BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Friday the 16th day of September 2022

Coram : Ms.Leena Nair, Administrative Member
Mr.R.Padmanabhan, Judicial Member

Appeal Nos. 138 and 139 of 2021

M/s.L& T South City Projects Pvt. Ltd.
(now known as M/s.Pragnya South City Projects Pvt. Ltd)
Rep. by its Authorized Signatory ... Appellant

-Vs-

1.Shobana Subramanian
2. Varun Gopal
3.M/s.L& T Realty Limited,
Rep. by its Authorized Signatory ... Respondents in A.No.138/2021

1.Sadhana Subramanian
2. V.Subramanian
3.M/s.L& T Realty Limited,
Rep. by its Authorized Signatory .... Respondents in A.No.139/2021

These two appeals U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Common Order passed by the Tamil

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Nadu Real Estate Regulatory Authority in C.Nos.246 & 247 of 2019 dated 10.06.2021.

1.Shobana Subramanian
2. Varun Gopal ... Complainants in C.No.246/2019

1.Sadhana Subramanian
2. V.Subramanian
.... Complainants in C.No.247/2019

-Vs-

1. M/s.L& T South City Projects Pvt. Ltd.
(now known as M/s.Pragnya South City Projects Pvt. Ltd)

2. M/s.L& T Realty Ltd. ... Respondents in both cases

These two appeals were taken on file on 01.12.2021 and came up for final hearing on 01.08.2022 in the presence of M/s.Krishna Ravindran, A.Charles Darwin and S.Praveen Kumar, Counsels for the appellant and the respondents 1 & 2 in both cases appeared party-in-person and M/s. P.Kavin Prabhu and N.Srivathsan, Counsels for the 3rd respondent. After hearing both side counsels through video conferencing, this Tribunal delivered the following:

COMMON ORDER

For the sake of convenience the parties- hereinafter will be referred to as per their rank and status before the TNRERA.

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1. **The case of the complainants, in brief, is as follows:** The respondent/promoter on 20.08.2014 entered into an Agreement to sell an apartment in their project by the name Eden Park Phase II, in the Thiruporur Taluk in Kanchipuram District, to the complainant/allottee. As per the **Schedule 'C' of the** said agreement, the respondent/promoter agreed to sell 339 sq. ft. of undivided share from and out of the property described in Schedule 'B' therein measuring an extent of 37 acres and 36 cents. The total extent of the project, as per the approved plan, was also 37.36 acres. **This was reiterated in the Construction agreement dated 20.08.2014** executed between the complainant /allottee and the respondent/promoter. Even in the said Construction agreement, the extent of the project area has been mentioned as 37.36 acres.

2. Further, the Common Areas & Amenities Agreement signed on 31st December 2015 between the complainant/allottee & the respondent/promoter describes the total land area of the Eden Park project and gives the survey numbers in its Schedule A. It also mentions that the complainant/allottee has an undivided share of her apartment bearing No. MGD1615 on the 16th Floor of Tower Marigold in the 37.362 acres of Eden Park.

3. Out of 14 towers in all, the respondent/promoter had structurally completed 5 towers namely 1) Block A1 Almond, 2) Block B1 Marigold, 3) Block C1 Peach, 4) Block C2 Daffodils and 5) Block C7 Jasmine. Subsequently, the respondent/promoter engaged in

constructing the remaining towers in the same project. While the remaining towers were under construction, the Real Estate (Regulation and Development) Act, 2016 came into force. In order to circumvent the provisions of the Act the respondent/promoter had segregated the 5 towers as if it was a separate project and compelled the complainant/allottee to get the sale deed registered.

4. The complainant/allottee paid all the amounts towards the cost of the apartment by availing bank loan. Before registering the sale deed in respect of the apartment, the complainant/allottee insisted to verify the draft sale deed. The respondent/promoter furnished a copy of the draft sale deed after some hesitation. Upon perusal of the said draft sale deed to her shock and surprise the Complainant / Allottee came to know that the total extent of land in which the proportionate undivided share to each allottee is to be conveyed, has been reduced from 37.36 acres to 12.82 acres. The Complainant /Allottee was being allotted the undivided share of property of 339 sq. ft. out of 12.82 acres instead of the agreed 37.36 acres.

5. It was found that the project layout and the approved plan had been **Suo Moto** altered by the respondent/promoter by an imaginary line drawn by him. There was no formal subdivision nor any application made or approved by the concerned authorities. This was also done without either oral or written consent of the complainant/allottee.

6. As per the various agreements, approved layout and building plan, all the common amenities provided in the 37.36 acres, are meant

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for the enjoyment of all the allottees including the Complainant. There are no common amenities such as club house, STP and other common area benefits available in the notionally subdivided 12.82 acres. In fact, the club house, STP and other common amenities are provided outside the 12.82 acres but within the 37.36 acres. The sale deed proposed to be executed by the respondent/promoter in respect of the undivided share will be void ab initio as there is no approved layout plan for 12.82 acres. Moreover, the approved layout plan required to be attached as part of the sale deed during future transfer by the complainant/allottee. Therefore the respondent/promoter is bound to execute sale deed in respect of the undivided share of 339 sq. ft. out of 37.36 acres as per the agreement dated 20.08.2014 and 31.12.2015.

7. Further, the construction of the residential towers and other common amenities in the same project is pending and not yet completed. Therefore the project is an ongoing project as on 1.5.2017, and is required to be registered as per section 3 of the Real Estate (Regulation and Development) Act, 2016. There are more than 1000 allottees in the project. The respondent/promoter has collected Rs.2 lakhs from each allottee towards corpus fund. So far he has not handed over the corpus fund to the Allottees' welfare association. Hence the Complaint with the following reliefs. Directing the respondent/promoter to execute the sale deed in respect of the undivided share as per the agreements between the parties. Directing the respondent/promoter to provide the common amenities such as club house, swimming pool,

multipurpose lawn and eco ponds and Directing the respondent/promoter to hand over the Corpus fund to the welfare association within a time frame.

8. **The case of the respondent/promoter in brief is as follows:** The 1st respondent company/promoter originally formulated a scheme for developing a larger extent of land measuring around 92 acres at Siruseri Village, erstwhile Chengelpet Taluk. This land is situated outside the Chennai Metropolitan area. The name of the project "Eden park". The respondent/promoter proposed to develop the Eden park in various phases. Already Eden park phase-1 was developed over 13.84 acres including OSR, and the apartments were handed over to the customers. Upon completion of the phase-1, the 1st respondent /promoter proposed to develop the Eden park phase-2 over 46.41 acres of land. Necessary building permit from the concerned authorities were obtained for construction of 14 towers in Eden park phase-2 during the year 2013. Out of 46.41 acres of land,an extent of 09.4 acres was reserved for public purpose. The remaining 37.36 acres of land has been earmarked for the construction of 14 towers and common amenities in Eden Park Phase-2.

9. Due to sudden slow down in the real estate market and due to the advent of RERA Act and tremendous increase in the cost of construction the respondent/promoter had to introduce changes in the strategy. The commencement of construction of all the 14 towers as envisaged in the original sanctioned plan was found to be financially

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unviable. Therefore, the project was being developed in a staggered manner and cluster-wise. The respondent/promoter had completed 5 towers namely 1) Block A1 Almond, 2) Block B1 Marigold, 3) Block C1 Peach, 4) Block C2 Daffodils and 5) Block C7 Jasmine. Out of these 5 blocks the first three blocks were structurally completed before 31.1.2017 and the same was published in the list of exempted projects in the official website of the the DTCP. Hence, they are not required to be registered with TNRERA. Now this issue is pending before the Hon'ble Division Bench of the Madras High Court in CMSA Nos.36 and 37 of 2021. The respondent/promoter is ready and willing to execute the sale deed without any reduction in the undivided share. There will not be any reduction in the extent of undivided share of land as provided under the agreement. Therefore the complaint is not maintainable and the same is liable to be dismissed.

10. After hearing both sides the learned RERA members have allowed the complaint and directed the respondent/promoter to execute sale deed exactly as per the agreement conveying 339 sq. ft. of undivided share out of the entire project extent of 37.36 acres as mentioned in Schedule B of the agreement to sell dated 20.8.2014. Further, the respondent/promoter was directed to register the project with the authority. Further, the respondent/promoter was directed to expedite the construction and completion of the club house and swimming pool on or before 31.12.2021. In respect of the corpus fund the RERA had directed the respondent/promoter to hand over the same

to the welfare association on or before 31.12.2021. Aggrieved over the same the respondent/promoter has preferred these two appeals before this Tribunal.

11. Heard both sides.

12. Points for consideration:

1. Whether the complaints are maintainable?

2. Whether the unilateral reduction of the project area from 37.36 acres to 12.82 acres will adversely affect the right of enjoyment?

3. Whether the Complainants / Allottees and their successors in interest would be denied the right of enjoyment over the other common area facilities/amenities if the undivided share of 339 Sq.feet of land is allotted out of 12.82 acres instead of the actual project area of 37.36 acres?

4. Whether the appeal deserves to be allowed or not?

Point 1:-

13. Earlier both the complaints were dismissed by the TNRERA on the ground of maintainability of the complaints. On appeal by the complainants, this Tribunal has decided that that the complaints were maintainable vide judgment in A.Nos.8 & 9 of 2020 dated 08.12.2020 and both the matter were remanded back to the RERA for fresh disposal. As this point has been already raised by the respondent/promoter and decided by this Tribunal, it is not necessary for this Tribunal to decide this point once again.

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Point Nos.2 & 3:-

14. These points relates to the unilateral reduction of the extent of the project area to be shared as UDS among the allottees. There cannot be any dispute between the parties that as per Schedule-C of the **Agreement to Sell** dated 20.08.2014, the UDS of 339 square feet will be allotted from and out of the land described in Schedule – B. Refer clause 1 of the agreement to sell dated 20.08.2014. (Typed set page 3 of the respondent/promoter). At page 6 of the typed set of the respondent/promoter, the Schedule B & C property has been clearly described. The same is reproduced hereunder.

Schedule B

" All that piece and parcel of land comprised in following survey numbers, (.....omitted.....)situated in Siruseri village, Chengelpet Taluk, Kanchipuram District, admeasuring an extent of 37 acres and 36 cents within the Chengelpet Taluk and Kanchipuram District and situated in the SR District of Thiruporur."

Schedule C

339 Square feet of undivided interest in the land in Schedule B property hereinabove described.

15. Also, the extent of the project area, 37 acres and 36 cents is reiterated in **the Construction Agreement** dated 20.08.2014. In the Construction agreement at page No.2 clause (ii) it is mentioned as follows:

> *"The Developer is now proposing to develop Eden Park Phase II in the said property pursuant to the scheme formulated, the Developer had reserved 9 acres and 4 cents and already conveyed an extent of 8 acres and 64 cents out of the said property to the concerned local authorities under Two Gift Deeds registered as Document Nos.7834 and 7835 of 2013 in the office of the Sub-Registrar, Thiruporur, for the purpose of Open Space Reservation ("OSR"), and to form "Edenpark Main Road" and Approach Road for Private Land, and obtained necessary approvals for the envisaged development and after reducing the lands contributed as aforesaid, the Developer is now owning an extent of 37 acres and 36 cents of land, morefully described in the Schedule A hereunder and hereinafter referred to as the "Said Land";*

Further in the definitions at page 3 of the same document at clause (j) the term Phase II has been defined as follows.

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"Phase II" is defined to "mean all apartments, all blocks, Residential or otherwise, Parking Space, all Common Area, Common Built up Area and related Common Amenities and Facilities which are to be constructed/developed by the Developer on the Said Land".

The term " said Land" is defined in clause (l) which reads as follows.

"Said Land" shall mean all the piece and parcel of land set out in Schedule A of the construction agreement dated 20.08.2014.

It is therefore abundantly clear that the project area is 37.36 acres and the undivided share will be a part of this whole area. Further in this agreement in Clause I, under the Developer's covenants it is mentioned as follows.

1. *The Developer shall strictly adhere to the plans and specifications as approved by the statutory authority.* "

This is reinforced in the allottees covenants mentioned in the same document at Section III clause 6 where the developer is authorized to do many things without referring to the allottee "***but without in any way prejudicing the rights of the allottee"***

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16. Further, the clause 1 of the another agreement dated 31.12.2015, named as Common Areas And Amenities Agreement is reproduced hereunder: (Page 79 of the typed set of the respondent/promoter)

> *"The developer had formulated a scheme for developing a residential township in the name and style of 'Eden Park' in multiple phases in the larger extent of land owned by the developer in Siruseri and Pudupakkam Village. As part of the scheme formulated, the developer had already developed the Eden Park Phase-1 in the part of the said larger extent of land, and now the developer is proposing to develop Eden Park Phase-2 (hereinafter referred as Eden Park) adjacent to the said Eden park phase-1, in the land of an extent of 37.362 acres out of the said larger extent of the land more fully described in the schedule-A hereunder and hereinafter referred to as the 'Phase-2' land."*

At the end of the said agreement the details of the phase-2 land has been furnished in schedule-A. (Refer page 89 of the typed set of the respondent/promoter.) The schedule-A is reproduced as hereunder:

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schedule-A

"All that piece and parcel of land comprised in following survey numbers (..... Omitted .....) situated in Siruseri Village, Thiruporur Taluk, Kanchipuram District admeasuring an extent of 37.362 acres".

From the above it is clear that the undivided share of 339 Sq.feet of land agreed to be sold to the complainant/allottee would be comprised out of the entire 37.362 acres comprised in various survey numbers.

17. Later the respondent/promoter has got approval and registered the non-constructed balance buildings of the project with TNRERA in 2017 bearing registration number TN/01/Building/0058/2017 dated 14/09/2017. It is available at SL. NO.58 in the list of approved projects (Buildings) on the TNRERA WEBSITE. In the details of the land held by the respondent/promoter submitted to RERA for this Registration the project area is still described as 37.362 acres. Further in the details of the project there is no mention of the allotment of 12.82 acres to the existing constructed towers wherein the complainant/allottee has flats. This clearlyamounts to misrepresentation of allocation of UDS. Hence the RERA is hereby directed to issue show cause notice to the respondent/promoter for misrepresentation of allocation of UDS and ensure that the entire project in 37.36 acres is registered within 2 months.

18. It is also to be noted that there is no separate subdivided property measuring an extent of 12.82 acres within this 37.362 acres. The boundaries of the 12.82 acres is also not defined. At best it can be called as a notional subdivision effected by the Respondent /Promoter himself, to avoid registration with TNRERA. The **Floor Space Index** (FSI) will be definitely adversely affected by this. It also restrains the homeowners from enjoying the facilities outside the UDS , as common facilities have to be within the UDS. Thus the project lay out and the approved plan has been "altered" without any approval from the concerned authorities and also without getting the written consent of the complainant/allottee. This is a clear violation of Section 14(2)(ii) of The Real Estate (Regulation and Development) Act, 2016.

19. The respondent/promoter cannot be allowed to divide one approved project into two according to his whims and fancies. Shrinking of the project area from 37.362 acres to 12.82 acres and allot 339 sq. ft. of undivided share of land to the complainant/allottee shows the highhandedness of the respondent/Promoter. If the respondent / promoter is allowed to do so, it will amount to allowing the respondent / Promoter to carve out an unapproved project within an approved project. Moreover, the complainants / allottees cannot use the clubhouse, swimming pool and other common amenities and they will be at the mercy of other allottees of the remaining project area. The contentions of the respondent/promoter that due to sudden slow down in the real estate market, due to advent of the RERA Act and due to

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tremendous increase in the cost of construction have forced to change the strategy of the respondent/promoter company cannot be accepted.

20. During the course of argument, this Tribunal has directed the respondent/promoter to submit a rough sketch showing the various amenities available in the project so as to ascertain their exact location in the approved plan. As such the counsel for the respondent/promoter submitted two rough sketches. One rough sketch shows the entire extent of 37.36 acres as per the original Eden Park, Phase-2 approved plan. Another rough sketch shows the notionally subdivided 12.82 acres within the 37.36 acres by notionally drawing a red coloured boundary line by the respondent /Promoter. As found from these two rough sketches the common amenities such as club house and the space allotted for STP and other common areas and access roads are lying outside the 12.82 acres. The more the common area, the more will be the Floor space ratio (FSR).

21. As per Section 14 (2) (i) of The Real Estate (Regulation and Development) Act, 2016 the respondent/promoter cannot alter the sanctioned plans, layout plans without the previous consent of the allottee. In these circumstances the written consent of 2/3 of the total number of allottees, contemplated U/s 14 (2) (ii) is immaterial. Even otherwise there are more than 1000 allottees in the entire project. There is no proof with regard to the total number of allottees and that 2/3rd of the total allottees has given their written consent for the alterations in the sanctioned plan.

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22. From the foregoing discussions we are of the considered view that the unilateral reduction of the project area from 37.36 acres to 12.82 acres will adversely affect the right of enjoyment of the Complainants / Allottees and that the Complainants / Allottees and their successors in interest would be denied the right of enjoyment over the common amenities / facilities. We answer these points accordingly.

Point No.4 :

23. In view of the finding given by us on points No.1 to 3 we hold that both the appeals are deserves to be dismissed.

24. In the result, both the appeals are hereby dismissed. The common order passed in C.Nos.246 & 247 of 2019 by the RERA dated 10.06.2021 is hereby confirmed. Connected Miscellaneous Applications pending if any are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 16th September Day of 2022.

Sd/-xxxxx
ADMINISTRATIVE MEMBER

Sd/-xxxxx
JUDICIAL MEMBER

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