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 2nd day of December 2022

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

Appeal No.80 of 2021

1. M.N.Balasundaram
2. N.Baskar
3. N.Sankar ... Appellants

-Vs-

1. Dr.G.L.Govindan
2. M/s.KNR Realty Properties Pvt. Ltd. ... Respondents

This appeal has been filed 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.429/2019 dated 19.04.2021 and the same was taken on file on 22.07.2021. The matter came up for final hearing on 16.11.2022 in the presence M/s.M.Sriram and Ramesh Venkatachalapathy, Counsels for the appellants and M/s.P.L.Narayanan,

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Counsel for the 1st respondent. The 2nd respondent called absent. Having heard both sides and having stood over for consideration till this date, this Tribunal delivered the following:

ORDER

1. The promoters of a layout project, who suffered an order at the hands of the TNRERA, directing to execute a sale deed in favour of an allottee, are the appellants herein.

2. According to the case of the appellants they are brothers and also the joint owners of the property in which they have developed a layout project by name Thillai Nataraja Nagar layout at Chikkarayapuram Village, near Mangadu, Chennai. The 2nd respondent company namely M/s.KNR Realty Properties Pvt. Ltd. was a broker in the real estate sector. The appellants never recognized the 2nd respondent company as their agent and no power of attorney deed was executed by them in favour of the 2nd respondent company. The appellants sold only very few plots through the 2nd respondent company for which brokerage was paid to them at the time of registration. The appellants used to deal with the intending buyers directly by entering into sale agreement with the intending buyers and by receiving payments from them. The 2nd respondent was never authorized either to enter into any agreement with the intending buyers or to receive payments from them on behalf of the appellants.

3. During November 2015 the 1st respondent approached the appellants and offered to purchase half of a plot having a lesser extent.

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Accordingly, the plot No.4 in the layout was divided into two halves and assigned plot numbers as 4A and 4B. The plot number 4A measuring an extent of 1350 sq. ft. was agreed to be sold to the 1st respondent. As such the appellants and the 1st respondent entered into an agreement for sale during November 2015. As per the agreement the 1st respondent paid a sum of Rs.10,000/-(Ten thousand) as advance to the appellants. The sale price was fixed at Rs.27,00,000/-. Thereafter no amount was paid to the appellants by the 1st respondent towards sale consideration.

4. The counsel for the appellants further contended that the 1st respondent had specifically admitted in his complaint filed before the TNRERA that he had paid Rs.34,50,000/- only to the 2nd respondent. As the second respondent was delaying the execution of sale deed, he insisted the repayment of the said amount of Rs. 34,50,000/-. The 2nd respondent by way of repayment with interest as compensation, issued two cheques in favour of the 1st respondent. Upon presentation for collection those two cheques were returned as "funds insufficient". Thus it is very clear that the 1st respondent was cheated by the 2nd respondent, the Counsel argued.

5. The learned counsel for the appellants also contended that according to the agreement entered into between the appellants and the 1st respondent during November 2015 the sale consideration was fixed at Rs.27,00,000/-only. That being the case there is no necessity for the first respondent to pay Rs. 34,50,000/-over and above the sale

consideration to the 2nd respondent. Out of this amount Rs. 19,50,000/- was said to have been paid subsequent to the execution of the agreement between the appellants and the first respondent during November 2015.

6. The TNRERA had failed to look into the agreement for sale executed in between the appellants and the first respondent. Rather held erroneously that the 2nd respondent was the agent of the appellants and that the appellants are liable for the acts committed by their agent. Ultimately, the TNRERA has directed the appellants to execute a sale deed in favour of the 1st respondent on or before 31.5.2021 after receiving the balance sale consideration of Rs.5,00,000/- from the 1st respondent. Therefore, the counsel for the appellants prayed to allow this appeal and to set aside the order passed by TNRERA in C.No.429 of 2019 dated 19.4.2021.

7. On the other hand the Counsel for the first respondent contended that the 2nd respondent acted as the agent of the appellants and has made all arrangements in connection with bank loan. In fact the appellants sold so many plots in the project through the 2nd respondent and in all those sale transactions part of sale consideration were paid to the 2nd respondent only. The 2nd respondent had effected public advertisements in leading news papers about the real estate project. It is completely false to state that the 2nd respondent was only a broker and not an agent of the appellants. The first respondent was made to believe that the second respondent was the agent of the

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appellants. According to the Counsel for the first respondent, the TNRERA had rightly appreciated the facts and circumstances involved in this case and had come to a just decision in this case and there is no need to set aside the order passed by the TNRERA.

8. Heard both sides in detail and the records were perused. It is the case of the first respondent that the total cost of the plot was fixed at Rs. 39,50,000/- inclusive of registration and other charges. Admittedly the first respondent paid Rs. 34,50,000/- to the second respondent on various dates from 29.06.2015 to 06.02.2016. As per the averments found in the complaint he has to pay a balance amount of Rs.5,00,000/-. It is an admitted fact that, after making payment of Rs. 15,00,000/- up to 05.08.2015 to the second respondent, the first respondent had entered into an agreement for sale with the appellants who are the actual land owners during November 2015. In this agreement the sale consideration was fixed at Rs.27,00,000/- only. As per this agreement the 1st respondent paid a sum of Rs.10,000/- as advance to the appellants. Even after entering into such agreement with the appellants, who are the actual land owners, the 1st respondent instead of paying the sale consideration to the appellants, continued to make further payment of Rs.19,50,000/- towards sale consideration to the 2nd respondent on various dates from 25.01.2016 to 06.02.2016, for the reasons best known to him only.

9. Further, no prudent man will pay an excess amount of Rs.34,50,000/- to a third person, that too after entering into an

agreement with the true owner of the property for a lesser sale consideration of Rs.27,00,000/-. The 1st respondent had voluntarily invited the trouble for which he has to blame himself or shall proceed against the 2nd respondent for recovery of the amount. It is there in the complaint filed by the 1st respondent before TNRERA that the 2nd respondent came forward to repay the said sum of Rs.34,50,000/- paid to him along with compensation of Rs.4,84,500/- by means of two cheques of HDFC bank Anna Nagar West Branch bearing cheque Nos.000453 and 000454. Upon presentation for collection those two cheques have been returned as "insufficient funds". Therefore it is clear that the 1st respondent has not paid the sale consideration to the true owner namely the appellants.

10. While the facts are being so, the TNRERA by erroneously relying upon matters unconnected to this case had come to a conclusion that the second respondent was the agent of the appellants. None of the circumstances pointed out by TNRERA in paragraphs 37 to 45 would be sufficient to infer Principal and Agent relationship between the appellants and the 2nd respondent. The TNRERA ought to have considered the agreement for sale entered into between the 1st respondent and the appellants and also the failure of the 1st respondent to discharge his obligations under the agreement. It may be relevant to mention here that the 1st respondent is not an illiterate person. He got Ph.D in Mathematics. Earlier he acted as the Head of Department, Department of Mathematics, Presidency College, Chennai and later

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retired as the Principal, Kolanjiyappar Government Arts College, Vridhachalam, Cuddalore District.

11. For all the above reasons, the order passed by TNRERA is liable to be set aside by allowing this appeal.

12. In the result, the appeal is allowed and the order passed by TNRERA in C.No.429 of 2019 dated 19.04.2021 is hereby set aside. Connected Miscellaneous Applications pending if any, are hereby closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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