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 24.01.2022

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

Appeal No. 91 of 2021

S.Ramakrishnan ... Appellant

-Vs-

1. Indian Railway Welfare Organization (IRWO)
   Represented by Managing Director,
   New Delhi – 110 001.

2. The Chief Project Manager/SZ
   Indian Railway Welfare Organization (IRWO)
   Egmore, Chennai – 600 008. .... Respondents

This appeal was taken on file on 24.08.2021 and came up for final hearing on 5.1.2022. The appellant Mr.S.Ramakrishnan appeared in person. The respondents appeared through their counsel Mr.G.Prakash. 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 home buyer against the order of the Regulatory Authority in C.No.82 of 2020 dated 10.06.2021. The respondent organization is a registered society and it works under the patronage of the Ministry of Railways, Government of India for the purpose of providing housing to serving and retired Railway employees on no profit - no loss basis. The home buyer is one of the allottee of the Group Housing Scheme promoted by the respondent/promoter at Ambattur, Chennai, which was registered under RERA as Phase II A–Tamil Nadu/02/building/0160/2018. The home buyer was allotted Type B dwelling unit and paid a sum of Rs.32,58,110/- and took possession of the dwelling unit on 18.2.2019. After taking possession the home buyer came forward with the complaint before the Regulatory Authority in June 2020, for the number of reliefs. After contest the Regulatory Authority directed the respondent/promoter to comply some directions and negative some relief. Aggrieved upon the same the home buyer preferred this appeal. In this appeal herein after the parties are arrayed as per their original rankings as the allottee as home buyer and the IRWO as promoters. The following are the main grounds put forth by the appellant are as follows:

- Culpable commission and omission of respondents on this project.
- There are many in friction in running their society as per Societies Act, deserves to be disqualified for violating improper use of Names and Emblems Act 1950.

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- IRWO deliberately created encumbrance by providing a common wall and built twin houses. There is clear breach of brochure agreement.
- Respondents used substandard materials against the specifications.
- The respondent promised for individual metro water connection with sump facility at each home as per brochure agreement but resorted to common water supply.
- Non completion of common amenities.
- There is avoidable delays incompetency of contracts coupled with mismanagement of respondents.

2. The appellant/home buyer as a party-in-person would submit that the promoter failed to provide amenities as promised in the brochure. IRWO has not conducted any general body meeting with the members. Every allottees expect portable drinking water as assured in the brochure terms and denying the same violates the terms of agreement. It amounts to unfair practices in the business and reserves remedial action and penalty as it is a potential health hazard and also breach of contract hence this appeal has to be allowed.

3. The learned counsel for the respondents/promoter would submit that the promoter is ready to issue completion certificate through Chennai Corporation as per the approved plan water supply will be provided by connection from a common undergrounds through hydro pneumatic system and accordingly approval has been obtained from CMWSSB and water supply is arranged for all the dwelling units. The amenities are all ready in existence it

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requires no other promise. The copies of documents will be enclosed along with the sale deed. The corpus fund shall be handed over to the registered association only. Therefore no merits in the appeal hence appeal has to be dismissed.

4. Point for consideration:

1. Whether the appeal deserves to be allowed or not?

Point:

5. The home buyer came forward with this appeal against the order of the Regulatory Authority along with grounds '(a) to (k)'. Out of which ground 'a' 'j' 'k' are all only formal. Grounds No. 'b', 'c' and 'h' are not related to the Real Estate (Regulation and Development) Act, 2016. Now let us see the merits of the case ground wise.

6. The ground No.'d' with regard to type of house. According to the home buyer independent house was promised with no encumbrance on four sides but constructed a twin house with encumbrance. The home buyer has produced typed set in this appeal in which at page Nos.2 to 8 Group Housing Scheme (2006) Rail Vihar, Ambattur, Chennai Phase II brochure, in which at page No.4 under the head of scheme it has been stated as follows:

> ***2. SCHEME:***
> ***2.1. The present scheme envisages construction of independent (twin) dwelling units of four types i.e. 'A 'B' 'C' and 'D' in group housing scheme at Ambattur on "No profit No loss" basis purely as a welfare activity.***

7. As per the above point No.2.1 construction of independent dwelling units with common wall between two dwelling units it named as 'twin'. The details of the dwelling units were explained in the same page in point No.5 which runs as follows (the home buyer's dwelling unit Type B):

> ***"5. DETAILS OF DWELLING UNITS:***
> ***5.1 The Scheme offers the following four types of independent dwelling units, with exclusive entry & frontage.***
> ***5.2 .. ..***
> ***5.3 Type B: Super Area 71 sq.m. (764 sft.) approx. (plot area 123 sqm.) consisting of living-cum-dining room, two bedroom, a kitchen, two toilets, service area, entrance verandah, open staircase & open car space"***
> ***5.4 .. ..***
> ***5.5 .. ..***

8. The home buyer applied for the Type B dwelling unit and paid the booking money Rs.70,000/- out of which Rs.26,500/- already paid by him and along with application a sum of Rs.43,500/- paid through bank draft. The above said particulars reflected from the applicants' copy of application form for booking which was produced by the home buyer in the typed set in page No.9. The above said application and payment and option for choosing type of house by the home buyer himself and applied on 21.7.2006. The brochure for the scheme was issued in May 2006 (appellant typed set page No.2). So after analyzing the scheme of the houses and after accepting the twin house and details of the dwelling units the home buyer has chosen Type B out of Type A to D. So the allegation that creation of encumbrance by providing a common wall and built twin houses is not sustainable.

9. The next ground No.'e' alleged by the promoter is with regard to violation of CMWSSB and CMDA. The home buyer has not produced any piece of paper regarding the alleged violation. Mere verbal allegation is not sufficient to find fault with the promoter. Furthermore, if any violation as alleged by the home buyer, is at liberty to bring the defects to the knowledge of the promoter and for which there is a specific clause in the technical brochure at page No.68 of the typed set of the home buyer produced before the Regulatory Authority. The defect liability as contemplated in the brochure as point No.10 (page No.7 of typed set of appellant) which runs as follows:

> ***10. IRWO'S LIABILITY:***
> ***IRWO's liability for maintenance and for replacement of any defective components in the construction shall cease immediately after the maintenance period which shall usually be for a period of 12 months from the virtual date of completion irrespective of the date of taking over of possession of the flat by the allottee.***

10. Admittedly, the home buyer took possession on 18.2.2019 and he approached the Regulatory Authority in June 2020 within a period of 12 months i.e. within the liability period. But the home buyer has not taken any steps to utilize the opportunity as contemplated in point No.10 of the brochure and he has not produced any piece of paper that the promoter has refused to rectify the violation etc., In such circumstances the claim of the home buyer as violations of Rules and Regulations of the CMDA and CMWSSB without any proof is not sustainable and entertainable.

11. The next ground No.'f' is with regard to individual metro water connection with some facility at each home as per brochure agreement. In this

regard the brochure agreement contemplates in point No. 5.6 notes vi (at page No.5 of the typed set of the appellant) which runs as follows:

5. DETAILS OF DWELLING UNITS:

5.1 to 5.5 .. ..

5.6 Cost of Apartment:

Notes:-

i) to v) .. ..

vi) The cost includes cost of internal and external water supply and sewerage disposal and provides for an underground water tank with overhead water tank of 1000 litre capacity for individual houses. It is proposed to connect the sewerage system to the municipal sewer or provide a separate sewage treatment plan."

12. As per the brochure point No.5.6 (vi) the cost of dwelling units includes cost of internal and external water supply and sewerage disposal and provides for underground water tank with overhead water tank of 1000 litres capacity for individual houses. In this brochure at point No.5.6 metro water connection not promised. The home buyer has produced CENTRAL GOVERNMENT EMPLOYEES WELFARE HOUSING ORGANIZATION TECHNICAL BROCHURE – CHENNAI : PHASE II (typed set of the appellant before the Regulatory Authority as list of enclosures for rejoinder at page No.64). The above said housing project is at Avadi Chennai (Phase II) Kendriya Vihar II. For the above said scheme technical brochure issued in which water supply and sewerage is stated as follows:

"Water supply and sewerage

Water supply shall be provided by C.M.W.S. & S.B. to underground tanks of sufficient storage capacity with arrangement of pumping to overhead tanks of all the blocks. In case of non-availability of water

supply from local authorities, bore well water shall be provided to the underground sump, with a treatment plant (if required)

Sewerage network of the complex shall be connected to sewerage treatment plant and treated effluent shall be connected to Storm water drain."

13. In the above said typed set the home buyer has produced page No.59 to 61 Ariel views of Chennai phase II, Chennai Phase II extension and Chennai phase II B at Ambattur. At page No.62 CMDA notification. From 64 to 81 is the technical brochure of Chennai Phase II Central Government Employees Welfare Housing Organization. The Ariel views of Rail Vihar photos are no way connected with the technical brochure of the Central Government Employees Welfare Housing Organization. The home buyer has added the Ariel view photos along with the technical brochure of Central Government Employees Welfare Housing Organization to create a make belief as if the Rail Vihar promoter has promised in the brochure to provide metro water connection to the individual houses. Even though indexed the above said items separately the home buyer's intention is to fish in the troubled water. The brochure issued by the promoters has not promised any metro water connection to the individual houses. Hence the claim of the home buyer is absolutely not sustainable and against brochure agreement with malafide intention.

14. The next ground No.'g' is with regard to non completion of common amenities. Regarding amenities are concerned they were narrated in the brochure as point No.4.2. (typed set of the appellant at page No.4)

4. SALIENT FEATURES OF THE HOUSING PROJECT:

4.1. .. ..

4.2 Amenities: Open spaces, children's play areas, shops and a community centre are proposed within the campus.
4.3 to 4.5 .. ..

15. As per the brochure point No.2 amenities mentioned as open spaces, children's play area, shops and a community centre. The home buyer has not stated any allegation about the amenities but stated about the D.G. set, metro water connection, street light, sewerage pump. Regarding metro water connection it has been answered in the previous paragraph, the other items namely D.G.Set, street light, sewerage pump are not classified as amenities in the brochure. Sewerage and water supply were included in the cost of the dwelling unit. Regarding street light and D.G.Set the home buyer has stated that they were provided but not functioning. Regarding defect of non functioning the home buyer is having right to rectify the same within 12 months by the promoter as stated supra. Whether the home buyer has utilized the opportunity as contemplated in the brochure regarding defect liability point no.10 no proof was filed. Regarding amenities as per brochure no grievance for the home buyer so this ground is not sustainable.

16. The next ground No.'i' is with regard to inordinate delay in conveying title. The promoter informed to the home buyer by way of letter dated 18.2.2019 regarding handing over of house in Rail Vihar Group Housing with photographs of the allottee. On receipt of the same on the same day the home buyer took possession and the home buyer signed taking over certificate. The above said documents were produced by the promoter as Annexure 48 in page nos.399 to

402 of the typed set of the promoter. The promoter has informed the home buyer on 25.4.2019 to get the registration of the dwelling unit positively by 31.7.2019 to that effect the promoter has sent a letter on 25.4.2019 as annexure No.R52 at page No. 425 of the typed set of the promoter. In that letter it has been stated as follows:

> ***"It is requested to kindly complete the registration by 31.7.2019 positively in case it is delayed and government levies any penalty due to delay in registration of DU then it will be solely on your account and IRWO shall not be held responsible for this delay".***

17. The promoter has informed the home buyer to get registration within two months from the date of taking possession and also sent draft deed of conveyance from page No. 407 to 424 of the typed set of the home buyer as annexure No.R50 and R51. For the above said communications what steps were taken by the home buyer is not answered by the home buyer. Furthermore the home buyer has suppressed the above said facts and came forward with the ground as inordinate delay. On perusal of above said documents delay in conveying deed is only on the part of the home buyer and not on the part of the promoter since the home buyer has not denied the above said documents therefore this ground is also not sustainable.

18. From the above discussion it is very clear that the grounds put forth by the appellant/home buyer to set aside the order of the Regulatory Authority, it is found that they are not sustainable. In addition to the above said grounds the home buyer by using the words namely, culpable commission & omission, disqualification and mismanagement. The above said grounds are termed as out

of jurisdiction of the Real Estate (Regulation and Development) Act, 2016. On the side of the promoter has produced IRWO memorandum of association in their typed set at page No.5, the aims and the objects is stated as follows:

> ***3. AIMS AND OBJECTS:***
> ***The aims and objects for which the Society is established are as under:-***
> ***(a) To promote Social Welfare Schemes such as providing all possible help to acquire accommodation to serving railway personnel, retired railway personnel, spouses of deceased railway personnel, personnel of Public Undertakings under the Ministry of Railways and the personnel of IRWO.***
> ***(b) To do all such things as are incidental or considered conducive by IRWO to attainment of the above objects or any of them.***
>
> ***6. Source of Income and Utilization of Funds***
>
> ***The finance of the Organization will broadly consist of the Loan Capital/Grant of the Government of India, loans from other financial institutions donations made to the Organization, amounts collected from the members. The funds will be utilized for meeting the objectives laid down in the Memorandum.***

19. The home buyer went to the extent of saying that entire purchase money of the plot 11.88 acres paid by the members of the Group Housing Scheme. But the promoter has denied by saying that on 12.3.2004, 11 acre 88 cents were purchased at the cost of Rs.7,16,36,608/- Out of that amount the collected amount from the members is only Rs.14,00,000/- the balance amount was borne by IRWO and the money collected from the association hence the arbitrator negatived the claim of the home buyer. In the memorandum of association the source of fund for the IRWO is from the loan capital/grant of the Government of India, loans from other financial institutions, donations made to the organization and amount collected from the members. These are the source

of income for the IRWO. But the home buyer suppressed these material things and came forward with allegations as stated supra.

20. From the above said discussions it is very clear that the home buyer's argument with the above said grounds to set aside the order of the Regulatory Authority are not sustainable. Therefore this Tribunal comes to a conclusion that this appeal is devoid of merits and there is no chance to interfere with the findings of the learned Regulatory Authority and hence it is liable to be dismissed. So this appeal is not deserves to be allowed. The point is answered accordingly.

21. In the result, this appeal is dismissed with costs of the respondent and the order of the Regulatory Authority in C.No.82/2020 dated 10.06.2021 is confirmed.

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 24th Day of January 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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