BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL, CHENNAI

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate (Regulation And Development) Act, 2016)

Monday the 17th day of October 2022

CORAM : Mr. Justice M.Duraiswamy, Chairperson
Ms. Leena Nair, Administrative Member
Mr. R.Padmanabhan, Judicial Member

Appeal No.104 of 2021

M/s. Color Home Developers Pvt. Ltd.
Rep. By its Authorized Signatory
D.Selvabharathy ... Appellant

-Vs-

1. M/s. First Venture
Rep. By its Managing Partner
Kaustubh Johri

2. M/s Religare Housing Development
Finance Corporation Ltd.
Rep. by its Authorized Signatory ... Respondents

This is an appeal U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the Tamil Nadu Real Estate Regulatory Authority in C.No.471 of 2019 dated 30.06.2021.

Verified Realstate

This appeal was taken on file on 07.10.2021 and came up for final hearing on 12.10.2022 in the presence M/s. Ralph V. Manohar, R.Ramana, Shyamala Gayathri and M. Sakthi Narayanan, Counsels for the Appellant and M/s. C.Uma, K.Chandra and T.Malar Magal, Counsel for the 1st respondent and M/s.M.Ajmal Azzath, J.Ramakrishnan and K.Rafiya Parveen, Counsels for the 2nd respondent. Having heard the arguments on both sides and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. The appellant, felt aggrieved over the order imposing penalty of Rs.1,00,000/-, by the TNRERA in C.No.471 of 2019 dated 30th June 2021, have preferred this appeal.

2. It is the case of the appellant company that they entered into a memorandum of understanding with the 1st respondent herein on 31.05.2016, whereby the 1st respondent partnership firm agreed to purchase five residential villas from the real estate project to be developed and constructed by the appellant at Sorancheri village, Poonamallee Taluk, Thiruvallur District. The 1st respondent paid a sum of Rs.1,50,00,000/- as advance. Though the memorandum of understanding contains various other clauses regarding payment of dividend etc., the dispute between the parties is entirely on different footing and not with regard to payment of any dividend. Therefore, there is no need to discuss in detail about those clauses mentioned in the memorandum of understanding.

Verified RealEstate

3. It is the case of the 1st respondent that the appellant instead of selling those five villas to the 1st respondent, had sold the five villas to third parties without the knowledge, consent, and permission of the 1st respondent. Further the appellant had also refused to return the advance amount of Rs.1,50,00,000/- but alternatively offered to sell seven villas bearing villa nos. 55A, 57A, 99A, 99B, 100A, 100B and 101B from another real estate project developed by the appellant at Kanchipattinam in Karai Village, Kanchipuram Taluk. Evidencing the same the appellant had issued a receipt on 20.03.2018 in favour of the 1st respondent. The 2nd respondent was the creditor of the appellant and was holding lien over the properties of the real estate project developed by the appellant.

4. Further, upon the advice of the appellant, the 1st respondent have paid Rs.15,00,000/- to the 2nd respondent finance company, and obtained No Objection Certificate in respect of the villa No.101B. In spite of the No Objection Certificate issued by the 2nd respondent finance company, the appellant failed to execute sale deed in respect of the villa No.101B in favour of the 1st respondent. In fact the appellant had sold the villa No.101B to a third person by name Giftson Samuel. The TNRERA after holding that the appellant had violated Section 11(4)(a) of The Real Estate (Regulation and Development) Act, 2016, had imposed a penalty of Rs.1,00,000/- as against the appellant herein. Aggrieved over the same the present appeal has been preferred.

Verified RealEstate™

5. Points for consideration:

1. Whether the imposition of penalty against the appellant is justified?
2. Whether this appeal deserves to be allowed?

Point No.1:

6. The appellant admits the execution of memorandum of understanding on 31.5.2016 and the receipt of Rs.1,50,00,000/- from the 1st respondent as sale advance in respect of five villas from the real estate project to be developed and constructed by the appellant situated at Sorancheri Village, Poonamallee Taluk, Thiruvallur District. The appellant also admits that, as an alternative arrangement they offered to sell seven villas bearing villa nos. 55A, 57A, 99A, 99B, 100A, 100B and 101B from another real estate project developed by them at Kanchipattinam in Karai Village, Kanchipuram Taluk to the 1st respondent, instead of five villas at Sorancheri Village, Poonamallee Taluk, Thiruvallur District as agreed by him earlier. It is also an admitted fact that dispute between the parties has narrowed down in respect of the villa No.101B alone. This villa No.101B was one among the seven villas offered alternatively, by the appellant. The receipt dated 20.03.2018 issued by the appellant proves the same.

7. Moreover, the appellant requested the 1st respondent to remit a sum of Rs.15,00,000/- with the 2nd respondent finance company to his credit and obtain No objection Certificate for registering the said villa No.101B in favour of the 1st respondent. Believing the words of the

Verified © RealEstate

appellant, the 1st respondent remitted a sum of Rs.15,00,000/- with the 2nd respondent finance company to the credit of the appellant and obtained No objection certificate for registering the villa No.101B in favour of the 1st respondent. The 2nd respondent also issued a no objection certificate on 31.07.2019 in favour of the 1st respondent in respect of the villa No.101B. In the mean time the appellant had sold the said Villa No.101B to a third party by name Giftson Samuel. The Act of the appellant amounts to violation of Section 11(4)(a) of the The Real Estate (Regulation and Development) Act, 2016 .

8. As a promoter the appellant shall be responsible for all obligations, responsibilities and functions under the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder and also to the allottees as per the agreement for sale till the execution of the conveyance deed is completed. As per Section 61 of the Act, the TNRERA is empowered to impose penalty upon the promoters who contravenes the provisions of the said Act. Therefore, we found that the imposition of penalty of Rs.1,00,000/- against the appellant is justified and there is no illegality in the order passed by the TNRERA. We answer this point accordingly.

Point No.2:

9. In view of the above discussions on point No.1 the appeal deserves to be dismissed. We answer this point accordingly.

10. In the result, the appeal is hereby dismissed. With regard to penalty amount, the appellant had already deposited 50% of the penalty

i.e a sum of Rs.50,000/- under section 43(5) of The Real Estate (Regulation and Development) Act, 2016. The appellant is hereby directed to remit the balance penalty amount of Rs.50,000/- forthwith, before the TNRERA itself failing which the TNRERA shall take necessary steps to recover the same according to law. No costs.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

Verified RealEstate