BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Friday the 11th day of November 2022

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

Appeal No.19 of 2022

1. M.Little Flower
2. C.S.Surya ... Appellants

-Vs-

1. R.Selvakumar
2. T.Munna Basha,
M/s. Chennai Construction ... Respondents

This appeal is filed U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the Tamil Nadu Real Regulatory Authority in C.No.181 of 2021 dated 21.03.2022.

This appeal was taken on file on 14.06.2022 and came up for final hearing on 19.10.2022 in the presence Ms.S.Harinyi, Counsel for the appellants and M/s. P.L.Narayanan, B.Sangeetha and M.Sumithra, Counsels

Verified RealEstate™

for 1st respondent. Notice to R2 could not be served in person and the postal cover containing the notice returned as 'addressee cannot be located'. Inspite of paper publication effected against him R2 was called absent. Having heard the arguments on both sides and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. It is the case of the appellant that they are the owners of land measuring to an extent of 36 cents comprised in old survey No. 102/2A3A and new survey No.102/2A3A2 and 102/2A3A3 situated at Pudupakkam Village, Thiruporur Taluk, Chenglepet District. The second respondent was doing construction business under the name and style of M/s. Chennai construction. He approached the appellant for the purchase of the appellant's land and paid a sum of Rs.5,00,000/- as advance amount. The mutual understanding between the appellant and the second respondent was that the second respondent will develop the land into villa plots and on receipt of the entire payment of the proportionate value of each plot directly from the prospective buyers, the appellant will execute and register the sale deeds either in the name of the 2nd respondent or to his nominee. No sale agreement or power of attorney was executed by the appellant in favour of the 2nd respondent.

2. Later the 2nd respondent introduced three persons as nominees. The appellants received the entire sale consideration from each nominees and executed sale deeds in favour of those three nominees in respect of UDS land measuring 1020 sq. ft. each.Those three persons entered into

Verified PedEstate

separate construction agreements with the 2nd respondent. As the 2nd respondent delayed the construction they have filed complaint before TNRERA in C.Nos.320, 321 and 324 of 2019 against the 2nd respondent with a prayer to issue "No objection Certificate" for proceeding with the construction of villas by themselves. Since the appellants have been formally arrayed as respondents and no relief was prayed against the appellants herein, they have not filed any counter in those cases. Lastly by order dated 28.11.2019 the TNRERA had closed all the three cases by stating that there was no necessity for issuing "No objection Certificate".

3. Subsequently, the appellants received notice from TNRERA in C. No. 181 of 2021. After receipt of such notice the appellants came to know that the first respondent the 2nd respondent colluded with each other and concocted an unregistered sale agreement dated 02.11.2017 by forging the signatures of the appellants. The appellants never seen the first respondent and there is no privity of contract between the appellants and the 1st respondent at any point of time. The appellants have not received any amount either from the 1st respondent or from the 2nd respondent as mentioned in the said sale agreement. Therefore the appellants are not liable to execute any sale deed infavour of the first respondent. The 2nd respondent suddenly gone missing and his whereabouts are not known.

4. The TNRERA, had assumed that the 2nd respondent acted as the agent of the appellants and came to a wrong conclusion. Further the TNRERA had itself compared the disputed signature with the purported signatures of the appellants found in some other agreements involved in

the previous cases filed by the other purchasers. The disputed signatures ought to have been compared with the admitted signatures with the help of a handwriting expert attached to the Forensic Sciences department. The appellants contended that the TNRERA, by wrongly comparing the signatures, came to a wrong conclusion and directed the appellants to execute the sale deed in favour of the 1st respondent on or before 31.05.2022 without any further payment. Hence the appeal.

5. It is the case of the 1st respondent that the 2nd respondent who is the proprietor of M/s Chennai Construction, launched a housing project called 'Green Apple' at Siruseri. The 1st respondent was allotted an undivided share of 1280 sq. ft. which measurement includes the villa plot area and the common area. The plot No.8 was allotted to the 1st respondent by the 2nd respondent. The 1st respondent paid Rs.42,00,000/- to the 2nd respondent towards the cost of the plot. Inspite of it the land was not registered in the name of the 1st respondent. Later the first respondent came to know that the same plot No.8 was sold to one Balachander. Upon searches made the 2nd respondent found missing and his whereabouts were not known. When the appellants were contacted no favourable answer was given by them. Hence he preferred the complaint for getting the sale deed executed alternatively for any other plot with same extent.

6. After hearing both sides TNRERA has allowed the complaint as prayed for and directed the appellants to execute the sale deed in favour of the 1st respondent in respect of any other plot having the same extent as that of plot No.8, in the same layout, on or before 31.5.2022 without

demanding any additional payment. Aggrieved over the same the appellants have preferred this appeal.

7. Heard both sides. Records perused. The 1st respondent admits that he had paid Rs.11,00,000/- to the 2nd respondent and not to the appellants. Contrary to the averments made in the complaint the first respondent claimed in his proof affidavit filed before the TNRERA that he had paid Rs.31,00,000/- to the appellants during December 2017 by means of account transfer through L.I.C.H.F.L., from where the first respondent had availed a housing loan. By way of self contradiction the 1st respondent had contradictorily mentioned in the same proof affidavit that the said loan amount of Rs.31,00,000/- was paid to the appellants through cheque in the month of December 2017. On any account there was no scrap of paper was produced in respect of the alleged payment of Rs.31,00,000/- to the appellants.

8. The appellants have specifically pleaded in their counter filed before the TNRERA that they have not received any amount from the 1st respondent and there is no privity of contract between them and the first respondent. In these circumstances it is the lawful duty of the 1st respondent to prove the payment of this Rs.31,00,000/- to the appellants by producing relevant documents. Even in the absence of any documentary evidence, the TNRERA accepted the statement of the 1st respondent made in the proof affidavit as gospel truth, which led to an erroneous conclusion.

9. Further with regard to the Principal and Agent relationship between the appellants and the second respondent, the 1st respondent has no

Verified RedEstate ™

where pleaded in his complaint that the 2nd respondent had acted as the agent of the appellants. However based on the circumstances orally narrated in the proof affidavit filed by the first respondent, the TNRERA had assumed that the 2nd respondent was the agent of the appellants. Admittedly there was no power of attorney deed executed by the appellants in favour of the second respondent. But the TNRERA had observed that the possession of the copies of title deeds by the second respondent and giving it to the L.I.C.H.F.L. for sanctioning the housing loan are sufficient to prove the Principal and Agency relationship between the appellants and the second respondent. Even if it was true this stray incident alone is not sufficient to presume any implied agency between the appellants and the second respondent..

10. Further the learned Members of the TNRERA had unnecessarily compared the facts and circumstances of this case with the facts and circumstances of earlier three cases filed by other three purchasers, which were in fact already disposed off. The facts and circumstances involved in this case are entirely different from the facts and circumstances involved in those three cases. Those cases were filed for the sole relief of obtaining No Objection Certificate from TNRERA for proceeding with the construction of villas by the purchasers themselves.

11. The TNRERA had erroneously compared the disputed signatures of the appellant found in the agreement dated 02.11.2017 with the purported signatures of the appellants found in some other agreements. It is well settled principle of law that only admitted signatures

Verified by RealEstate

of a person made during contemporary period can be used as sample signatures for comparison purposes. In this case the TNRERA had compared the disputed signatures with the purported signatures of the appellants found in some other agreements.

12. The 1st respondent failed to prove that he had paid the sale consideration to the land owners namely the appellants. Having paid the amounts to the second respondent he cannot expect the appellants to sell their property in his favour by executing a sale deed. In the absence of any valid Power of attorney deed it cannot be said that the second respondent had acted as the agent of the appellants. Therefore the appellants are not bound to execute any sale deed in favour of the 1st respondent. Therefore the order of TNRERA is liable to be set aside. Accordingly the appeal is hereby allowed.

13. In the result the appeal is allowed and the order passed by the TNRERA in C.No.181/2021 dated 21.3.2022 is hereby setaside. No costs.

Sd.xxxx
CHAIRPERSON

Sd.xxxx
ADMINISTRATIVE MEMBER

Sd.xxxx
JUDICIAL MEMBER

Verified RedEstate