BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL, CHENNAI

Monday 14th day of November 2022

CORAM : Miss. LEENA NAIR, ADMINISTRATIVE MEMBER
&
Mr.R.PADMANABHAN, JUDICIAL MEMBER

Appeal No.116 of 2021

K.Indira ... Appellant

-Vs-

M/s. S & P Foundation Private Limited
Rep. by its Managing Director,
S.Prabhakar ... Respondent

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.114 of 2020 dated 17.03.2021.

K.Indira ... Complainant

-Vs-

M/s. S & P Foundation Private Limited
Rep. by its Managing Director,
S.Prabhakar ... Respondent

This appeal was taken on file on 15.11.2021 and came up for final hearing on 21.09.2022. M/s.Aruna Ganesh and S.Nagarajan, Counsels for the appellant filed vakalat initially but the Vakalat was changed in favour of

Verified RealEstate™

M/s. A.V.Arun, Ganesh V Aranala, M.A.Aruneshe, G.Prabaharan, and M.Abinu Monisha who subsequently withdrew the Vakalat. On request, the appellant was permitted to appear in person. M/s. Cherian Mathews and S.Velu, were the Counsel for the respondent. In spite of the video conference link sent to them, they did not make any submissions in the appeal and were absent for several hearings. They were continuously absent from 15.06.2022 even though six adjournments were given for them to present their case. Heard the oral arguments of the appellant through video conferencing.

ORDER

The case of the complainant/allottee, in brief, is as follows:

1. The complainant/allottee on seeing advertisements, approached the Respondent / Promoter for purchasing a Villa plot and to construct a Villa in the project promoted by them. The name of the project is "S & P Signature villas". During November and December 2018, the complainant paid a sum of Rs.17,00,000/- as booking advance and cost of the villa. Subsequently, on 14.03.2019 a tripartite agreement for the sale of land, construction and sale of the villa was executed between the vendor, developer and purchase wherein Villa no. 218 was allotted to her. The promoter wanted to execute a second tripartite agreement on 06.08.2019. However, the appellant/complainant did not sign the same as there was a reduction in the carpet area, from 1190 sq. ft. to 1177 sq. ft. in the second agreement. Even though the total villa area was retained as 1828 sq. ft.

Verified RealEstate

2. The vacant plot bearing No.218 measuring 121.30 sq.m. equivalent to 1306 sq.ft. was agreed to be sold at a cost of Rs.13,06,000/-. The respondent/promoter himself agreed to construct a villa measuring carpet area of 1190 sq.ft. & a total built-up area of 1828 sq.ft. at a cost of Rs.63,19,000/-. The cost of the villa and the cost of the plot comes to Rs.77,69,000/-. Including the registration charges, GST, other expenses in providing the basic amenities and the construction costs, the total sale consideration was fixed at Rs.89,00,214/-. **The respondent/promoter agreed to complete the construction and hand over the Villa within 18 months from the date of registration of the Sale Deed which was done on 27.08.2019.**

3. Subsequent to the execution of the agreement dated 14.3.2019 the complainant/allottee paid a sum of Rs.27,68,984/- on six different dates during August 2019. Thus the complainant /allottee paid a total sum of Rs.43,24,984/-. However, the respondent/promoter did not commence the construction work and could lay the foundation stone only towards the end of 2019. At that stage, disputes arose between the parties, especially over the building plan and total built-up area deviations from the agreement. The work progressed very slowly and reached the basement/foundation level only after the complainant/appellant brought the matter before TNRERA. The respondent/promoter demanded additional payment for the construction of the Septic tank and U.G. Sump. The respondent/promoter abruptly stopped the construction at the basement/foundation level. After a prolonged exchange of emails, the complainant/allottee issued a legal

notice on 20.1.2020 to the respondent/promoter and requested the respondent/promoter to construct the villa as per the building plan without excluding any amenities as agreed in the agreement for sale and construction. The respondent/promoter issued a reply notice on 21.02.2020 with false allegations. Therefore, the complainant/allottee filed the complaint before TNRERA.

The case of the respondent/promoter, in brief, is as follows:

4. The complainant has filed this complaint for the relief of direction to construct the septic tank and sump at the villa plot purchased by her. The said septic tank and sump were already constructed as on 13.09.2019. Therefore, the said prayer becomes infructuous. The complainant also prayed for rescheduling the payment dates which is not at all possible. Further, when the construction reached the stage of the basement/foundation level, the complainant/allottee wanted to increase the built-up area by violating the approved plan. The respondent/promoter refused her request as it would amount to violating the approved plan. The complainant/allottee wants to exclude the sump area and the septic tank area from the total built-up area. The complainant/allottee preferred a police complaint against this respondent/promoter in this regard. A detailed inquiry was made by the police and the complainant/allottee was advised to engage her own civil engineer for getting the necessary clarifications.

5. Excluding the registration charges and other expenses amounting to Rs.1,44,000/- the complainant/allottee so far paid a sum of Rs.43,24,984/-.

As per the payment schedule, the complainant/allottee ought to have paid a sum of Rs.52,49,970/-. As such, the complainant/allottee was overdue of Rs.9,24,986/- for which the default interest comes to Rs.4,08,933/- and in all the complainant is liable to pay a sum of Rs.13,33,919/- to the respondent/promoter. Instead of paying the said amount she had come to this forum with false allegations. Therefore the complaint is liable to be dismissed.

6. The appellant in this appeal A.No.116/2021, is the complainant in C.No.114/2020. She preferred a complaint against the promoter, the respondent herein, for the reliefs regarding the non-inclusion of the septic tank and sump in the built-up area, to reschedule the additional costs of construction, to deliver built-up area as per the specification agreed upon, set aside the demand for interest and pass any other orders as the appellate authority may deem fit. She also pointed out that the project had not been registered with RERA.

7. After contest, the Learned Regulatory Authority negatived the first two prayers namely the septic tank and sump & rescheduling of the additional cost of construction and allowed the 3rd prayer by directing the promoter to adhere to the construction agreement. The Learned Regulatory Authority miserably failed to consider the primary duty of the RERA regarding the 'Registration of Project'.

8. Aggrieved upon the same the appellant /allottee preferred this appeal against the order of the Learned Regulatory Authority on the following main grounds:

- The promised superstructure area of the villa as per the sale & construction agreement is 1828 sq. ft. and a reduction of the same amounts to fraud on the purchaser.
- Holding Rs.43,24,984/- for 3 years without completing the construction of the villa.
- Huge interest of Rs.4,08,933/- is being imposed on the appellant for the remaining amount that is to be paid stage-wise and no clarification has been offered by the promoter.
- The builder is precluded from including the sump, septic tank, and parking space area in the total built-up area.
- Non Registration of the project with RERA.

9. The appellant /allottee would submit that the Learned Regulatory Authority has not passed a speaking order and simply endorsed the statement of the promoter. Therefore this appeal has to be allowed.

10. The first counsel for the appellant/allottee appeared but did not argue the case and the second counsel entered appearance but withdrew his Vakalat. Therefore there was no one to argue the case on behalf of the appellant. The appellant/allottee complained to the Tribunal that the counsels were being threatened hence they have withdrawn the Vakalat. At the request of the appellant/allottee, she was permitted to argue the case in person. The counsel for the respondent as well as the

Verified RedEstate™

respondent/Promoter were intermittently absent in the beginning and did not appear for arguing the case in spite of several adjournments given. They had also not made any written submissions on the appeal.

11. During the course of the arguments, the appellant prayed for permission to partially withdraw from the project in so far as the construction of the villa by the respondent/promoter is concerned. The appellant /allottee also prayed for a refund of the amount paid by her after deducting the price of the plot for the villa Rs.13,06,000/- and the registration charges of Rs.1,44,000/- were paid separately on 27th August 2019. The appellant /allottee further argued that she is a single mother, not educated and belongs to a below-middle-class family, residing in rented premises and constructing the house with loans and borrowed funds. She has submitted that since the contractual relationship got irreparably strained it will be very difficult for her to continue her villa construction with the respondent/promoter. She wants to engage another construction agency to build her villa in the same plot which is registered in her name. Therefore the complainant/allottee prayed before this Tribunal to direct refund of the balance amount and permit her to construct the villa with a third party builder.

12. Perused the contentions of both sides. On perusal, the following points arose for determination in this appeal:

Verified RealEstate™

Points for determination:-

1. Whether the project of the respondent is liable to be registered under RERA?
2. Whether the claim of the appellant is tenable?
3. Whether this Tribunal can mould the relief?
4. What reliefs are the parties entitled to?

Point No.1:

13. According to the respondent/promoter, they applied for **RERA registration on 15.5.2019 through application No.2484/2019**. The TNRERA has vide its **letter No.TNRERA/2484/2019 dated 22.8.2019 returned the project registration application unregistered.** TNRERA stated that "registration can be done only when the plot extent is more than 500 m^2 and the number of the dwelling unit is more than 8 in a single plot".

14. **Under the Real Estate (Regulation and Development) Act, 2016** the application for registration of a real estate project is very detailed and has complete details of the works, plan of development works, land details including land dedicated to the project, and even a proforma of the allotment letter. The sale & construction agreement in this project clearly reveals that the **promoter proposed to develop 350 villas** which find a place in paragraph No. 35 (a) (ii) on page No.34 of the Typed set of the appellant which reads as follows: -

Verified PredEstate

"(ii) The ownership of the common amenities building being low and building along with the facilities amenities, equipment's, etc. available in the Common Amenities Buildings shall be transferred to the duly formed association only after the completion of the entire project which consists of 350 villa, until such hand over the same shall be under the control and possession of Developer"

15. The sale & construction agreement also clearly speaks about the construction of the entire project exclusively by the promoter including all residential areas and common amenities necessary for the community living in the project area. It even mentions his role in the formation of an association of residents.

16. Further, the applications for registration were submitted all together for the entire project and not singly.

17. In spite of all this information, TNRERA failed to take cognizance of the fact that the **Act requires the Authority to consider a project in its totality, inclusive of all phases of development**. The Act is crystal clear that the exemption is only applicable on small standalone individual plots where the total area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight **in of all phases of development of the project.** It is unfortunate that TNRERA did not apply its mind and the project which was submitted for registration was returned as unregistered by stating that they were not required to be registered under

the Act, as the individual plot was less than 500 sq. m. and the number of buildings is less than 8 in one plot.

18. TNRERA has therefore erred by applying this limitation on a project of more than 350 dwelling units, which are being developed in a single phase. The authority has compounded this error by not taking cognizance of this lapse even during the hearing of this case.

19. **This Appellate Tribunal has given repeated findings in the same set of facts**, in K.S.Pradeep Kumar and another Vs S.Elayaraja and another; S.Elayaraja Vs K.S.Pradeep Kumar & others and C.A.Prabakar Vs. K.S.Pradeep Kumar & Others. As Section 3(2)(a) of the Real Estate (Regulation and Development) Act, 2016 specifically states that exemption from registration is to be given only when "the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight **inclusive of** all phases", this Tribunal held that registration was required for the total project of the promoter, even though they were constructed by the promoter, in a phased manner, and the individual villa was within the limit of below 500 m^2.

20. The learned TNRERA has not taken c**ognizance of the TNREAT judgments even during the hearing of this case, though the Respondent has informed that their application for registration was returned unregistered by TNRERA stating that individual buildings were less than 500 m^2. TNRERA has, by its silence on the issue during the hearing of the case, maintained even now**

Verified RealEstate ™

that the project of the respondent/promoter does not require registration under the Real Estate (Regulation and Development) Act, 2016 by TNRERA.

21. Therefore this Tribunal comes to the conclusion that the project of the respondent is liable to be registered under TNRERA under Section 3. Point No.1 is answered accordingly.

Point No.2:

22. The appellant/allottee came forward with the claims that the promoter reduced the carpet area from 1190 sq. ft. to 1177 sq. ft., villa area from 1828 sq. ft. to 1765 sq. ft., delayed construction and completion in spite of advance payment, charging of excess interest, reduction in plot size after registration of land for the purpose of road, and the inclusion of the sump, septic tank, and parking space area in the total built-up area. The respondent/promoter totally denied the claims as baseless. In such situations, we have to analyze which one is true.

23. The appellant/allottee had signed the agreement for sale and construction on 14.3.2019 wherein in Schedule B regarding Property, (page 16 of the typed set of the appellant) the Villa was described as **"with a total carpet area of 1190 sq.ft.".** However in the 2nd agreement dated 06.08.2019 which the appellant/allottee refused to sign, but which is quoted by the respondent/promoter, (page 37 of the typed set of the appellant) under Schedule B Property the Villa was described as **"with a total carpet area of 1177 sq.ft.".**

24. There were discrepancies/issues with regard to the plot and total building area of the Villa also. The appellant/allottee sent mail dated **24.9.2019 & 26.9.2019** (at pages 62-63 of the typed sets of the appellant) in which she raised the issues as follows:-

Mail dated **24.9.2019** stated

"The plan clearly says the building area for sale is 1828 sq. ft. All the specifics are being changed after the land registration is completed.
The reason behind why the construction work is not following the approved plan is uncertain.
The plan clearly says the building area for sale is 1828 sq.ft. All the specifics are being changed after the land registration is completed
The senior engineer, Mr.Elangovan demands land from plot 218 for the construction of a common road which is irrelevant and unacceptable. This has not been discussed prior to the registration of the land. Why is the land demanded after land has been registered. Everything seems to go beyond our scope of work."

Kindly proceed the construction as per 1828 sq. ft."

This was followed up with another mail from her on **26.9.2019** stating:-

1. ***"No measurements are specified in the approved plan. However, specifics are mentioned in the proposed plan in which sump details are no where included.***
2. ***---***
3. ***---***
4. ***Land for road construction cannot be accepted and spared.***

5. ***You say plot 217 owners also are paying same amount as us, so we will have to accept the building area of 1765 sq. ft. but pay for 1828 sq. ft. "***

The response by the promoter made on 27.9.2019 runs as follows:-.

1. ....."**sump is mentioned in the approval plan which is attached herewith for your reference."**
2. ***We were not notified about sump at all. ..... By default we are providing the sump for all the corner villas and it is included in the build up area. .. ..***
3. ***... ..***
4. ***Land for road construction cannot be accepted and spared. - Your land measuring 1306 sq. ft. remains the same and your land will not be taken for any other construction.***
5. ***You say plot 217 owners also are paying same amount as us, so we will have to accept the building area of 1765 sq. ft but pay for 1828 sq. ft.. - Yes, he is paying more than you cost for 1765 sq. ft. because normally we are achieving 1.5839 for all the villas i.e. 1765/1163 = 1.5 FSI. But in your villa we are achieving only 1.39 FSI instead of 1959 sq. ft. i.e., 1306 x 1.5."***

Herein it has been specifically admitted by the respondent/promoter in paragraph 5 of the mail that the building area is only 1765 sq. ft. Apart from this, the reply does not make any sense, as Floor Space Index (FSI) is a non issue in this matter. **FSI is the maximum permissible floor area, that a builder can build on a particular plot/piece of land. As FSI is the ratio of building floor covered area to area available on the**

land it has no bearing on the construction costing of the villa. Cost of construction is based on **the carpet area and total built-up area, amenities provided & quality parameters and not FSI**. According to the **Nedungundram village,** Kattangulathur Panchayat union approved plan, which is found on page No.21 and 42 of the typed set of the appellant, the FSI for plot No.218 is only 1.05 meaning they could construct more area in the plot. Here again, by saying that the villa of the appellant/allottee is achieving only 1.39 FSI as against 1.5 of others, the respondent/promoter is misleading the appellant/allottee. **According to the above-mentioned plan, the total built-up area counted towards FSI of villa 218 is 1372 and non-FSI is 179.33 totaling 1551 sq. ft.**

25. On 23.11.2019 & 14.12.2019 the appellant/allottee again sent a communication for clarification regarding the reduction in the total built-up area from what is stated in Schedule B of the agreement. Since no further clarification was received from the promoter the appellant/allottee sent a legal notice to the respondent/promoter on 20.01.2020 only as a request to consider the terms and conditions of the agreement and not exclude any amenities from the cost of construction agreed upon and to consider the request of the appellant. For the legal notice, the respondent/promoter replied on 21.2.2020 by stating that the construction of villas will be done only as per approval without deviation and asked the appellant to come to their office with a professional person regarding clarification. Again on 9.9.2020 the appellant/allottee requested the promoter to furnish building

plan approval and particulars of the area under construction and its width and breadth. The promoter replied by mail **with an area statement giving a set of particulars in A, B and C. A & B are interpreted as FSI and non-FSI area mentioned in the building plan, totaling 1551 sq ft., and C, areas which are not included in the plan and are non-FSI areas measuring 277 sq. ft.** (page 61 of typeset of appellant) making the **total built-up area (1551 +277) 1828 sq. ft.. As the promoter did not give the finer details of carpet area, the complainant was not satisfied and made a complaint before the TNRERA in C.No.114/2020.**

26. In this case, the appellant/allottee **paid the money in November and December 2018 and entered into the agreement for sale and construction with the respondent/promoter on 14.3.2019 only. On 25.4.2019, that is after more than one month of signing the agreement did the promoter obtain the building permission and approval for the building plan from the Nedungundram village, Kattangulathur panchayat union. Thereafter, the promoter applied for RERA registration only on 15.5.2019. This is a clear violation of section 3 (1) of the Real Estate (Regulation and Development) Act, 2016 which prohibits the sale of plot, apartment or building without registration; it also violates Section 11(3) which directs the promoter, at the time of the booking and issue of allotment letter - to make available to the allottee, the following information, namely:— (a) sanctioned**

plans, layout plans, along with specifications, approved by the competent authority, by a display at the site or such other place as may be specified by the regulations made by the Authority.

27. **The Apex Court verdict in a similar case, *Ferani Hotels Pvt. Ltd. Vs The State Information Commissioner Greater Mumbai & Ors, on 27 September 2018,*** acts by way of precedent and runs as follows:-

> ***"34. In the end, we would like to say that keeping in mind the provisions of RERA and their objective, the developer should mandatorily display at the site the sanction plan. The provision of sub-section (3) of Section 11 of the RERA require the sanction plan/layout plans along with specifications, approved by the competent authority, to be displayed at the site or such other places, as may be specified by the Regulations made by the Authority. In our view, keeping in mind the ground reality of rampant violations and the consequences thereof, it is advisable to issue directions for display of such sanction plan/layout plans at the site, apart from any other manner provided by the Regulations made by the Authority. This aspect should be given appropriate publicity as part of enforcement of RERA."***

28. As per the principle laid down by the Apex court in the above-mentioned case, the developer has to mandatorily display the sanctioned plan at the site.

Verified by RealEstate™

29. Even if RERA did not register the project, nor approve the plan under a misconception that it did not require the Authority's approval, it was mandatory for the promoter to have got the planning permission from CMDA and the plan sanctioned by the local competent authority - the local panchayat, before even offering the plots for sale, shared the approved plan with the allottees/buyers when selling it and displayed it at the site during construction. **Promotion and sale could have been initiated only after getting the response on the application for registration from RERA on 22.9.2019.**

30. The promoter in this case did not **have even the building permission, let alone the sanctioned plan from any authority at the time of receiving payment; it was the same situation even when he entered into an agreement with the appellant/allottee. Further, he also failed to furnish a copy of the sanctioned plan to the appellant even after it was sanctioned by the panchayat.** It is therefore evident that it was falsely indicated that the approved Villa/House Plan was annexed to the agreement in the unregistered sale and construction agreement of 14.3.2019 (on page no. 40 of the typedset of the appellant). Actually on that date even the Planning Permission from the panchayat union was not given nor was the plan sanctioned by the local authority. This is also evident from the fact that it is not mentioned in the Schedule B Property. In fact, even at the time of the proposed agreement dated 06.08.2019 also, the plan had not yet been approved as it was pending with TNRERA though it also mentions the sanctioned plan as part

of the enclosures. It was finally furnished only after repeated demands made by the allottee.

31. The promoter has also accepted the reduction of the building area, from 1828 sq. ft. to 1765 sq. ft. and tried to justify it (at page no.64 of the typed set of the appellant). Hence the respondent/promoter has clearly violated Section 14 of the Act as he has not adhered to the sanctioned plan and villa specifications specified in the agreement and sanctioned plan. He has also not performed his **obligations specified under Section 12** which states that

> ***"Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act"***

32. In view of the above, the allegation of the respondent/promoter regarding the claim of the appellant as baseless and an afterthought is wrong. Since the appellant has paid more than Rs.43 lakhs and has a valid reason to doubt the actual built-up area of the Villa, she has an absolute right to question and seek clarification. So, the reasonable doubt raised by the appellant is tenable and it cannot be termed as an afterthought. Therefore, this Tribunal has come to a conclusion that the claim of the appellant is tenable and point No.2 is answered accordingly.

Point No.3:

33. The Real Estate (Regulation and Development) Act, 2016, is a regulatory law enacted, with **the primary purpose of restoring the confidence of consumers in the Real Estate Sector, safeguarding homebuyers and promoting investment in the real estate industry by introducing transparency and accountability therein. The act was necessitated because the real estate sector was growing but was largely unregulated, especially from the perspective of consumer protection.** Though consumer protection laws are available, the recourse available therein was only curative, but not preventive. The major objectives the Real Estate Act intended to achieve are:

- To protect the interest of the allottees and ensure their responsibility.
- To maintain transparency, ensure fair play and reduce the chances of fraud & delays.
- To enhance the flow of correct information between the home buyers and the sellers.
- To impose greater responsibilities on both the builders and the investors.
- To enhance the reliability of the sector and thereby increase confidence amongst the investors.
- To implement Pan-India standardization and bring about professionalism.

34. The preamble of the Real Estate (Regulation and Development) Act 2016 explicitly states that - it is an " Act to establish the Real Estate Regulatory Authority for **regulation and promotion** of the real estate

sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, **in an efficient and transparent manner and to protect the interest of consumers in the real estate sector** and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the Adjudicating Officer and for matters connected therewith or incidental thereto."

35. **From the above, it is very clear that the Real Estate (Regulation and Development) Act, 2016 has been enacted with the clear intention to protect the interest of consumers in the real estate sector. The transactions should be transparent and open without giving rise to suspicions. The creation of an Appellate Tribunal under this Act is also critical to ensuring efficiency and quicker disposal of appeals of aggrieved parties from both the Authority and the Adjudicating Officer. Under Section 53, the Appellate Tribunal** shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

36. Various judicial pronouncements have strengthened the role of a Tribunal. The Hon'ble Supreme Court of India in **Union Of India And Anr Vs Paras Laminates (P) Ltd,** reported in 1991 AIR 696, 1990 SCR (3) 789, has held as follows.

"There is no doubt that the Tribunal functions as a Court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. Where an Act confers a jurisdiction, it impliedly also grants the power, of doing all such acts, or employing such means, as are essentially necessary to its execution."

37. In this matter, the Tribunal applying the principles of natural justice gave a number of adjournments to ensure the presence and thereby the submissions of the advocates of both sides as well as the representatives of the appellant and respondent. In the case of the appellant, there was a change of Vakalat and the second counsel for the appellant refused to argue the case and withdrew the Vakalat. In such circumstances, the appellant sought permission to argue the case herself. This was permitted. However, in spite of numerous opportunities, no written submissions regarding defense was filed by the counsel or the respondent /promoter in the appeal. The respondent/promoter failed to

Verified RealEstate ™

utilize the opportunity to put forth their defense even though five adjournments were given. In such circumstances this Tribunal was constrained to consider the defense put forth by the promoter namely, counter, written arguments filed on behalf of the promoter before the Regulatory Authority. The non participation of the promoter in the appeal reflects his attitude and also shows the contempt and callousness with which the respondent/promoter treated the appellant/allottee and her issues, as well as their lack of interest in resolving the issue amicably.

38. As mentioned above, the scheme of the Act gives a **clear** guiding principle – actions must be viewed from the **perspective of consumer protection that is, to protect the interest of consumers in the real estate sector. They must ensure that consumers will not be cheated or taken for a ride by the developers, therefore, the transactions should be transparent and open, not giving rise to suspicions.**

39. In order to efficaciously and meaningfully give effect to the objectives of this Act, as well as the requirement of speedy disposal under the Act, this Tribunal has to decide the case on hand on merits. The aim is to ensure the implementation of the Act in letter and spirit. The ultimate aim of the Act is to ensure transparency in the dealing of Real Estate sale and protect the interest of the consumer so that he is not cheated. In this case, the promoter without any agreement, permission to build or sanction of the building plan received large sums of money from the appellant/allottee. Further, he miserably failed to furnish the approved

Verified RealEstate™

layout and building plan to the purchaser even after it was approved which is against the basic provisions of the Act. This peculiar act of the promoter of first getting the money from the purchaser and then move for getting the building plan approval and written agreement was resorted to solely by misusing the illiteracy of the lady. Again, he entered into the first agreement dated 14.03.2019 and showed sanctioned building plan as enclosed **when he actually did not even have a sanctioned plan**. And finally, the promoter tried to obtain the signature of the appellant on a new tripartite agreement on stamp paper dated 27.8.2019 mentioning the date in the document as 06.08.2019 showing reduced carpet area of 1177 sq. ft. Though the appellant/allottee did not sign it is pertinent to note that this agreement also mentioned the sanctioned plan as enclosed. Unfortunately, **here too the situation** vis-à-vis the **sanctioned plan is not altered as the RERA had neither approved nor returned the plan on 6th August 2019. The Plan was returned stating that registration was not required only on 22nd August 2019 as given on page 3 of the counter filed by the respondent/promoter before RERA.** It shows that the promoter without following any principles of law regarding the Real Estate Act and Indian Stamp Act and Indian Contract Act and amounts to hoodwinking the hapless appellant. Therefore, there is certainly, no transparency in the Real Estate dealing of the promoter with the appellant. In such circumstances, the appellant was constrained to make a plea for the refund of the cost of construction along with interest, compensation for mental agony and also sought for relieving her from the clutches of the

promoter who has no scruples. In such circumstances, by following the preamble of this Act to protect the interest of the consumer in the Real Estate Sector and to give fruits of the Act to the consumer this Tribunal necessarily has to mould the relief without sending the parties from pillar to post thereby saving time and ensuring speedy disposal of the Real Estate dispute. Therefore this Tribunal comes to the conclusion that to meet the ends of justice relief be moulded. Point No.3 is answered accordingly.

Point No.4:

40. There are a number of allegations raised against the respondent/promoter in the complaint. The promoter has not been able to justify his actions properly nor provide any remedies. The relationship between the parties has got extensively strained and there is no chance for reconciliation. Even before the complaint was filed before the RERA, the dispute between the parties went up to the police station and the relationship between both the parties got stressed to the maximum level.

41. It is apparent that the appellant/allottee was asked to sign on the dotted line. She had no choice but to give her assent to agreement that was incomplete (without essential details like planning permission and plan sanction details), prima facie wrongly mentioned the enclosure of documents that were non-existent on the date of the agreement and contained unfair and unreasonable clauses, all because she had made substantial payments before signing the agreement. As per the law laid down by the Apex court in the Pioneer Urban Land and Infrastructure Ltd.

Vs Govindan Raghavan on 2nd April 2019 when a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form, it amounts to unfairness and unreasonableness in that contract. The agreement was never registered though stamp duty and registration charges were charged. All this definitely goes to show that the promoter is involved in unfair practices and irregularities and is adopting unfair methods, as defined in A(ii) and B(d) in the explanation to section 7(1) of the Real Estate (Regulation and Development) Act, 2016, to promote the sale of the real estate project.

42. The fact that the respondent/promoter tried to make the appellant/allottee to sign an agreement dated 6th Aug 2019, which was written much later, definitely after 26th August 2019, (inferred from the fact that 27th Aug 2019 is mentioned as the date of purchase of the stamp paper), makes it amply clear that the respondent/promoter was unscrupulously trying to manipulate/create records and is therefore not trust worthy. Further, even when the appellant questioned the measurements the promoter gave an evasive reply and went to the extent of saying that the appellant sought a deviation from the approved plan which is patently a lie. The appellant/allottee who is the weaker party cannot obtain even her rightful demands and services but has to accept them on the terms imposed by the stronger party (promoter) or go without them. She is being forced to accept interruptions in the construction and unfair/unreasonable interpretations of the contract. Further, she is also

being deliberately confused by the promoter and his agents by talking of unrelated matters like FSI when she is questioning about reduction in area and increase in construction costs, asking her to part with land for road construction etc., when in reality there is no such requirement.

43. Due to the above, there is a lot of mistrust and the relationship is very strained. The appellant/allottee therefore no longer wants to continue to engage the respondent/promoter to complete the villa construction and wants him to withdraw from the project and the agreement.

44. We do agree that no relief for replacing the developer for the construction of the Villa or refund was prayed for in the complaint filed before the RERA. The appellant explicitly requested the Tribunal in her oral arguments to permit her to partially withdraw from the project and also permit her to replace the respondent with a third party for constructing the Villa. Since she wants to withdraw from the project, she wanted to get back the amount paid towards the construction of the villa after adjusting the cost of the plot and registration expenses.

45. In the unusual circumstances of this case, by applying the principle of justice we cannot permit the promoter to complete the construction in villa No.218 of the appellant. **Therefore, this Tribunal comes to a conclusion by invoking Section 7(1)(b) and Section 8 of RERA Act, to permit the appellant/allottee to complete the construction herself directly, or through a third party.**

46. The respondent/promoter contended in his counter filed before the TNRERA that the appellant/allottee failed to pay the further amount as per

Verified RealEstate

the payment schedule. The question of further payment as per the payment schedule will arise, only when the appellant /allottee is willing to proceed with the construction which is not as per the specifications agreed to, especially with regard to the total building area. Further, it is also not a case of the respondent/promoter having completed the construction as per schedule for the money already deposited. On the other hand, he had delayed starting the construction till the later part of 2019 and halted the construction at the basement/foundation level. Therefore all the contentions that the respondent/promoter raised in his counter regarding further payment as per the payment schedule cannot be accepted. Further, accepting the respondent/promoter's contention that the inclusion of the sump & septic tank was in the sanctioned plan, the expenditure would definitely have been factored into the construction cost. Then asking for an additional amount for the same does not arise. The respondent/promoter cannot expect payments as per the schedule of payments, without proceeding with the construction.

47. The appellant/allottee is a poor uneducated woman hailing from a remote village. She is a single parent who has no support from friends and family. Taking advantage of her pitiable situation the respondent/promoter collected a sum of Rs.17,00,000/- from her during November and December 2018, **without having any building permission, approved building plan or signing any agreement with the party. The tripartite agreement for the sale of land, construction and sale of the Villa was entered into between the parties only in March**

2019. Even at this time the respondent/promoter did not have an **approved building plan. The respondent/promoter again tried unsuccessfully to enter into a tripartite agreement for the sale of land, sale and construction of Villa between the same parties on 6th August 2019.The promoter/respondent only refers to this agreement in his submissions before RERA presumably overcome the non existence of a sanctioned plan. However, this agreement was dated 6th August 2019 did not alter the position with regard to the sanctioned plan, as the plan submitted to RERA on 15.5.2019, was still under their scrutiny on 6th August 2019. The Plan was returned only on 22nd August 2019.** Collection of such a huge sum of Rs.17,00,000/- without a sanctioned plan or entering into any agreement is a clear violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016 and is punishable under Section 61 of the said Act by imposing a penalty of 5% of the project cost.

48. As per section 3(1) of the Real Estate (Regulation and Development) Act, 2016, no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act. If any promoter contravenes the provisions of Section 3, he shall be liable to a penalty under Section 59, which may extend up to ten percent of the estimated cost of the real estate project as determined by the Authority.

The respondent/promoter is liable to pay "a penalty which may extend up to ten percent of the estimated cost of the real estate project". But the promoter is using the order of the Regulatory Authority dated 22.08.2019 as a shield to relieve from the liability of penalty under Section 59.The Real Estate Act, particularly Section 3, came into force on 1.5.2017 itself. The promoter has applied for the registration of the project with TNRERA on 15.05.2019. He has however advertised and promoted the project in 2018, also received money as advance for the villa from the appellant in November and December 2018, allotted the villa and signed the agreement on 14.3.2019 - all this much before he submitted the application to TNRERA for registration. Even before knowing the outcome of his application for registration, he tried to get the second agreement also signed by the appellant. The promoter has therefore certainly contravened the provisions of Section 3 and the promoter shall be liable to pay a penalty as per Section 59. Anyhow, in view of the orders passed by the TNRERA, no penalty is imposed.

49. He is also liable to pay interest for this amount of Rs.17,00,000/- from the date of payment, as also for the balance amount of Rs.30,00,000/- which was kept with him for nearly four years without any progress in construction. **In fact, the amount of Rs.30,00,000/-is nearly 3.75 lakhs more than the amount of Rs. 26,24,984/- she was required to pay up to the completion of the foundation.**

50. In this case, the promoter has received substantial money from the appellant/allottee without the approval/sanction of the building plan from any authority and without any written agreement. The document was never registered though the respondent/promoter charged 1% Stamp Duty &1% Registration fee. As per the agreement the promoter agreed to construct an 1828 sq. ft. villa for the appellant. After receiving the sale consideration and beginning construction, the promoter suo motto reduced the built-up area of the villa from 1828 sq. ft. to 1765 sq. ft. and carpet area from 1190 sq. ft. 1177 sq. ft.

51. In doing the above-mentioned acts he has violated a number of mandatory provisions of the Real Estate (Regulation and Development) Act, 2016 which are provided to ensure the sale of plots and construction of building **in an efficient and transparent manner and protect the interest of consumers in the real estate sector. He has also not performed the functions he is expected to perform as a promoter. He has violated-**

i. **Section 3(1)** No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act
ii. **Section 11(3)(a),** the promoter at the time of booking and issue of allotment letter shall be responsible to make available to allottees the documents namely sanctioned plan, layout plan along with specifications, approved by the competent authority,

by display at the site. But in this case, the promoter has not even got a sanctioned plan at the time of booking.

iii. **Section 13**

(*1*) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

iv. **Section14.** (*1*) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(*2*) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

a. any additions and alterations in the sanctioned plans, layout plans and specifications described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

52. Therefore, this Tribunal comes to the conclusion that the promoter has violated the above said provisions of the Real Estate (Regulation and Development) Act, 2016 with impunity.

53. In such circumstances this Tribunal has decided for the ends of justice and to implement the RERA Act in letter and spirit, it is just and fair to impose penalty by invoking Section 61 of the RERA Act for violation of

the provisions of the Act and as well as to direct the promoter to refund under Section 18 of the Act, the excess amount deducting the work done by the promoter along with interest for the remaining amount and also to award compensation to the appellant for the mental agony caused to the appellant by the promoter by purposely delaying the construction, with litigation costs.

54. The following penalties are levied on the respondent/promoter for the violations

In view of the orders passed by the TNRERA, no penalty is imposed for violating Section 3(1).

a) **For the violation under Section 11(3) (a) for not making available to the allottee the sanctioned plan, layout plan along with specifications approved by the competent authority for which the Penalty under section 61 i.e., 5% of the project cost (cost is limited to the cost of the single villa Rs.89,00,214/- and not the project) which comes to Rs.4,45,010/-.**

b) **The violation under Section 13 for receipt of advance amount more than 10% of the cost of villa without entering into agreement, the Penalty under section 61 i.e., 5% of the project cost (cost is limited to the cost of the single villa Rs.89,00,214/-) which comes to Rs.4,45,010/-.**

Verified by RedEstate

c) The Violation under Section 14 for alterations in the sanctioned plan by reducing the built up area of the villa from 1828 sq. ft. to 1765 sq. ft. the Penalty under section 61 i.e., 5% of the project cost (cost is limited to the cost of the single villa Rs.89,00,214/-) which comes to Rs.4,45,010/-.

55. The promoter enriched himself with the amounts paid by the appellant/allottee to the tune of Rs.43,24,984/- for the past 4 years and returned as a land sale deed in August 2019 and construction up to basement/foundation level only and retained the balance amount along with interest. This Tribunal has already came to a conclusion that the appellant/allottee is entitled to the refund of the sale consideration paid by her after deducting the cost of construction made by the promoter and the land cost along with registration charges. After paying the land cost totaling Rs.13,06,000/- there was a balance of Rs.30,18,984/- from the total amount paid by the appellant/ allottee. The interest calculated at 12% as per the rules, from the date of payment till 31st October 2022 comes to Rs.17,60,830/-. Therefore the promoter is liable to refund Rs.30,18,984/- plus Rs.17,60,830/- which is equal to Rs.47,79,814/-.

56. Admittedly the promoter has constructed up to basement/foundation level and the cost of the same is calculated as per Schedule C of the agreement.

Verified RegEstate

57. Land cost and construction cost as per agreement is Rs.77,69,000/- and by deducting the land and registration cost of Rs.13,06,000/- the construction cost is Rs.64,63,000/- for 1828 sq. ft. As per the built-up area statement given in the counter affidavit of the promoter before RERA, page 85 of the typeset of the appellant/allottee, the ground floor is mentioned as 592 sq. ft., ignoring the reduction in the constructed area, the cost for the built-up area of the basement/foundation will be Rs.20,93,050/-.

58. The total amount to be refunded by the promoter after deducting the cost of the constructed basement/foundation area is Rs.**26,86,764**/- (Rs.47,79,814/- minus Rs.20,93,050/- = Rs.**26,86,764**/-). **So the promoter is liable to refund Rs.26,86,764/- to the appellant/allottee.**

59. Admittedly the appellant/allottee paid the amount for the purchase of villa house from 3.11.2018 to 30.08.2019 to the tune of Rs.43,24,984/- even then the promoter failed to hand over the villa within 18 months as agreed due to a dispute between them regarding the reduction of built-up area. Due to this dispute, the appellant/allottee was constrained to go from pillar to post to seek remedy from 2019 for nearly 4 years and the appellant/allottee lost her hope in getting her dream home which caused and created failure in her attempt to own a house. Certainly, it caused mental agony in the mind of the appellant/allottee since she has paid more than 50% of the cost of the villa even then she could not see the roof of the dream home. The mental agony of the appellant/allottee

cannot be measured in terms of money. But at the same time, the promoter has not lost anything but he enriched with the amount paid by the appellant. Therefore it is just and necessary to heal the mental agony by way of awarding compensation by applying the principle of 'just compensation' as already decided by this Tribunal in A.No.47 of 2020 dated 04.11.2020 and A.No.50 of 2020 dated 21.06.2021 by relying on the verdict of the Apex court in ***Divisional Controller, KSRTC –Vs- Mahadeva Shetty and another*** (2003) 7 SCC 197:

> **"It has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just. (See Helen C.**

Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191)."

Before The Tamil Nadu Real Estate Appellate Tribunal

A.No.50 of 2020

M/s.K.G.Foundations (Pvt) Ltd., Vs J.Rajashekar and Another

"20. By following the above principle compensation has to be fixed. As an ordinary prudent business man can expect reasonable return of his capital investment. For example in a firm a partner, who has no expected expenses, he would not withdraw his share of profit and invest the profit in the same firm by lending the same to the firm certainly he would fetch a reasonable interest and guaranteed interest @ 12% per annum. Likewise for a sum of Rs.1,00,000/- @ 1,00,000/- @ 12% p.a. reasonable expectation of income would be Rs.12,000/- p.a. by applying the above principle the home buyers is getting by way of interest Rs.10,050/- p.a. The reasonable rate is only 12% p.a. already got 10% by way of interest and available balance only 2% p.a. is reasonable and just. So reasonable and just rate @ 12% for 3 years 7 months 19 days total comes to Rs.43,633/-. Already @ 10.05% got Rs.36,543/-. Hence the balance 2% comes to Rs.7,091/- as rounded of Rs.7000/-. As per the above reasonable calculation the compensation is only Rs.7000/-. The same principle was already adopted by this Tribunal in A.No.47/2020 dated 04.11.2020. Therefore this Tribunal fixed the compensation of Rs.7000/- only instead of Rs.25,000/-.

60. The promoter has enjoyed and enriched himself with Rs.26,86,764/- of the appellant's money retained by him for the past 4

Verified Real Estate ™

years without delivering the dream home to the appellant causing her mental agony. By applying the above-said principle as a precedent, this Tribunal fixed the compensation for mental agony at Rs.12,89,600/-. The amount was arrived at by taking into account the refund amount of Rs.26,86,764/- (amount retained for 4 years) at the rate of 12% per annum simple (Rs.26,86,764/- x 12 / 100 x 4 = Rs.12,89,646.72 and round off the same as Rs.12,89,600/-). **Therefore the promoter is liable to pay the compensation for the mental agony at Rs.12,89,600/- to the appellant/allottee.**

61. **In the result by allowing this appeal with costs, the order of the TNRERA in C.No.114/2020 dated 17.03.2021 is set aside and the complaint of the appellant/allottee is allowed by modifying the relief by issuing the following directions:-**

a) **The TNRERA is directed to register the project of the respondent/promoter under TNRERA within two months.**

b) **The promoter is directed to deposit the penalty amounts totaling Rs.13,35,030/- before the TNRERA within two months.**

c) **The promoter is directed to refund a sum of Rs.26,86,764/- to the appellant/allottee with subsequent interest from the date of this order at the rate of 12.05% till realization.**

Verified RealEstate™

d) **The promoter is directed to pay a sum of Rs.12,89,600/- towards compensation for the mental agony.**

e) **The promoter is directed to refund and compensation within two months.**

f) **The appellant is at liberty to construct the villa No.218 on her own and on her own costs with any third party.**

g) **The respondent/promoter is relieved from the liability with regard to villa No.218 after the payment of refund and compensation.**

Connected Miscellaneous Applications pending if any, are hereby closed.

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

Verified RealEstate