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 09.02.2022

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

Appeal No. 86 of 2021

1. Devendra Bhatia
2. Anjula Bhatia ... Appellants

-Vs-

1. K.Balasubramaniyan
2. G.K.S. Technology Park Pvt. Ltd.
   Represented by its Managing Director
3. Tulive Viha Apartments Owners Association,
   Rep. by its President
4. S.Ganesa Subramanian
5. M.Suresh Kumar .... Respondents

This appeal was taken on file on 12.08.2021 and came up for final hearing on 2.2.2022 in the presence of M/s. K.Suresh Babu, P.Mahalakshmi, Kadambri Suresh and Navin Suresh, Counsels for the appellant and M/s. M.R.Gokul Krishnan, S.Patrick, K.Sankar Vignesh, A.Aravind, T.G.Madhuvaneswaran and

Ojas Sivakumar, Counsels for 1st respondent and R2, R3 & R5 called absent and 4th Respondent appeared as Party-in-person. 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. This appeal has been preferred by the appellants/3rd and 4th respondents against the order of the Regulatory Authority in C.No.1/2020 dated 19.4.2021. The home buyer/complainant preferred the complaint against the respondents 1 to 4. Subsequently, respondents 5 and 6 themselves filed impleading petition before the authority and they were impleaded as respondents 5 and 6. The 1st respondent is the promoter and the 2nd respondent is the apartment owners' association and the appellants 1 & 2 and 3rd & 4th respondents in the complaint are also allottees. Since the appellants purchased the common area from the promoter/2nd respondent in this appeal, the affected parties namely the home buyer/complainant/1st respondent in this appeal preferred a complaint in C.No.1/2020 and the 5th & 6th respondents/home buyers and respondents 4 & 5 in this appeal have themselves impleaded as affected parties in the complaint in C.No.1/2020. Both the parties have arrayed as respondents in the complaint as well as in the appeal and to avoid confusion in this appeal hereinafter they are called as per their original rankings as the 1st respondent/complainant as home buyer-1, the 2nd respondent/the promoter is called as promoter, 3rd respondent/apartment owners' association is called as association and the

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respondents 4 & 5/home buyers are called as home buyer-2 and home buyer-3. The appellants, even though they are home buyers, are called as appellants.

2. The appellants, 1st respondent and 4th respondent have preferred miscellaneous applications under Order 41 Rule 27 CPC separately. In all the three applications the applicants sought for reception of additional evidences. Since the documents relied by the applicants are not relevant to decide the issue in this appeal hence all the three applications are dismissed by common order.

3. Since the promoter executed sale deed in favour of the appellants with regard to common area and withholding the corpus fund hence the home buyer-1/complainant filed a complaint for the relief of directing the builder to transfer the corpus fund along with interest, direct the builder to register the project and to declare that the builder does not have any right to sell common area and the association is the custodian of entire common area of the complex. After contest, the Regulatory Authority directed the promoter to register the project and found that the sale of common area is null and void and directed the promoter to execute rectification deed by deleting the common area in the original sale deed executed with the appellants and also imposed a penalty of Rs.5,00,000/- to the promoter and also directed the promoter to pay back the sale consideration of Rs.17.25 lakhs to the appellants and also directed the promoter to transfer the corpus fund along with interest at the rate of 9.30 % to the association. Aggrieved upon the same the promoter has not preferred any appeal. The appellants alone have preferred this appeal against the home buyer-1, promoter,

association and home buyers 2 & 3. The following are the main grounds put forth by the appellants by way of grounds of appeal and additional grounds of appeal:

- The RERA authority has erroneously understood the meaning of the terminology 'person'.
- The RERA Authority failed to appreciate that individual allottees who have formed an association are collectively called as 'person'.
- Under Section 31(1) of RERA Act once an association is formed under RERA Act is always the association and not an individual allottee.
- The RERA authority failed to appreciate that the association had already taken cognizance of the corridor issue with the mediation committee and without awaiting for the decision of the committee hurriedly filed the complaint.
- The appellants believe that the corridor area shall not be construed as a deviation.

4. The learned counsel for the appellants would submit that the Hon'ble Supreme Court had a number of occasions observed to give adequate importance to mediation between the parties and also to persuade the compromise between the parties wherever possible. In the Civil Procedure Code a new section was inserted as Section 89 for settlement of disputes outside the court. Hence to redress the grievance regarding corridor issue in the general body meeting for amicable settlement a mediation committee was formed for arriving at an amicable solution. But the complainant/home buyer-1 without

adhering to the resolution hurriedly approached the Regulatory Authority. The attitude of the home buyer-1 is against the principles of amicable settlement. Therefore this appeal has to be allowed and the complaint has to be dismissed.

5. The learned counsel for the home buyer-1 and home buyer-2 party-in-person would submit that they are the directly affected parties. Further would submit that the home buyer-1 had discussed with office bearers and perused the said documents and it was only then he understood the gravity of the situation and the malafide intent on the part of the promoter hence the complainant/home buyer-1 approached the Regulatory Authority to redress the grievance of illegal sale of common area. Neither the association nor the mediation committee cannot solve the illegal act of sale done by the promoter hence the complainant/home buyer-1 has rightly approached the Regulatory Authority. Therefore the appeal has to be dismissed.

6. Points for consideration:

1. Whether the sale of common area by the promoter to appellants is legally sustainable?
2. Whether the allegation that after forming allottees association complaint by individual allottee is not maintainable is sustainable?
3. Whether the allegation that without exhausting remedy of amicable settlement complaint is not maintainable is sustainable?
4. Whether the appeal deserves to be allowed or not?

5. Whether the direction of the Regulatory Authority for rectification deed is legally sustainable?

Point No.1:

7. The promoter has sold the common area namely corridor measuring 230 sq. ft. approximately to the appellants, who are owners of the apartments bearing No.401 and 402 in the 4th floor of the Tulive Viha Apartment. According to the home buyers 1 & 2 the common area namely corridor absolutely belongs to the apartment owners association. According to the appellants they believe that the corridor area shall not be construed as a deviation and also understands that the FSI area has not been fully utilized in the building. Which one is correct is to be decided? Before discussing the merits of the point we have to see what is meant by corridor and what is the importance in the construction for the corridor and whether it can be sold to allottee have to be analyzed. The following are the relevant precedent, guidance, provisions and Rules for deciding the point:

'National Building code of India' has described the corridors and its design, structure, stability and its importance are formulated which is as follows:

NATIONAL BUILDING CODE
OF INDIA 2016
VOLUME 1

BUREAU OF INDIAN STANDARDS

B-5.2 Internal Corridors and Accessible Routes
B-5.2.1 General

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The main horizontal circulation design shall be level on each floor in order to ensure that the building is accessible to all people. Horizontal circulation shall be without steps. Where differences in level cannot be avoided, ramps or lifts shall be provided in accordance with B-6. Buildings should be designed, constructed and managed so that the internal layout is accessible and easily understood. All aspects of horizontal circulation, including corridors, should be designed to facilitate ease of movement for all people.

In order to avoid a tripping hazard (especially during a fire evacuation), where a raised threshold is necessary at a door opening, its maximum height shall be 12 mm, and those exceeding 5 mm shall be bevelled, and shall have a minimum difference in LRV of 30 points compared to the floor.

Routes should preferably intersect at right angles to each other and be easy to follow. To facilitate people with visual impairments, routes should have detectable cues and different visual contrast from the surroundings. For orientation and wayfinding in very complex buildings and across large areas, guidance may be provided by tactile ground surface indicators and visual, audible and tactile information, including egress and evacuation.

NOTE . Handrails can provide support for people with impaired mobility, guidance for people who are blind or have impaired vision, and can also support Braille information or tactile information.

B-5.2.2 Internal Passages

Intensity in use of the corridor shall be a criterion when establishing the minimum width and length of the corridor (see Fig. 41). The minimum unobstructed width of corridors shall be 1 500 mm, with a preference for a width of 1 800 mm.

Where less than 1 800 mm wide, a corridor shall be provided with passing places, 1 800 mm wide and at least 1 800 mm in length at reasonable intervals. These dimensions shall be exclusive of handrails and any other projections, for example portable fire extinguishers, notice boards, etc.

Adequate circulation space, where a doorway exists, shall be provided (see B-5.3).

Changes of direction within a corridor shall have a turning circle with a diameter of 1 500 mm or more, clear of any obstructions (see Fig. 42).

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The minimum clear height of corridors shall be 2 100 mm.
Hanging objects on walls should be avoided, except when they comply with B-2.6.2. The minimum unobstructed width shall remain 900 mm.

B-5.2.3 Turning Space for 90° Turn of a Wheelchair in Corridors
The manoeuvring zone required for a wheelchair to make a 90° turn shall be designed according to Fig. 42. It shall have no gradient, and it shall not be less than 1 500 mm wide and 1 500 mm long in the direction of travel.

B-5.2.4 Circulation Space for 180° Wheelchair Turn
The space required for a wheelchair to make a 180° turn shall be not less than 2 000 mm in the direction of travel and not less than 1 800 mm wide.
For landing dimensions, see B-6.2.6.

B-5.2.5 Resting Benches/Seats
In long paths of travel resting areas shall be provided with B-2.2.1 (g).

B-5.2.6 Protruding Object
Obstacles, projections or other protrusions shall be avoided in corridors, passageways or aisles. Long paths of travel shall be avoided and resting areas shall be provided at frequent intervals not exceeding 30 m. For provision of unavoidable obstacles and protruding objects and protection therefrom, requirements given in B-2.6 shall be followed.

B-5.2.7 Floors in Corridors
B-5.2.7.1 Floor surface shall be stable, firm, level and slip-resistant, preferably of matt finish and shall not have any projections, drops, or unexpected variation in level that may impede the easy access by persons with disabilities. Following requirements shall also be complied with:
a) Complex patterns shall be avoided.
b) Floor patterns that could be mistaken for steps, for examples stripes, shall not be used for floors in corridors.
c) Floors shall be levelled. If this is unavoidable,

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the slope of floors shall be no greater than 1:20. If greater slope is adopted, floor shall be designed as ramp.

B-5.2.7.2 For people with low vision, lines of brightly coloured fluorescent tape may be placed on the floor surface to assist mobility in poor lighted areas.

B-5.2.7.3 Carpeting should be avoided in circulation areas/accessible routes. In case, Where, carpets are used in circulations areas, they shall,

a) not be deeper than 12 mm;
b) shall be securely fixed;
c) have firm cushion, pad or backing; and
d) exposed edges of carpets be fastened to floor surface and trimmed along the entire length of the exposed edge.

B-5.2.8 Lighting in Corridors and Manoeuvring Zone Lighting in the corridor and manoeuvring zone shall be even, diffused and without glare, reflections or shadows. Minimum illumination level at the corridor and manoeuvring zone shall be 100 lux.

B-5.2.9 Doors Leading into Corridors
Doors shall conform to B-5.3 and shall not open outwards from rooms directly into a frequently used corridor, with the exception of doors to accessible toilets and service ducts. Where a door opens into an infrequently used corridor such as emergency exit, the corridor width shall allow a clear space of 900 mm within the corridor when the door is open. Such doors shall be located clear of any sloping floor surfaces in the corridor. Any door that opens towards a frequently used corridor should be located in a recess at least as deep as the width of the door leaf.

The word 'common area' defined in Section 2(n) which runs as follows:

Section 2(n) "common areas" mean—
(i) the entire land for the real estate project or where the project is developed in phases and

registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(vii) all community and commercial facilities as provided in the real estate project;

(viii) <u>all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;</u>

The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017

Annexure 'A' - Construction Agreement:

11. RIGHTS AND DUTIES OF THE ALLOTTEE:

(a) and (b) .. ..

(c) The Allottee shall adhere to the maintenance and usage guidelines provided by the Association to maintain harmonious community living and ensure that rights and enjoyment of other apartment owners are not affected;

(d) The Allottee covenants not to make any alteration in the structure of the Apartment, which may affect directly or indirectly, the structural safety & stability and the aesthetic elevation of the building complex;

(e) to (h) .. ..

(i) The Allottee shall not encroach upon the common areas;

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(j) The Allottee shall not decorate the exterior of the proposed buildings in the Project otherwise than in a manner agreed to by the majority of the apartment owners with the prior permission of the Association;

(k) to (q) .. ..

18. ADDITIONAL CONSTRUCTIONS:

The Promoter undertakes that it has no right to make additions or to put up additional structure(s) anywhere in the Project after the building plan has been approved by the competent authority(ies) except for as provided in the Act.

8. The National Building Code of India issued in 2016 provided a separate chapter for internal corridors and accessible routes. It has explained the corridors in the following headings namely: General, Internal passages, Turning space for wheel chair, resting benches, protruding object, floors in corridors, lighting in corridors, maneuvering zone and doors leading into corridors. Particularly obstacles, projections or other protrusions shall be avoided in corridors. The floor surface shall be stable, firm level and slip resistance preferably of mat finish shall not have any projects, drops, or unexpected variation in level that may imbede the easy access for the person with disabilities. These are the technical features for providing corridor. The above said passage reflected the importance of the corridor and its usage with safety measures. The architectural engineers have designed the corridor with huge expectations and explained its importance coupled with safety since it is the common area and it is useful for all. But unfortunately the promoter and the appellants without knowing the importance and usefulness of the corridor as a common passage they have entered into sale

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transaction only for the purpose of money to the promoter and selfishness on the part of the appellants.

9. The word common area defined in Section 2(n) of The Real Estate (Regulation and Development) Act, 2016. According to Section 2(n) (viii) in the project all other portions other than described in 2(n)(i) to (vii) for the purpose of convenient for its maintenance, safety and in common use are called as common area. The corridor portion is meant for common use of all apartment residents and it cannot be curtailed to some extent for their exclusive use of particular allottee alone. Therefore, the legislature has carefully worded the common area for the purpose of convenient for its maintenance, safety and in common use. Once the building plan approval is sanctioned by the authority after that it cannot be altered, reduced or extended at any point of time by the builder or by anybody. Therefore, as per Section 2(n) definition of common area is meant only for the purpose of common use of all the apartment dwellers.

10. The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 in its Annexure has prescribed the sale agreement and construction agreement. In the construction agreement the rights and duties of the allottees have been described as a separate heading No.11. In which it has been specifically contemplated that the allottee shall adhere to the maintenance and usage guidelines provided by the association to maintain harmonious community living and ensure that rights and enjoyment of other apartment owners are not affected. It further covenants that the allottee not to make any alteration in the

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structure of the apartment, which may affect directly or indirectly. The specific and important condition contemplated in the rights and duties of the allottee that the allottee shall not encroach upon the common areas and the allottee shall not put up any temporary or permanent structures anywhere in the project nor change the elevation of the proposed buildings. Further covenant is that the allottee shall not decorate the exterior of the proposed building in the project otherwise than in a manner agreed to by the majority of the apartment owners with the prior permission of the owners association.

11. In the above referred conditions the word 'shall' has been used for the imposing conditions to the allottees. But regarding exterior decoration is concerned alone the association has got discretion by majority. Regarding addition and alteration is concerned no such discretion has been given to the association.

12. As per the Building code of India and as per Section 2(n) and as per the Rule Annexure rights and duties of the allottee contemplated in the construction agreement itself the allottees have agreed to abide the conditions imposed in the construction agreement for the purpose of ensuring harmonious community living without affecting the rights of other apartment owners.

13. The basic concept of apartment living is HARMONIOUS COMMUNITY LIVING. It means not only without interfering with the co-residents' rights but also respect the rights of co-residents. The apartment living will ensure equality

among the co-residents and all the apartments, facilities, structure, designs, common area, parking area, corridor facilities, water facilities, STP facilities, drive-way facilities, play area, recreation area and OSR facilities all are same for all and there is no differentiation to the apartment dwellers. All the apartment dwellers are having equal rights in the above said facilities. It is the concept of everything is for all and equally entitled to utilize the same facilities. Therefore the promoter, as a trustee has to act as custodian till the formation of the residents' welfare association. After the formation of the association the trusteeship shifted to the association from the promoter. In the above said construction agreement in clause No. 18 there is a specific undertaking given by the promoter that he has no right to make additions or put up additional structures anywhere in the project after the building plan has been approved by the competent authority. Even after the undertaking the promoter has illegally authorized the appellants to encroach upon the common area namely the corridor for the money and knowing fully executed the sale deed by the promoter and the appellants obtained sale deed knowing fully well that the promoter has no right or title or interest over the common area to execute sale deed amounts to innovation of others right and breach of trust with malafide intention of cheating the co-buyers of the apartment.

14. From the above discussion it is very clear that the promoter has no locus standi to execute any sale deed regarding common area in favour of the appellants and the action of the promoter and the appellants has no legal sanction and it amounts to illegal transaction. The convenient enjoyment of the

appellants and spending of huge money for the illegal transaction will in no way justify the transaction. In any angle the sale of common area, namely the corridor, by the promoter to the appellants is not legally sustainable. Therefore this Tribunal comes to a conclusion that the sale of common area is legally not sustainable. The Point No.1 is answered accordingly.

Point No.2:

15. According to the appellants in most of the grounds of appeal they have raised the plea that the authority has misunderstood the meaning of the word person and once the association is formed, the association alone is empowered to file a complaint and not an individual allottee. The appellants have relied Section 31(1) and 19(9) of the Real Estate (Regulation and Development) Act, 2016. On the side of the home buyer-1 & 2 the learned counsel would submit that an aggrieved person can file a complaint that is the provision hence denied the arguments of the appellants. Now let us see the above relied provisions.

31. Filing of complaints with the Authority or the adjudicating officer.

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) .. ..

19. Rights and duties of allottees.

(1) to (8) .. ..

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) & (11) .. ..

16. As per section 31(1) any aggrieved person may file a complaint with the authority or the Adjudicating Officer for any violation or contravention of the provisions of this Act or the Rules and Regulations against any promoter, allottee or real estate agent. In this provision there is an explanation is incorporated in which, for the purpose of preferring a complaint by aggrieved person the word person includes the association of allottees or any voluntary consumer association. According to the provision an aggrieved person can prefer a complaint it means that any individual person who is affected by any violation or contravention of the provisions of this Act. The word person is also extended to the juristic person namely association of allottees or voluntary consumer association. In this provision it has not been stated that the association of allottees alone shall make a complaint therefore, in the explanation it was carefully worded person shall include the association of allottees. Nowhere in the provision has restricted the right of complaint to the association only. Therefore, the arguments of the appellants that the RERA Authority has misunderstood the word 'person' are not sustainable. Furthermore, every individual allottees are having right to redress their grievances and there is no bar under Section 31 to prefer a complaint by the individual allottee. Section 19(9) contemplates the participation of every allottee of the apartment towards the formation of an association. This provision has also not restricted any individual allottee to

prefer a complaint. When there is no specific restriction against the individual allottee to prefer a complaint as an aggrieved person in Section 31(1) it cannot be construed that the association alone is entitled to prefer a complaint is against the provision. Therefore this Tribunal comes to a conclusion that the allegation that after forming allottee association complaint by individual allottee is not maintainable is absolutely not sustainable. Point No.2 is answered accordingly.

Point No.3:

17. The learned counsel for the appellants would vehemently contend that the Hon'ble Supreme Court had a number of occasions observe to give adequate importance to mediation between the parties and also to persuade the compromise between the parties wherever possible. Even though the dispute was referred to General Body Meeting of the Association and the General body refer the matter to the mediation committee and without waiting for the report of the committee the home buyers-1 & 2 hurriedly approached the Regulatory Authority. This is the specific allegation against the home buyers-1 & 2. Now let us see the provision with regard to mediation. Section 89 CPC newly introduced provision for settlement of disputes outside the court.

89. Settlement of disputes outside the Court.—
(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:--
(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat: or

(d) mediation.

(2) Were a dispute has been referred--

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall .apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.]

18. The above said provision is with regard to the settlement of disputes between the parties before the court commences the trial. In the case in hand, no such situation arose. Hence it is not applicable.

19. The appellants have spent number of grounds of appeal with regard to the settlement by mediation committee. Regarding mediation committee the complainant/home buyer-1 has stated in paragraph No.xv of the complaint which runs as follows:

(xv) I humbly submit that the 1st respondent had replied vide email dated 19.11.2019 wherein stating that they would like to have a comprehensive closure with the Association and that the Corpus Fund will be transferred along with the Rs.17.25 Lakhs and that there is nothing pending to be discussed and have also stated that the corpus fund till the same is transferred will carry interest of 5.5% p.a., as per SBI term deposit rates. I state that I discussed with the office bearers

and perused the said documents and it was only then I understood the gravity of the situation and the malafide intent on the part of the 1st respondent.

20. According to the complainant/home buyer-1 he came to know that there is nothing pending to be discussed in the General Body Meeting except transfer of corpus fund. So he understood the gravity of the situation and the malafide intent on the part of the 1st respondent namely the promoter hence as an aggrieved person he preferred a complaint under Section 31. It is peculiar to note that senior manager of the promoter company has sent a reply mail on 28.11.2019 which runs as follows (page No.83 of the Typeset of the appellant):

"In reply we wish to impress upon you that the area given to only Mr. & Mrs. Bhatia was done with the intention of helping to close a sale only and not with the intention of defrauding any of our customers in Viha.

We have not at all directly or indirectly gave consent to them to install anything in any shaft.

The decision on the corridor area being attached to the flat was taken by us only.

We had not increased the dwelling unit from what was allowed in the CMDA plan, it was an internal changes only.

In case of any electricity leakage or the occurrence or an untoward incident, the responsibility lies only on the owner of 401/402C. Mr.& Mrs.Bhatia are agreeing to execute an affidavit which states the same of necessary.

Regards,
Priya.C.
Senior Manager CRM"

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21. The above said reply mail disclosed the intention of the promoter with regard to corridor issue. At page No.79 of the Typed set of the appellant the President of the Association (TVAOA) has informed to Mr.Gopi and Mr.Sureshnathan is as follows:

Further, to the meeting we had at your office on 2nd Nov 2019 we held an extraordinary GBM of the members of Tulive Viha Apartment Owners Association in relation to the corpus fund and the hand off from the builder (Tulive GK Shetty) t the TVAOA.

At the GBM we presented that the builder had informed that they would want a closure on the issue of sale of common area to the buyer of C401, C402 and in this effect wanted to remit to the association a sum of Rs.17.25 lakhs along with a corpus and the builder had put in a condition that the corpus will be released only along with this amount of Rs.17.25 lakhs and seek a sign off from the association that the association would not prefer any claim with the builder for the sale of common area to the owner of C401 and C402.

The GBM unanimously concluded as below:

- ***The corpus amount should not be linked to any other amount as the builder is a custodian of the corpus and should have remitted the same to the association forthwith on the opening of the association bank account.***
- ***TVAOA to request the builder for the draft of the hand off letter.***

22. These are the communications between the office bearers of the association and the builder management people. It is crystal clear that the

builder wants the association to sign off that the association would not prefer any claim with the builder for the sale of common area and it was discussed in the GBM and not accepted the proposal of the builder. Then the complainant/home buyer came to a conclusion that it is not possible to get a relief from the association hence he preferred a compliant. The so-called committee formed for the purpose of justifying the illegal act of sale of common area, to which the complainant/home buyer-1 was not amenable, acceptable and approached the Regulatory Authority. Therefore, this Tribunal comes to a conclusion that the complainant/home buyer -1 after exhausting the remedy before the association having found it is not possible to redress his grievance and then only has approached the Regulatory Authority. In such circumstances the claim of the appellants as the complaint is not maintainable is not sustainable. Point No.3 is answered accordingly.

Point No.4:

23. The learned counsel for the appellant would vehemently put forth his arguments by focusing on an amicable settlement. In point No.3, it was decided that the complainant after exhausting remedy by way of settlement through association which ended in vain and then only he has approached the Regulatory Authority by way of complaint. The learned counsel further would submit that as an individual allottee he has no right to prefer a complaint, it was also negatived in point No.2. On the side of the appellants even though they have raised 30 grounds against the order of the learned Regulatory Authority none of the grounds are sustainable to interfere with the findings of the learned Regulatory

Authority. Except the direction regarding execution of rectification deed the order of the Regulatory Authority is not liable to be interfered. Therefore this Tribunal comes to a conclusion that this appeal is not deserves to be allowed. Furthermore, the appellants knowing fully well that the common area cannot be sold by the promoter since he has no right to sell the same even then the appellants have purchased the same with malafide intention and to justify the illegal act they have preferred this appeal. Hence this appeal has to be dismissed with exemplary costs. Point No.4 is answered accordingly.

Point No.5:

24. The learned Regulatory Authority in its order in paragraph No.56 it has directed the promoter to execute the rectification deed in the office of the concerned jurisdictional Sub Registrar deleting the common area in the original sale deed executed with the 3rd and 4th respondents before 31.5.2021. The promoter has executed sale deed of the apartments along with common area to the appellants. As on date the promoter has no right or title, after the execution of the sale deed, to execute any rectification deed. The proper course would be to re-convey the property by the deed of conveyance by the transferee namely the appellants in favour of the original owner the allottees' association as per the following full bench verdict of the Hon'ble Madras High Court which runs as follows:

Madras High Court

M/S.Latif Estate Line India Ltd vs Mrs. Hadeeja Ammal

W.A. NOS. 592 & 938 OF 2009

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59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion: -
(i) A deed of cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence such a deed of cancellation cannot be accepted for registration.
(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a deed of cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.
(iii) Where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a deed of cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a sale deed, admittedly, the title remained with the transferor.
(iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.

25. As per the above referred full bench decision of the Hon'ble Madras High Court instead of rectification deed by the promoter, the appellants shall execute re-conveyance deed with regard to common area of the apartment complex namely Tulive Viha as per the approved plan dated 20.8.2015 in favour of the Tulive Viha Apartment Owners' Association. Therefore the direction of the Regulatory Authority is not sustainable with regard to rectification deed.

26. The preamble of the Real Estate (Regulation and Development) Act, 2016 ensure greater accountability towards consumers and significantly reduced frauds and delays as also the high transaction cost. This Act is to ensure sale of

real estate project in an efficient and transparent manner to protect the interest of the consumers in the real estate sector. This is the motive behind the enactment of this legislation. The learned Regulatory Authority has simply directed the promoter only to execute the rectification deed before 31.5.2021. The promoter has not complied with the order so far and simply paid the penalty amount and washed his hands from the clutches of the Act. Furthermore, the promoter has not preferred any appeal against the order of the Authority. The appellants alone have preferred this appeal. As per the full bench decision of the Hon'ble Madras High Court the direction issued by the Regulatory Authority for execution of rectification deed by the promoter itself not legally correct as per the above decision. In such circumstances, the directions of the Regulatory Authority have to be corrected according to law as per the decision of the full bench. Furthermore, the authority has failed to direct the parties those who failed to obey the order within the stipulated time by invoking Section 63 of the Act. Therefore, the directions of the Regulatory Authority has to be corrected as per the full bench decision of the Hon'ble Madras High Court and specific direction shall be incorporated for non performance of the directions under Section 64 and 68 of the Real Estate (Regulation and Development) Act, 2016. Point No.5 is answered accordingly.

27. In the result, this appeal is dismissed with exemplary cost of Rs.10,000/- and the cost to be deposited into the account of the Regulatory Authority within thirty days. The findings of the Regulatory Authority in

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C.No.1/2020 dated 19.4.2021 is confirmed except the direction for rectification deed. To implement the Real Estate (Regulation and Development) Act, 2016 in letter and spirit the following directions are issued:

(a) The appellants are directed to execute deed of re-conveyance with regard to common area (corridor) as per the Tulive Viha Apartment Complex approved plan in No.B/SPL.BLDG/228-D/F/201 dated 20.8.2015 in favour of the Tulive Viha Apartment Owners' Association/3rd respondent within sixty days from the date of this order failing which the appellant shall be punishable under Section 68 of the RERA Act, 2016, with imprisonment for a term which may extend upto one year and with fine for every day during which such a default continues, which may cumulatively extend upto 10% of the apartment cost.

(b) The promoter/2nd respondent is directed to return the sale consideration with regard to common area to the appellants within thirty days from the date of this order and directed to facilitate the appellants to execute the deed of re-conveyance with regard to common area (corridor) as per the Tulive Viha Apartment Complex approved plan in No.B/SPL.BLDG/228-D/F/201 dated 20.8.2015 in favour of the Tulive Viha Apartment Owners' Association/3rd respondent within sixty days from the date of this order failing which the promoter shall be punishable under Section 64 of the RERA Act, 2016, with imprisonment for a term which may extend upto three years and fine for every day during which such default continues, which may cumulatively extend upto 10% of the real estate project.

(c) The Tamil Nadu Real Estate Regulatory Authority is directed to implement the directions of this Tribunal and directed to restore the common area as per the approved plan dated 20.8.2015 with assistance of CMDA and file compliance report to this Tribunal within ninety days.

Connected Miscellaneous applications are closed.

This Order is directly dictated to the Stenographer, typed in the computer by her, corrected and pronounced by us in the open court on 09th Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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