BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 27.10.2021

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No. 60 of 2021

M/s.Casa Grand Builder Private Limited,
Represented by Managing Director Y.Mohanraj ... Appellant

-Vs-

Tamilnadu Real Estate Regulatory Authority
Through its Chairperson, TNRERA, Chennai. .... Respondent

This appeal was taken on file on 19.04.2021 and came up for final hearing on 27.09.2021 in the presence of M/s.Anand, Samy & Dhruva, Counsels for the appellant. The respondent has passed administrative order in Proc.No.TNRERA/6674/2020 dated 5.1.2021 against the appellant. Being the administrative order challenged by the appellant no notice was served to the respondent. Having heard the arguments of the appellant through video

conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. The appellant/promoter has contravened the provisions of section 61 of the Act and also the reply furnished by the appellant was not acceptable and the learned Regulatory Authority imposed a penalty of Rs.10,00,000/- in Proc.No.TNRERA/6674/2020 dated 5.1.2021. Aggrieved upon the same the appellant preferred this appeal along with application for reception of documents (M.A.No.110/2021). That application is dismissed.

2. The appellant has released an advertisement in 'Hindu' (Property plus) dated 14.11.2020 for sale of flats location @ Sholinganallur, Manapakkam, Sholinganallur, Mogappair, ECR, Medavakkam, Thalambur-OMR, Nolambur, Thoraipakkam-OMR, Thalambur-OMR without mentioning the TNRERA registration number (individual mentioning). Hence the Regulatory Authority issued a show cause notice on 20.11.2020 calling upon the appellant to explain why action should not be taken against the appellant for contravening the provision of Section 3(1) and 11(2) of The Real Estate (Regulations and Development) Act, 2016 within 15 days from the date of receipt of said notice. The appellant sent a reply on 15.12.2020 by stating as follows: Due to space constrain we could not carry the entire RERA numbers belongings to the appropriate projects mentioned in the property plus advertisement. Instead of mentioning RERA numbers we have specifically mentioned as all projects are

RERA approved. However the projects mentioned in the advertisement are registered under TNRERA. The Regulatory Authority has not accepted the reply furnished by the appellant and imposed a penalty of Rs.10,00,000/-. Aggrieved upon the same the appellant preferred this appeal on the following main grounds:

- The Regulatory Authority has passed non speaking order without giving proper reasons to impose fine.
- The omission of the mentioning the RERA registration number in its newspaper advertisement is not wanton and deliberate.
- The appellant has not violated and committed any error contravening the provisions of the Act.
- The appellant has not collected money and cheated the general public by assuring false promises by advertising the commencement its aforesaid projects.
- The reasons are assigned by the respondent/authority is not sound and proper.

3. The learned counsel for the appellant would submit that due to space constrain they could not mention the entire registration numbers but the appellant has specifically mentioned in the advertisements that all the projects are RERA registered. The appellant company has not doing the job of advertisement and engaged one M/s.Green Chilly Brands, Advertising strategy works around all their ongoing projects and also projects which registered

under TNRERA. This agency has also explained the reason as due to constrains of fonts they are not able to mention the numbers without knowing the legal implications. Even though the above said facts were brought to the knowledge of the learned Regulatory Authority, the authority has not considered. The omission or commission is neither willful nor wanton. Hence the explanation has to be accepted by allowing this appeal.

4. Perused the contentions of the learned counsel for the appellant and explanation adduced by the appellant. On perusal of the reply sent by the appellant to the Regulatory Authority dated 15.12.2020, due to space constrain RERA registration number for each project cannot be advertised. This is the only reason adduced by the appellant. But the learned counsel in the grounds of appeal as ground No.3 as non-mentioning of RERA registration number termed as an omission and it is not wanton deliberate. In addition to this ground the appellant has stated that the order of the Regulatory Authority is a non speaking order, it is not sound and proper and failed to consider that there is no violation or cheating. How far the grounds raised by the appellant is sustainable has to be analyzed?

5. According to the appellant due to space constrain RERA registration numbers were omitted to mention in the advertisement. The alleged advertising agency has also stated the same reason in page no. 6 of the typed set of the appellant. The non-mentioning of RERA registration numbers can be construed as an omission? For which the answer is available in the following

verdict of the Apex court. Before going to discuss the merits the meaning of the word 'omission' has to be looked into. The ordinary dictionary meaning for the word omission is "a failure to fulfill a moral or legal obligation".

Supreme Court of India
Appeal (crl.) 276-277 of 1997
PARAS YADAV AND ORS. Vs STATE OF BIHAR
DATE OF JUDGMENT: 12/01/1999

In such a situation, the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar and others, J.T. (1998) 3 SC

290. "In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

In this view of the matter with regard to Paras Yadav, in our view, there is no reason to disbelieve the oral dying declaration as deposed by number of witnesses and as recorded in farbdeyan of deceased Sambhu Yadav. The farbdeyan was recorded by the Police Sub-Inspector on the scene of occurrence itself, within few minutes of the occurrence of the incident. Witnesses also rushed to the scene of offence after hearing hulla gulla. The medical evidence as deposed by p.w. 11 also corroborates the prosecution version. Hence, the courts below have rightly convicted Paras Yadav for the offence punishable under Section 302 I.P.C.

On applying the law laid down by the apex court the ultimate aim of this Act to be implemented by letter and spirit. The preamble of this Act runs as follows:

> ***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.***

The background of the enactment of Central Legislation of this Act is as follows:

> ***"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.***

6. The parliament committee has emphasized in its report with regard to the background of the Act emphasized the words namely 'lack of standardization and unregulated' construction industry pave way for the enactment of this Act. Therefore in this Act, in the preamble itself it is

incorporated as 'to ensure sale of plot, or apartment or building or real estate project in an efficient and transparent manner.' For the purpose of transparency alone the Legislature carefully worded the provisions by using the word 'shall' in Section 3 and 11. Section 3 commences as 'no promoter shall advertise without registration'. Likewise Section 11 (2) commences as 'the advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the authority' ... and include the registration number ... The purpose of the provision to impose such a kind of conditions as mandatory is to achieve the goal of transparency. As per the reply of the appellant they have simply stated that due to space constrain it is omitted. As per the above Apex Court verdict and as per the background of the Act and preamble the so-called omission cannot be construed as a mere omission. When the Act itself made the advertisement regarding real estate project with registration number and website particulars as mandatory by using the word 'shall', by mere producing a letter of an agency is not sufficient to cure the mistake committed by the appellant . The appellant simply has thrown the burden on the advertising agency as if the appellant has no responsibility or duty in advertising. As far as the appellant is concerned this is not the first occasion as already the appellant was imposed penalty by the Regulatory Authority in C.No.334/2019 dated 10.02.2020 and it was confirmed by this Tribunal in A.No.45 of 2020. Under such circumstances the plea of the appellant as omission of the mentioning of RERA registration number is not wanton deliberate is not an acceptable one.

7. The learned Regulatory Authority properly following the principles of natural justice issued show cause notice after getting reply and on non satisfaction of the reply by invoking Section 61 the Regulatory Authority imposed penalty of Rs.10,00,000/- against the appellant. There is no infirmity in the findings of the learned Regulatory Authority.

8. Section 61 of the Act empowers the Regulatory Authority to impose penalty which may extend upto 5% of the estimated cost of the real estate project. But the learned authority has imposed penalty a sum of Rs.10,00,000/- only. It is not sufficient since it is a second occasion for the appellant/promoter is concerned. Even after the finding of the Regulatory Authority as well as this Tribunal in A.No.45 of 2020 the appellant is not taking any care while advertising with regard to its projects. If due care is taken certainly this omission can also be avoided. But the appellant/promoter without taking care and without due regard to The Real Estate (Regulations and Development) Act, 2016 simply delegated the advertising work with third party and try to relieve from the clutches of the Act. If the act or omission occurred after due diligence, care and caution it can be accepted and leniency can be availed but this appellant is concerned no due diligence or care was pleaded and the appellant has delegated the responsibility to a third party who is no way connected with the project. In such circumstances this Tribunal comes to a conclusion that the penalty imposed by the learned Regulatory Authority is not sufficient and not reasonable and for the ends of justice and to

implement The Real Estate (Regulations and Development) Act, 2016 in letter and spirit by imposing further penalty of Rs.10,00,000/- is justifiable.

9. In the result, the appeal is dismissed and the order of the Regulatory Authority is modified by imposing further penalty of Rs.10,00,000/- under Section 61 of The Real Estate (Regulations and Development) Act, 2016, in addition to the penalty imposed by the Regulatory Authority in Proc.No.TNRERA/6674/2020 dated 5.1.2021. The appellant is directed to deposit the entire penalty amount of Rs.20,00,000/-, after deducting already deposited amount, before the Regulatory Authority within a month from the date of receipt of this order.

Connected Miscellaneous applications 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 27th Day of October 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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