**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: 10.10.2022**

**Coram: Mr. Justice M.Duraiswamy, Chairperson**
**Ms. Leena Nair, Administrative Member**
**Mr. R.Padmanabhan, Judicial Member**

**Appeal No. 13 of 2022**

V.Perumal ... Appellant

-Vs-

1. M/s.Isha Homes (India) Pvt. Ltd.,
   Rep by its Authorized Signatory N.Anbu Mani
2. Nazeem Sharief
3. Nusrath Sharief
4. Tanveer Sharief .... Respondents

This appeal was taken on file on 25.03.2022 and came up for final hearing on 10.10.2022 in the presence of M/s.R.Ramasubramaniam Raja, R.Hemavathi, Arvind A.S., Nancy Devadass, Kannammai.M.E. and B.Anithaa Selvi, Counsels for the appellant, M/s. Fox Mandal and Associates – P.Jayaprakash, K.Lakshmi and Shruthikka.S, Counsels for the 1st respondent and M/s.K.S.Karthik Raja, M.Senthil



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Kumaran, R.Venkatraman, M.Arun kumar, A.Arasu Sanga Tamil and R.Indhumathy, Counsels for the respondents 2 to 4. Having heard the arguments of both sides and having stood over for consideration till this date and this Tribunal delivered the following:

**ORDER**

Challenging the order passed in C.No.145 of 2021 made by the Tamil Nadu Real Estate Regulatory Authority (TNRERA) (Tamil Nadu, Andaman & Nicobar Islands), Chennai, the complainant has filed the above appeal.

2. It is the case of the appellant that the 1st respondent – Company entered into a Joint Development Agreement with the respondents 2 to 4 for developing a Real Estate Project under the name and style of "Isha Code Field" at Pudupakkam Village, Thiruporur, Thiruporur Taluk, Kancheepuram District, presently Vandalur Taluk, Chengalpattu District. The said project was registered with the Real Estate Regulatory Authority. Further, according to the appellant the 1st respondent has initially registered its Real Estate Project with TNRERA dated 12.02.2018 and subsequently, registered the same Real Estate Project on 25.09.2019.

3. According to the appellant, he was in possession and enjoyment of the extent of 16 cents of land in Survey No.65/8A and that during the 1st week of August 2018, the respondents attempted to encroach on the complainant's land in Survey No.65/8A. Further, it was contended by the appellant that he came to know that the 2nd respondent had obtained patta in her name in respect of Survey No.65/8A measuring an extent of 16 cents. The appellant made a representation on 16.08.2018 to the Revenue Divisional Officer, Chengalpattu



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questioning the grant of patta in favour of the 2nd respondent. After issuing notice to the parties, the Revenue Divisional Officer passed an order restoring the patta in respect of Survey No.65/8A in favour of the appellant's grandfather by name K.Mari. Further according to the appellant, the 2nd respondent, by using the said patta, which was got by making false representation, by way of a Gift Deed dated 07.04.2016 gifted the land measuring an extent of 16 cents belonging to him to Pudupakkam Village Panchayat for forming road. Subsequently, the respondents applied for planning permission in respect of property in Survey Nos.64/10B, 12, 13, 65/1, 2, 6, 8A, 8B & 9B of Pudupakkam Village showing the land in S.No.65/8A as Open Space Reservation (in short "OSR"). The Mamallapuram Local Planning Authority, by order dated 28.07.2016, granted approval for the layout in No.18/2016 and also planning permission No.22/2016 for the entire property for putting up construction. Based on the planning permission granted by the authority and also the layout approval, registered the project with TNRERA on 12.02.2018 and started promoting the project by advertising and selling the apartments.

4. The appellant contended that the respondent had obtained planning permission and layout approval from the respective authorities by showing his land measuring an extent of 16 cents in Survey No.65/8A as OSR for the project. Since the very application for planning permission and layout approval was based on the inclusion of the appellant's land, the planning permission and layout permission were obtained by misrepresentations is invalid and is non-est. The appellant also contended that the only recourse which was available was to cancel the Gift Deed dated 07.04.2016 and to submit a fresh planning permission

with all the requirements, including OSR requirements. The appellant made a representation dated 20.08.2018 to the Director of Town and Country Planning, Chengalpattu for cancellation of the planning permission and also to the Block Development Officer, Thiruporur for cancellation of the Gift Deed executed by the 2nd respondent. Since no action was taken based on the appellant's representations, the appellant filed a Writ Petition in W.P.No.7745 of 2019 seeking for issuance of Writ of Mandamus directing the Director of Town and Country Planning, Chengalpattu and the Mamallapuram Local Planning Authority, Mamallapuram (respondents 4 & 5 in the Writ Petition) to cancel the layout approval No.18/2016 and Planning Permit No.22/2016 dated 28.07.2016 issued to the 1st respondent herein for the purpose of construction of flats in respect of property bearing S.Nos.64/10B, 12, 13, 65/1, 2, 6, 8A, 8B & 9B of Pudupakkam Village, Thiruporur Panchayat Union, Thiruporur Taluk, Kancheepuram District and to revoke and cancel the Gift Deed dated 07.04.2016.

5. When the Writ Petition came up for hearing before the Hon'ble High Court, the learned counsel for the appellant made a submission that after perusing the counter and the revised plan, the appellant was satisfied that the land falling under S.No.65/8A does not fall within the revised approved layout and therefore, he has no grievance in the revised plan dated 23.07.2019 approved by the SRO, Thiruporur in favour of the 1st respondent herein. Further, the learned counsel made a submission before the learned Single Judge that he is concerned about the Gift Deed executed in favour of the Local Authority, which includes the disputed portion under S.No.65/8A. The Hon'ble High Court, while disposing of the Writ Petition by order dated 19.08.2019, observed that as

far as the portion claimed by the appellant is concerned, the right over the property has to be decided by the Revenue Authorities and by a competent Civil Court. Further, it is observed that to avoid complication and further litigation, the 1st respondent has excluded that portion from the layout and therefore, the prayer in the Writ Petition insofar as the relief sought for by the appellant is concerned, cannot be granted. In the said order, it is also observed that the dispute with regard to the Gift Deed between the appellant and the respondents 2 to 4 respondents can be sorted out and if the said issue is sorted out, automatically the inclusion of S.No.65/8A in the Gift Deed will become non-est in law.

6. The appellant had also filed another Writ Petition in W.P.No.30597 of 2019 challenging the order passed by the District Revenue Officer, Kancheepuram dated 03.10.2019 granting patta in favour of the 2nd respondent. The learned Single Judge, by order dated 19.08.2021, dismissed the Writ Petition observing that the District Revenue Officer has rightly referred the parties to the Civil Court to decide the issues between them. Further, the learned Single Judge observed that the appellant will not gain any advantage by correcting the entries in the revenue register. Further, it has been observed that the 2nd respondent herein asserts title to the entire 29 cents in S.Nos.65/8A and 65/8B, hence, the appellant will necessarily have to assert and establish his title and the only forum available for that assertion is the Civil Court. When the Hon'ble High Court has categorically held that the dispute with regard to the exclusion of the Gift Deed has to be decided only by a Competent Civil Court, the filing of a compliant before the TNRERA by the appellant, is not maintainable.

7. It is brought to the notice of this Tribunal by the learned counsel on either side that the appellant has also filed Review Application (Writ) No.228 of 2019 in W.P.No.7745 of 2019, which was also dismissed by the learned Single Judge by order dated 25.02.2020.

8.The learned counsel for the appellant submitted that challenging the order dated 19.08.2019 made in W.P.No.7745 of 2019 and the order dated 25.02.2020 made in Review Application (Writ) No.228 of 2019, the appellant has filed Writ Appeals in W.A.No.1632 of 2021 and W.A.No.1754 of 2021 respectively and the same are pending.

9. When the facts of the case stand thus, the appellant has filed the complaint before the TNRERA seeking for the following reliefs:

i) to cancel the layout approval by the Member Secretary, Mamallapuram in LPA letter dated 23.07.2019 and the Special Officer, Pudupakkam Panchayat/ BDO, Thiruporur dated 31.07.2019, which is obtained in contravention to provisions of RERA;

ii) to revoke the registration dated 25.09.2019 granted under Section 5 of RERA;

iii) to punish the respondent for having violated the provisions of RERA.

10. When the appellant made a submission before the learned Single Judge in W.P.No.7745 of 2019 stating that he was satisfied with the exclusion of the land in S.No.65/8A by order dated 19.08.2019, he cannot be allowed to make a



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contrary submission before this Tribunal. In the Writ Petition in W.P.No.7745 of 2019, the appellant has challenged the correctness of the order passed by the authority dated 28.07.2016. By the said order, the land in S.No.65/8A was included in the layout approval. By subsequent order dated 23.07.2019, the land in S.No.65/8A was excluded, however, the appellant was granted approval only by the earlier order passed by the authority on 28.07.2016 and not by the order dated 23.07.2019. The submissions made before this Tribunal is contrary to the submissions made before the learned Single Judge in W.P.No.7745 of 2019. Therefore, it is clear that the land in S.No.65/8A was not included in the approval granted on 23.07.2019. Since the appellant has not challenged the order dated 23.07.2019 before the Hon'ble High Court, the finding of the TNRERA rejecting the complaint made by the appellant as not maintainable is just and proper.

11. The appellant can only establish his right over the land in S.No.65/8A before a Competent Civil Court. When the appellant has no subsisting right in the said land as of today, the complaint filed by the appellant was rightly rejected by the TNRERA. That apart, the correctness of the Gift Deed dated 07.04.2016 executed by the respondents 2 to 4 can only be decided by a Competent Civil Court.

12. We do not find any error or irregularity in the order passed by the TNRERA. Accordingly, the appeal is liable to be dismissed and the same is dismissed. Since we are dismissing the appeal filed by the appellant challenging the order passed by the TNRERA, which dismissed the complaint filed by the appellant as not maintainable, we find no necessity to consider the applications

in M.A.Nos.97 & 119 of 2022 filed by the appellant seeking to file additional documents and the applications are liable to be closed.

13. In these circumstances, the Appeal is dismissed. Consequently, connected Miscellaneous Applications are closed.

**Sd/- xxxx**
**CHAIRPERSON**

**Sd/- xxxx**
**ADMNINISTRATIVE MEMBER**

**Sd/- xxxx**
**JUDICIAL MEMBER**

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