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 No.98 of 2021

M/s. Kgeyes Residency Private Limited,
Rep by its Managing Director
Mr.P.V.Shanmugam ... Appellant

-Vs-

Dr.S.Gnanasundaram ... Respondent

This appeal was taken on file on 1.9.2021 and came up for final hearing on 9.2.2022 in the presence of M/s.Nithyaesh Natraj, Vaibhav R Venkatesh, Rajaram.H, Counsels for the appellant and M/s. Anant Merathia, Ranghasayee, Poornima Devi and Vetrivel P. Counsels for the respondent. 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 against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.99 of 2020 dated 10.06.2021 with regard to maintainability of the complaint. The appellant is the developer and the respondent is the owner. In this case the main contention of the appellant is that he is not the promoter for the land owner and hence hereinafter in this appeal the appellant is called as developer and the respondent is called as land owner per their original rankings.

2. The land owner and the developer entered into joint development agreement in April 2013 and subsequently on 14.6.2017 entered into supplemental agreement with regard to the property situate in Palaniappa Cross Street, Velachery, Chennai – 42. As per the joint development agreement and supplemental agreement the developer has to subdivide the lands into three plots as Part A, Part B and Part C. The owner shall retain the plot bearing Part C together with 506.04 sq. ft of undivided share in the private passage. The owner shall own, posses and enjoy the schedule B property along with the building proposed to be constructed absolutely with all powers of alienation and the developer or its nominee shall not have any right, title or interest over the above said property. The owner shall transfer the plots bearing Part A & B together with 720.18 sq. ft of undivided share in the private passage as described in the Schedule-C to the developer and/or its nominee absolutely with all the powers of alienation and the owner shall not have any right, title or interest over the above said property. The private

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passage described as Schedule-D in which the owner, the developer or their nominees and successors have no right to put up any construction. For the above such transfer of part A & B the developer instead of paying consideration, the developer has to construct six apartments at his own costs which is described as schedule-E. The revised sub division plan approved by the Corporation of Chennai on 10.12.2014 is final. Since the developer has not completed the construction the land owner came forward with the complaint before the Regulatory Authority in C.No.99/2020 for the relief of registration of project, handing over of project, rental compensation Rs.60,000/-, compensation of mental agony Rs.50,00,000/-, permit the representative of the owner to visit and supervise the project and to construct in a proper manner as per Section 37 of the RERA Act. The developer entered appearance before the Regulatory Authority and raised the preliminary issue as the complaint itself is not maintainable. After hearing both sides the learned Regulatory Authority passed orders on the point of maintainability of the complaint and found that complaint is maintainable and direct the developer to file counter. Aggrieved upon the same the developer has preferred this appeal on the following main grounds:

- The complainant is not a home buyer but a land owner and there is no provision under the RERA Act to initiate proceedings against the developer and if any dispute the same can only be done before appropriate civil court.

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- The subdivided lands are measured as 233.75 sq. m., 204.77 sq. m. and 369.02 sq. m. respectively and the same are below the range of 500 sq.m., hence outside the scope of jurisdiction.

3. The learned counsel for the appellant would submit that the agreement between the parties were not the construction agreement as between the home buyer and promoter. The learned Regulatory Authority has considered the agreement between the parties as if they were home buyer and promoter. Furthermore, the developer agreed to construct apartments in Part C of the property in view of consideration to be paid by the developer to the land owner. But the learned Regulatory Authority misunderstood the agreement between the parties and came to a wrong conclusion hence it has to be set aside and the complaint is not maintainable.

4. The learned counsel for the respondent would submit that the learned Regulatory Authority after considering the entire facts and came to a correct conclusion and there is no infirmity in that finding hence the appeal has to be dismissed.

5. The learned Regulatory Authority found that as an allottee of six plots, the land owner/complainant has right to file compliant under Section 31 of the Act as an aggrieved person for delay in construction. Further total number of plots is indicated as 16 numbers and total extent of land is about 930 sq. m. Therefore this authority has no hesitation to conclude that this is a single real

estate project coming under the purview of Section 3 of the Act to be registered.

6. Point for consideration:

Whether the appeal deserves to be allowed or not?

Point:

7. According to the appellant/developer they purchased lands part A & B for consideration not as a cash and in lieu of cash as consideration the developer has to construct six apartments in part C of the land belong to the land owner. In Part A and B land the developer has to develop his own project and that project is no way connected with the apartments of the land owner and the developer has no right, title or interest over the six apartments of the land owner. As such the land owner has no right, title or interest over the apartments within the land of Part A and B. These are the agreement between the parties regarding immovable property.

8. According to the respondent/land owner the developer agreed to construct 16 apartments totally ten for himself and six for the land owner. Therefore, it is the real estate project and would come under the RERA Act.

9. According to the learned Regulatory Authority the plea of the land owner not denied by the developer and the developer has proposed to construct 16 apartments totally.

10. The specific contention in this appeal regarding maintainability is that the complaint itself not maintainable since the land owner is not an allottee and there is no privity of contract between the developer and the land owner as promoter and home buyer. How far this contention of the appellant is sustainable has to be analyzed. Before going to discuss the merits of the contention the relevant provisions and relevant portions of the agreement have to be looked into and they are extracted as follows:

> ***Section 2:***
> ***(zk) "promoter" means,—***
> ***(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or***
> ***(ii) to (vi) .. ..***
>
> ***(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;***
>
> ***Section 3: Prior registration of real estate project with Real Estate Regulatory Authority***
> ***(1) .. ..***
> ***(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—***
> ***(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:***
> ***Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be,***

inclusive of all phases, for exemption from registration under this Act;

Supplemental Agreement dated 14.6.2017 between the land owner and the developer runs as follows (at page No.67 of typed set of land owner):

NOW THIS SUPPLEMENTAL AGREEMENT TO JOINT DEVELOPMENT AGREEMENT DATED 12.04.2013 WITNESSETH AS FOLLOWS:

01. The Owner herein shall retain the Plot bearing Part-C together with 506.04 sq. ft. of undivided share in the Private Passage, which is more fully described in the Schedule "B" hereunder. The Developer shall construct a Building Stilt + 2 Floor Residential apartment building having a total super built up area of 6371 Sq. ft. or thereabouts, comprising of 6 flats together with proportionate car park which is more fully described as schedule E hereunder and complete the same with service connections and hand over the same to the owner in a habitual manner. The owner shall own, possess and enjoy the Schedule "B" Property along with the aforesaid Building absolutely, with all powers of alienation and the Developer and/or its nominee/s shall not have any right, title or interest over the aforesaid property.

02. The Owner shall convey/transfer the Plots bearing Part-A and Part-B together with 720.18 Sq ft. of Undivided share in the Private Passage which is more fully described in the Schedule "C" hereunder, to the Developer and/or its nominee/s absolutely, with all powers of alienation and the Owner shall not have any right, title or interest over the aforesaid property.

11. Now let us analyze first whether the developer is the promoter with regard to the land owner is concerned. As per section 2(zk) the meaning of the promoter, as stated supra, is that 'a person who constructs a building

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consisting of apartments for the purpose of selling is the promoter'. In this case the developer constructing a building consisting of six apartments is for the land owner. There is no dispute in it. But if the construction for the purpose of is selling them the person who constructs become a promoter. In this case the developer is to construct for the land owner only six apartments and to be handed over to the land owner. In this regard the agreement between the parties is as follows:

> ***"schedule E hereunder and complete the same with service connections and hand over the same to the owner in a habitual manner. The owner shall own, possess and enjoy the Schedule "B" Property along with the aforesaid Building absolutely, with all powers of alienation and the Developer and/or its nominee/s shall not have any right, title or interest over the aforesaid property."***

12. So, the developer has no right to sell the apartments handed over to the land owner. Therefore, the developer has not acted as a promoter to the land owner and he acted as builder only for the consideration payable by him to the land owner instead of paying sale consideration he paid the consideration as apartments, which are to be constructed at the own cost of the developer. The land owner has also not paid any amount as consideration for the construction of six apartments in his portion Part-C as Schedule-B to the developer. Therefore there is no relationship or privity of contract between the land owner and developer as allottee and promoter. Hence this Tribunal comes to a conclusion that the developer is not a promoter under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

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13. Now let us analyze secondly whether the project of the developer is the real estate project. The meaning of the word real estate project explained in Section 2(zn). In which it has been specifically stated that the development of a building consisting of apartments for the purpose of selling amounts to real estate project. The developer and the land owner have entered into an agreement and supplemental agreement that the land belonged to the land owner has to be handed over to the developer and the developer agreed to subdivide the lands as part A, B, and C at his own cost and agreed to construct six apartments in part C of the land at his own cost and handed over the same to the land owner after that the developer has no right or title in that six apartments. The land owner agreed to transfer part A and B land to the developer for which the developer need not pay any amount to the land owner and the developer can construct apartments at his own cost in Part A and B lands and alienate himself as per his choice and the land owner has no right or title or interest over the part A and B of the land. The definition for real estate project clearly states that development of apartment for the purpose of selling. The land owner has no right or title or interest over the apartments, to be constructed in Part A and B lands, it is the separate entity of the developer and he became the absolute owner and if he sells the said apartments which is to be constructed in part A and B the developer will become the promoter for the person who purchased from the developer. So, there is no connection between the land owner and developer with regard to the real estate project to be developed by the developer in his part A and B property.

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14. Regarding the property of the land owner namely Part C land in which six apartments to be constructed and after handing over the land owner became the absolute owner. The developer agreed to construct in Part C land in lieu of consideration only payable by him for the Part A and B property and not for the construction of apartments in Part C land and the developer has not going to sell any apartment belonging to the land owner. The developer has made advertisements regarding his projects along with the apartments of the land owner. It is made for the purpose of business only to attract home buyers. Actually there is no agreement between the parties to market the real estate project jointly. Therefore mere making of advertisement alone not sufficient to come to a conclusion that it is the real estate project of the developer since the developer has no right or title or interest over the six apartments of the land owner. Hence this Tribunal comes to a conclusion that the findings of the learned Regulatory Authority is that total 16 apartments leads to real estate project is not sustainable since there is no specific contract or agreement between the parties for the projection of the real estate project.

15. Now let us analyze thirdly whether the construction of six apartments to the land owner in his part C of land will come under purview of Section 3. Section 3 contemplates that what are the developments will come under the purview of the RERA Act. The above said section has clearly prescribed the quantum of area and quantum of apartments as follows:

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of

apartments proposed to be developed does not exceed eight inclusive of all phases:

16. In this case as per the agreement between the parties in Schedule B in the supplemental agreement the land retained by the owner an extent of 3972.14 sq.ft. which is equal to 369.011 sq. m. (at page No.69 of the typed set of the land owner). The developer agreed to construct six apartments only. Therefore the land to be developed in 369.011 sq. m. which is below 500 sq. m. and the number of apartment is only six it is also below the prescribed 8 apartments. Therefore as per Section 3(2)(a) the prescribed measurement of land and number of apartments not exceeded by the developer and Section 3(2)(a) is not applicable to the facts of this case, hence, this Tribunal comes to a conclusion that Section 3 is not applicable.

17. From the above discussion it is very clear that the complaint by the land owner with regard to his portion of land namely part C as per the supplemental agreement, agreed to be constructed by the developer will not come under the purview of Section 3 and the above said construction of apartment to the land owner is not the real estate project and above all the developer is not the promoter for the land owner. Therefore, Section 31 of the Real Estate (Regulation and Development) Act, 2016 cannot be invoked by the land owner since he is not an allottee or home buyer under the construction agreement and the apartments proposed to be constructed is also not for sale by the developer to the land owner. In such circumstances, there is no business for Section 31 of the Act. But unfortunately, the learned Regulatory Authority has without considering the agreement between the parties and

mere reading of advertisements and total number of apartments alone not sufficient to come to a conclusion. Furthermore, the basic document is the agreement between the parties to decide the forum for adjudication of disputes between the parties. In this case the learned Regulatory Authority has not considered the agreement between the parties namely the joint development agreement dated 12.4.2013 and supplemental agreement dated 14.6.2017 which are the clinching evidences to decide the rights of the parties. Hence this Tribunal found that the improper appreciation of facts by the learned Regulatory Authority leads to interference with the findings of the authority and the order of the authority necessarily has to be set aside. Therefore this Tribunal comes to a conclusion that this appeal is deserves to be allowed. The point is answered accordingly.

18. In the result, this appeal is allowed and the order of the Regulatory Authority in C.No.99 of 2020 dated 10.6.2021 is set aside and the complaint of the land owner is dismissed. No costs.

Connected Miscellaneous applications are closed.

This Order is directly dictated to the Stenographer 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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