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 21.02.2022

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

Appeal Nos. 83, 84, 90 and 99 of 2021

Capt P.S.Dheenadayalan (Retd.) (A.No.83/2021)
Sub Maj/ H/Lt K.Shunmugavelu (A.No.84/2021)
Col R Ganesan (A.No.90/2021)
Col.Sreeghanlal P Raman (Retd.) (A.No.99/2021)

... Appellants

-Vs-

1. Army Welfare Housing Organization (AWHO), Represented by its Managing Director
2. Project Director, Army Welfare Housing Organization (AWHO) Raman Vihar, Coimbatore.

.... Respondents in A.Nos. 83, 84 and 90 of 2021

1. Army Welfare Housing Organization(AWHO), Represented by its Chairman
2. Army Welfare Housing Organization (AWHO), Represented by its Managing Director

.... Respondents in A.No.99 of 2021

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These appeals were taken on file on 28.7.2021, 4.8.2021, 24.8.2021 and 3.9.2021 respectively came up for final hearing on 07.02.2022. Appellants in A.Nos.83 and 99 of 2021 appeared as party in person and Appellant in A.No.84/2021 appeared through his counsels M/s.R.Ramasubramaniam Raja, R.Hemavathi, Arvind.A.S., D.Nancydevadass, K.Vanikala and B.AnithaaSelvi and Appellant in A.No.90/2021 appeared through his counsels M/s. K.R.Samratt and M.Senthil Vadivu and Respondents appeared through their counsels M/s. AAV Partners, P.H.Manoj Pandian, N.Zahid Ahmed and S.Varshini. 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:

COMMON ORDER

1. These appeals have been preferred by the home buyers against the order of the Regulatory Authority in C.Nos.106/2020, 117/2020, 451/2019, and 153/2021. One of the home buyer by name Col.R.Ganesan preferred a complaint for the relief of conveying the correct UDSL as per DTCP sanction of layout plan and building approval and for other reliefs. Subsequently, Col.Sreeghanlal P Raman filed a separate complaint for the same relief of UDSL and for other reliefs. Then the home buyers Capt. P.S. Deenadayalan, Sub. Maj/HLT.K.Shunmugavelu and Lt.Col.Sukumaran.K. jointly have preferred complaint for the same relief of UDSL and other reliefs. After contest the Regulatory Authority passed a separate order in C.No.451/2019 on 10.6.2021 and another separate order passed on the same day in which referred the order passed in C.No.451/2019. Subsequently on 28.6.2021 the Authority has passed

separate order in which also referred the order in C.No.451/2019. In which the Authority has directed the promoter to execute sale deed with all the allottees as per the registration with the authority. In other complaints also the authority has stated that the orders passed in C.No.451/2019 hold good. In C.No.153/2021 the Authority has stated that the orders passed in C.No.451/2019 holds good in respect of prayers A & D and remaining prayers B & C directed the promoter to file counter in the next hearing. Aggrieved upon the same the home buyers preferred these separate appeals on the following main grounds:

- The promoter obtained planning permission by DTCP for 496 dwelling units for the entire 33.53 acres. After deducting 5.15 acres gifted to Panchayat balance undivided share available is 28.38 acres.
- In the RERA registration carpet area mentioned for 496 dwelling units as 18.43 acres.
- Remaining extent 9.96 acres needs to be included in the carpet area statement for 496 dwelling units.

2. The learned counsel for the home buyers and the home buyers appeared party in person would submit that the remaining 9.96 acres have not been included in the carpet area. When the building plan approval obtained for 496 dwelling units showing 33.53 acres after deducting the gifted land the balance land has to be added to the carpet area. The promoter purposely avoided to include the same. But unfortunately the learned Regulatory Authority has not spoken about the same in its order and simply directed the promoter to execute sale deed as per the registration particulars. The order of the Regulatory

Authority is not at all a speaking order and it has not discussed the points raised by the home buyers in their complaint and the explanation given by the promoters. Therefore these appeals have to be allowed.

3. The learned counsel for the respondents would submit that the individual home buyers have preferred these separate complaints and the learned Regulatory Authority has directed the promoter to execute sale deed as per the registration particulars. There is nothing wrong in the order of the learned Regulatory Authority since the home buyers are entitled to get sale deed as per the registration particulars. Furthermore, the home buyers' association has also preferred a separate complaint regarding the same relief of undivided share land and for some other reliefs and the same is pending before the learned Regulatory Authority. In such circumstances these appeals are unnecessary and liable to be dismissed.

4. Point for consideration:

Whether the appeals deserve to be allowed or not?

Point:

5. According to the home buyers as per the DTCP approval obtained by the promoters the total extent mentioned as 33.53 acres. The promoter has shown gifted land 5.15 acres and undivided share of land available for 496 dwelling units is 28.38 acres. But the promoter has shown carpet area to the extent of 18.43 acres. The balance 9.96 acres not mentioned the purpose and

concealed. The home buyers paid for the entire planning permission area hence the promoter is liable to distribute the remaining 9.96 acres in proportion to the carpet area to the home buyers. Hence the home buyers filed separate complaints to direct the promoter to mention the correct undivided share of lands in the carpet area statement. But unfortunately the learned Regulatory Authority failed to consider the plea raised by the home buyers and simply directed the promoter to execute sale deed as per the registration particulars. Since the promoters failed to execute the undivided share sale deed along with balance land of 9.96 acres, the home buyers came forward with these complaints. Even then the learned Authority miserably failed to appreciate the claim of the home buyers.

6. According to the promoters as far as phase I is concerned, 400 dwelling units out of the sanctioned 496 dwelling units together with common amenities and facilities provided, have been completed and 396 of the 400 dwelling units have been handed over to the respective allottees. The un-utilized land measuring 10.08 acres in the project shall be taken up for further development as phase II or sale as and when deemed appropriate.

7. The learned Regulatory Authority in its order in paragraph No.10 that this authority has already granted registration for this real estate project which contains all the relevant details such as carpet area, undivided share of land and car parking, the respondent/promoter shall execute correct sale deed with all the allottees as per the registration with this authority.

8. The home buyers came forward with complaints not only with the prayer for execution of correct carpet area particulars as per the approved planning permission by DTCP but also with some other prayers. But the learned authority has passed orders in the main complaint namely C.No.451 of 2019 in which the home buyer sought for four prayers. The first prayer is with regard to conveying the correct UDSL. The remaining three prayers are not considered by the learned authority. On the basis of this order C.Nos.106, 117 and 118 of 2020 were ordered as previous order holds good. In C.No.153/2021 also the home buyer prayed for four prayers out of which two prayers alone ordered on the basis of order in C.No.451 of 2019 and the remaining prayer posted the case for counter. Furthermore the order passed in C.No.153/2021 and C.No.451/2019 are termed as final order, it is not conclusive orders because the remaining prayers of the complaint were not ordered and the cases are pending before the learned authority.

9. As per the typed set of the appellant in A.No.90 of 2021 at page No.139 on 15.3.2021 the learned Regulatory Authority Chairperson has sent a letter in which particulars were called for regarding the undivided share allotment along with the breakup details of the total extent of 33.66 acres. For the above said letter on 31.3.2021 the promoter has sent a reply, at page No.140 of the typed set of the appellant in A.No.90 of 2021, by stating that the un-utilized land admeasuring 10.08 acres in the project shall be taken up for the further development as phase II or sale as and when deemed appropriate. The above

said particulars called for and reply received by the authority even then the authority has not appreciated the same properly and even discuss about the same and simply passed orders as act according to the registration of the project. Therefore this Tribunal found that there is a force in the arguments of the home buyers' side.

10. Admittedly, the promoter has obtained DTCP approval for the entire 33.53 acres. The land gifted to the panchayat is only 5.15 acres. The remaining undivided share of land available to the tune of 28.38 acres but the promoter shown in the carpet area statement as only 18.43 acres. Balance 9.96 acres is not included in the carpet area. Moreover, the total approval for the entire project is 33.53 acres, in such circumstances the home buyers are absolutely entitled to question about the balance area of 9.96 acres. The promoter is liable to answer for the same. The answer was obtained by the authority itself. At this juncture, it is the bounden duty of the learned authority to discuss about the merits and demerits of the claim of the home buyers and the promoters. Without discussing and without giving any finding with regard to that prayer mere directing the promoter to act as per project details is certainly not sufficient, not tenable.

11. Already individual home buyers have filed separate complaints regarding the same prayer regarding undivided share of land and got orders without any finding. In the peculiar circumstances the Raman Vihar Apartments Owners' Association has preferred a separate complaint against the promoter with eight prayers. The first prayer is with regard to the undivided share land. The

remaining prayers are with regard to other amenities, facilities and even seeking for punishment of the promoter and also questioned the payment of project registration fees and the complaint itself is pending adjudication as C.No.226/2021. The above said complaint was filed on 13.7.2021. The apartment owners association is the competent person to question about the remaining area of the approved planning permission area. When the matter is pending adjudication by proper person before the proper forum and without ascertaining the result of the authority this Tribunal cannot pass any orders. If any order is passed it will affect the result of the above said complaint. Furthermore, the learned Regulatory Authority has not passed any speaking order in the complaint of the appellants/home buyers. In such circumstances if any order is passed by this Tribunal it will affect one opportunity to the home buyers. Hence this Tribunal found that it is not proper to pass any orders on these appeals on merits and decided to remand the matter for fresh disposal along with the complaint preferred by the apartment owners association in C.No.226/2021. Therefore this Tribunal comes to a conclusion that these appeals are deserves to be allowed for the purpose of remand the complaints for fresh disposal. The point is answered accordingly.

A.Nos.83,84,90 and 99 of 2021

12. In the result, these appeals are allowed and order of the Regulatory Authority in C.Nos. 106, 117 of 2020, 451 of 2019 dated 10.06.2021 and C.No.153/2021 dated 28.6.2021 are set aside and the said complaints are remanded back to the Regulatory Authority for fresh disposal along with

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C.No.226/2021. The appellants and respondents are directed to appear before the Regulatory Authority on 16.3.2022.

Connected Miscellaneous applications are closed.

This Order is dictated to the Stenographer, transcribed by her and typed in the computer by her, corrected and pronounced by us in the open court on 21st Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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