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.81 of 2021

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

-Vs-

1. S.Suresh Kumar
2. V. Jeeja Bai
3. KNR Jothi Krishna,
   Managing Director, M/s. KNR Realty Properties Pvt. Ltd.
4. A.Savitha, Director, M/s. KNR Realty Properties Pvt. Ltd.
5. Seethapathy
6. M/s. KNR Realty Properties Pvt. Ltd.
   Represented by its Managing Director ... Respondents

This appeal is 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.48 of 2020 dated 19.04.2021.

This appeal was taken on file on 22.07.2021 and 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, Counsel for the respondents 1 & 2 and M/s. Arul selvam associates, A. Aravindan, S.Elumalai and R.Honest, Counsels for R5. The respondents 3, 4 & 6 called absent despite substituted service by newspaper publication. 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 them to execute the sale deed on or before 31.5.2021 in favour of the 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, Mangadu, Chennai. The 3rd respondent is the Managing Director and the 4th Respondent is the Director of M/s.KNR Realty Properties Pvt. Ltd. According to the appellants the 3rd respondent was acting as a broker in the real estate sector. The appellants never recognised the 3rd respondent as their agent and no power of attorney deed was executed in favour of the 3rd respondent. The appellants sold few plots through the 3rd respondent for which the brokerage was paid to him 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

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them. The 3rd 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. The counsel for the appellants contended that the appellants never entered into any agreement to sell with the respondents 1 & 2 and there is no privity of contract between them. The appellants have not received any payments either from the respondents 1 & 2 or from the 3rd respondent at any point of time. Admittedly, the respondents 1 & 2 have paid Rs.8,00,000/- to the 3rd respondent during March 2016 and April 2016. The so called agreement dated 03.08.2016 alleged to have been executed by the appellants is a forged document. The signatures contained in the said agreement are not that of the appellants. There are material contradictions between the said agreement and the averments in the complaint.

4. The Counsel for the appellant further argued that the 2nd respondent, who is none other than the wife of the first respondent, preferred a police complaint on 3.12.2016 as against the respondents 3 to 5 with the V3-J.J. Nagar Police Station, Chennai. Subsequently similar complaint was preferred to the Commissioner of Police, Chennai on 21.12.2016 against respondents 3 to 5. In those complaints even the name of the appellants were not mentioned and nothing stated against these appellants. The respondents 1 & 2 have been clearly cheated by the 3rd respondent. During the year 2019 the appellants gained knowledge about the cheating committed by the 3rd respondent. Immedately they have preferred a complaint to the T14, Police Station, Mangadu on 27.11.2019.

5. The Counsel for the appellant further contended that the respondents 1 & 2 miserably failed to prove their allegation that a sum of Rs.20,18,250/- was paid to the appellants in the form of Demand Draft drawn on ICICI Bank. The appellants never received any such demand draft and encashed the same. The plea raised by the appellant that there was no privity of contract between the 1st and 2nd respondents and the appellants at any point of time and the plea of forgery with regard to the agreement dated 03.08.2016 were not all considered by the TNRERA.

6. The Counsel for the appellants also contended that as per the order of this Tribunal in M.A. 23 of 2022 dated 22.04.2022, the disputed agreement dated 3.8.2016, allegedly executed by the appellants, have been sent for forensic examination for comparing the signatures by a handwriting expert. According to the counsel for the appellants the report of the handwriting expert was in favour of the appellants and that the purported signatures of the appellants found in the agreement dated 03.08.2016 are found to be forged signatures.

7. The TNRERA had passed not only an erroneous order but also a hypothetical order. The TNRERA had directed the appellants to execute the sale deed after receiving the balance sale consideration of Rs.21,08,350/-, if not received the payment earlier by demand draft. Therefore the counsel for the appellant prayed to set aside the order passed by TNRERA in C.No.48 of 2020 dated 19.4.2021.

8. On the other hand the Counsel for the respondents 1 & 2 argued that the 3rd respondent acted as the agent of the appellants and has made

all arrangements in connection with the 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 3rd respondent only. The 3rd 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 appellants. According to the Counsel for the respondents 1 & 2, 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.

9. Heard both sides in detail. Records perused. The respondents 1 & 2 have admitted that they had dealings only with 3rd respondent. As per the spontaneous statement of the 2nd respondent, contained in the police complaint dated 03.12.2016, (CSR No.733/2016 of V3-J.J. Nagar Police Station) she had clearly admitted that she and her husband, the 1st respondent herein, have approached the 3rd respondent and had negotiations with him. As per the averments in the said police complaint it appears that the respondents 1 & 2 agreed to purchase the plot No.54 measuring 1035 sq. ft. at a cost of Rs.29,08,350/- and paid Rs.1,00,000/- by SBI cheque on 30.03.2016 to the 3rd respondent. Subsequently, on 04.04.2016 another sum of Rs.7,00,000/- was paid to the 3rd respondent through RTGS funds transfer. As per the averments in the police complaint it appears that on 31.03.2016 itself an agreement for sale was entered into

between the 1st respondent and the 3rd respondent. The said agreement dated 31.03.2016 was not produced by the respondents 1 & 2 for the reasons best known to them only.

10. But the 1st and 2nd respondents produced another agreement dated 03.08.2016 alleged to have been executed by the appellants. According to the 1st and 2nd respondent the said agreement dated 03.08.2016 was came into existence for the purpose of availing home loan from the ICICI bank. The respondents 1 & 2 also stated that by availing the home loan they have paid the balance sale consideration of Rs.20,18,250/- in the form of Demand Draft drawn to the appellants. But the appellants denied both the execution of agreement dated 03.08.2016 and also the receipt of any such demand draft. In such case it is the duty of the respondents 1 & 2 to prove the fate of the demand draft by producing their bank account statement or by summoning the ICICI bank officials. But no such steps have been taken by the respondents 1 & 2 in this regard for the reasons best known to them.

11. Further, the appellants, in the counter filed by them before the TNRERA, have clearly stated that the agreement dated 03.08.2016 was a fabricated document. In the said counter filed by the appellants instead of mentioning the date of agreement as 03.08.2016 they have mentioned the date of purchase of the stamp paper viz 09.06.2016. During the pendency of this appeal the appellants have filed an application in M.A.No.23 of 2022 for referring the agreement dated 03.08.2016 to a hand writing expert attached to the Government Forensic Science Department, for comparison

of the disputed signatures of the appellants with the admitted signatures of the appellants. After hearing both sides the M.A.No.23 of 2022 was allowed and the agreement dated 03.08.2016 was referred to the hand writing expert attached to the Government Forensic Science Department, for comparison of the disputed signatures of the appellants with that of the admitted signatures of the appellants.

12. Accordingly, the hand writing expert examined both the admitted as well as the disputed signatures of the appellants and submitted a report dt.17.06.2022 with reasoning sheets. As per the expert report the disputed signatures are not made by the persons who made the admitted signatures. No serious objections were raised by the 1st and 2nd respondents on the expert report. We have carefully perused the expert report dated 17.06.2022. The report clearly corroborated with the other facts and circumstances of this case. It may also be noted that the 2nd respondent have not whispered anything about the so called agreement dated 03.08.2016 allegedly executed by the appellants, in the subsequent police complaint dated 03.12.2016. Considering all the other facts and circumstances discussed above and based on the expert opinion we conclude that the agreement dated 03.08.2016 is a forged one and the appellants are not bound by the said agreement.

13. The 1st and 2nd respondents, who preferred the complaint before the TNRERA, had miserably failed to prove their contentions. On the other hand the appellants against whom the complaint was preferred, have proved their case that they have not entered into any agreement with the

respondents 1 & 2 and no amount was received by them towards sale consideration. In law there was no privity of contract existed between the appellants and the respondents 1 & 2 at any point of time.

14. The TNRERA had accepted the averments in the complaint preferred by the 1st and 2nd respondents as gospel truth and concluded that M/s. KNR Realty Properties Pvt. Ltd. represented by the respondents 3 & 4 are the agents of the appellants herein. The stray incidents referred to by the TNRERA are not sufficient to hold that the M/s. KNR Realty Properties Pvt. Ltd. represented by the respondents 3 & 4 are the agents of the appellants. The TNRERA had hypothetically directed the appellants to execute the sale deed on or before 31.5.2021 after receiving the balance sale consideration of Rs.21,08,350/-if not received earlier.Such hypothetical directions will leave the parties in lurch. Viewing from any angle the order of the TNRERA is liable to be set aside by allowing this appeal.

15. In the result the appeal is allowed. Consequently the order passed by TNRERA in C.No.48 of 2020 dated 19.04.2021 is hereby set aside. No costs. Connected Miscellaneous applications pending if any, are hereby closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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