BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL
CHENNAI

Friday, the 2nd day of September 2022

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

Appeal No.66 of 2021

1. M/s. Dawning Developers LLP.
2. M/s. Casagrand Builders Private Limited ... Appellants

-Vs-

L.Suresh Kumar ...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 RERA, Chennai in C.No. 76 of 2020 dated 10.03.2021.

L. Suresh Kumar ... Complainant

-Vs-

1. M/s. Dawning Developers LLP.
2. M/s. Casagrand Builders Private Limited ... Respondents

This appeal was taken on file on 21.06.2021 and came up for final hearing on 22.06.2022 in the presence of M/s. R. Parthasarathy, Rahul

Verified RealEstate™

Balaji, K.Chandrasekaran, Vishnu Mohan and Harshavardhan Ganesan, Counsels for the appellants and M/s. T. Dharmarajan and A. Ramakrishnan, Counsels for the respondent. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. The parties hereinafter will be referred to as per their rank and status before the RERA.

The case of the complainant in brief is as follows.

2. The complainant intended to buy a flat from the respondent/promoter in and around Ambattur. For that purpose he browsed the websites of the respondent company. In one website he found that the respondent was promoting an ongoing project by name Casagrand Crescendo at Nolambur. The website also contained the RERA registration number as TN/02/Building/0190/2018. Another website of the respondent company states that there was another ongoing project at Ambattur. The website contains the RERA registration number as TN/02/Building/0190/2018 which is however the same as that of Casagrand Crescendo.

3. The complainant further browsed the websites of the respondent company. In one website he found that the respondent was promoting an ongoing project by name Casagrand Zenith at Medavakkam. The website also contained the RERA registration number as

Verified by RealEstate™

TN/02/Building/0101/2019. Another website of the respondent company states that there was another ongoing project at Perumbakkam. The website contains the RERA registration number as TN/02/Building/0101/2019 which is however the same as that of Casagrand Zenith.

4. Thus the respondent/builder indulged in misrepresentation and misleading the buyers. The respondent used the RERA Registration Numbers for additional projects which were not at all registered with the RERA. This is a clear violation of the provisions of the Real Estate (Regulation and Development) Act, 2016. Hence the complaint.

The case of the respondent in brief is as follows:

5. The complainant has no locus standi to file this complaint. The complainant was neither an allottee nor an aggrieved person. The complainant, in collusion with some local elements and in order to reap undue advantage and benefit from the respondent company, has filed this complaint with cooked up stories.

6. The respondent in due course of their business had initiated villa project known as Casagrand Crescendo and Casagrand Zenith near Mogappair and Medavakkam respectively. The websites mentioned by the complainant is not used for sales related activities and are used only for surveying activities. Those websites are created for the purpose of guiding the customers who are unfamiliar with the project location advantages and to guide the customers towards corporate website. The respondent have

Verified RealEstate™

not placed or committed any false information in the websites and does not have any deceiving intention as alleged by the complainant.

7. There is no complaint from any customers regarding the alleged misleading or misrepresentation of facts about the project. The respondent strictly followed the Rules and Regulations framed by the RERA. The respondent/builder earned a good reputation for the past several decades. In order to tarnish the image of the respondent company the complainant in collusion with the local elements and in order to reap undue advantage from the respondent company had filed this vexatious complaint with untrue facts. Therefore the complaint is liable to be dismissed with exemplary costs.

8. After hearing both sides the RERA has imposed a penalty of Rs.10,00,000/- for misrepresentation and publishing incorrect & misleading particulars in the website of the respondent. According to RERA the act of the respondent is in contravention of the Section 7 of the Act. Aggrieved over the same, the respondent/builder preferred this appeal before this Tribunal.

9. Heard both sides.

10. Point for determination:-

1. Whether the Complainant, who was not an allottee, has any locus standi to prefer the Complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016

2. Whether the appeal is deserved to be allowed or not?

Verified by PedEstate™

Point: 1

11. Regarding the maintainability of the complaint on the ground that the complainant is not an "aggrieved person". The matter regarding who is an aggrieved person since it is not defined in the Real Estate (Regulation and Development) Act, 2016, Rules and Regulations has been elaborately discussed and set at rest by this Tribunal in A.No.45 of 2020 dated 8.12.2020, which involved the very same respondent. It was stated that the Act and Rules are designed to set norms of moral or professional conduct for the community at large or even a section i.e., the construction industry and its consumers.

12. Here too, the complainant is not a stranger but a prospective buyer. With a view to buying property in a particular area he verified the website of the respondent and found incorrect, misleading & misrepresentation of facts in the website of the respondent and then made the complaint. He therefore can be construed as an aggrieved person and has got every locus standi to make the complaint for violation or contravention of the Real Estate Act, Rules and Regulations. We answer this point accordingly.

Point No.2

13. Admittedly the respondent had initiated two housing projects known as Casagrand Crescendo and Casagrand Zenith. The location of the Casagrand Crescendo project was shown on the website **as Nolambur**,

Verified by RealEstate ™

Chennai and the relevant TNRERA Registration Number was given as TN/02/BUILDING/0190/2018. However, as per the TNRERA website the location of the project was shown as , **Bye-pass Road, Athipattu, Chennai -600 058.** Also, another Casagrand website shows that there is another ongoing project in Ambattur with the same RERA registration number. This can be seen on its website http://casagrandambattur.com. Therefore the company is misleading and misrepresenting as well as using the same RERA permission for two projects.

14. Likewise for Casagrand Zenith project; the website of the Casagrand group shows that the ongoing project is located at Mambakkam Main Road, Sitlapakkam, Krishnaveni Nagar, Medavakkam, Chennai–600126. However, as per TNRERA registration number TN/01/BUILDING/0101/2019, the project location has been mentioned as Vengaivasal Village, Tambaram Taluk, Kancheepuram District. Again, the Casagrand website, http://casagrandperumbakkam.com shows another ongoing project with the same TNRERA registration number is in Perumbakkam. The website however does not give any address for the project. Therefore it is apparent that they are using the same TNRERA registration for two different projects. The Address of the Medavakkam project also differs from what is given in the TNRERA registration.

15. Further, the housing project named Casagrand Zenith has published details and advertisement of the project on their website. As per the website the location is given as Mambakkam Main Road, Citlapakkam, Krishnaveni Nagar, Medavakkam, Chennai – 600 126. However, the project

Verified by PropEstate™

is located as per the RERA registration certificate at Vengaivasal Village, Tambaram Taluk, Kanchipuram District. This again is a misrepresentation of facts to the public and is a violation of Section 7(1) of the Real Estate (Regulation and Development) Act, 2016.

16. There are also discrepancies regarding the Survey Numbers given for Casagrand Crescendo. The Survey Numbers given by Greater Chennai Corporation available on the TNRERA website do not match with the details in the respondent's website. The planning permission is given for plot address is "Block No.22, Plot No.TS 9/6, 7, 11/1, 4, 5, 6, 7 and 9, Survey No.10, 12/5, 6, bye-pass road, Athipattu, Chennai – 600 058, as per the TNRERA website. The project however, has been shown in the Casagrand website as Nolambur. This again is a misrepresentation of facts to the public and is a violation of Section 7(1) of the Real Estate (Regulation and Development) Act, 2016.

17. Apart from this, using the same registration of Casagrand Zenith they have advertised another ongoing project in Perumbakkam on their website i.e. http://casagrandperumbakkam.com. This is again giving a false impression of the project having received the RERA registration. This misrepresentation of facts to the public is again a violation of Section 3(1) & Section 7(1) of the Real Estate (Regulation and Development) Act, 2016.

18. The respondent/builder has published details and advertised four projects on their websites **useing the two registration numbers given by RERA for the Casagrand Crescendo and Casagrand Zenith project.** Therefore, it can be safely concluded that **two unregistered**

Verified RealEstate™

projects have been falsely shown as registered projects. This act of the respondent/builder is not only deceptive practice under Section 7 (1) but also a clear violation of Section 3 (1) and of the Real Estate (Regulation and Development) Act, 2016.

19. Even on earlier occasions the respondent / Promoter had twice committed similar violations and was imposed penalty of Rs.10,00,000/- and above by both the RERA and TNREAT. In the first case in C.No. 334 of 2019, the RERA by it's order dated 10.02.2020, had imposed a penalty of Rs.10 lakhs. The appeal in A.No. 45 of 2020 was also dismissed and the order of the RERA was upheld by this Tribunal vide order dated 08.12.2020. However the respondent has continued to commit factual misrepresentation and mislead the general public and prospective buyers.

20. The respondent on another occasion committed similar violation and was again penalized and was imposed penalty of Rs. 10,00,000/- by the RERA in Proc. No.TNRERA/6674/2020 dated 05.01/2021 regarding the advertisement of a project without mentioning the TN RERA registration number. On appeal by the respondent / promoter this Tribunal, while confirming the order of the RERA, has enhanced and doubled the penalty amount by imposing an additional penalty of Rs.10 lakhs (totally Rs.20 lakhs) vide it's order dated 27.10.2021 in A.No.60 of 2021 on the file of this Tribunal.

21. Thus the respondent has continued to commit factual misrepresentation to mislead prospective buyers again and again. It appears that the imposition of penalties on earlier occasions did not bring

Verified by PropEstate™

any change in the attitude of the respondent / Promoter. It is therefore clear that the respondent, who is a habitual offender, requires a deterrent punishment. Section 59 of the of the Real Estate (Regulation and Development) Act, 2016, which deals with imposition of penalty for one time violation and also imposition of imprisonment upto three years or with fine or with both for continuous violation of Section 3, is reproduced hereunder.

> 59. (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.
>
> (2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

22. Section 61 of the Real Estate (Regulation and Development) Act, 2016 deals with Penalty for contravention of other provisions of the Act which is reproduced hereunder.

> 61. If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

23. In the facts and circumstances of this case we are of the view that instead of imposing sentence of imprisonment a final chance can be

Verified RealEstate

given to the respondent / Promoter. However we are of the view that the imposition of penalty of the same 10 lakhs by the RERA is not sufficient enough to deter the respondent / Promoter. Therefore we are of the considered view that increased amount of penalty to be imposed.

24. In the result, the appeal is hereby dismissed and the order of the regulatory authority is upheld with the following modifications. In addition to the penalty of Rs.10,00,000/- imposed by the RERA in C.No. 76 of 2020, the respondent /Promoter is directed to pay a sum of Rs. 10,00,000/- as additional Penalty under Section 59 (1) R/w section 3 (1) of the Real Estate (Regulation and Development) Act, 2016. Further the respondent /Promoter is also directed to pay a further sum of Rs. 5,00,000/- as further penalty under Section 61 R/w Section 7 (1)(c) of the Real Estate (Regulation and Development) Act, 2016, for the deceptive practice continuously followed by him.

25. The total penalty amount imposed by this Tribunal and the RERA comes to Rs. 25,00,000/-. The respondent / Promoter had already deposited Rs. 4,00,000/- U/s 43(5) and the same was remitted to Government by this Tribunal. The balance penalty amount of Rs. 21,00,000/- shall be deposited before the RERA by the respondent / Promoter within one month from this day. If the respondent / Promoter fails to deposit the balance penalty amount within the time allowed the RERA shall take necessary steps to recover the same according to law. A copy of this order shall be communicated to RERA at once. With the above

Verified RealEstate

the appeal is disposed. Connected miscellaneous applications if any pending are hereby 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 the 2nd Day of September 2022.

Sd/-xxxx
ADMINISTRATIVE MEMBER

Sd/-xxxx
JUDICIAL MEMBER

Verified RealEstate™