BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Reserved on: 05.06.2023

Delivered on: 12.06.2023

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

Appeal No.23 of 2022

1. M/s. SPR & RG Constructions Private Limited
   Rep by its Managing Director, Hitesh Kumar P Kawad
2. Hitesh Kumar P Kawad
   Managing Director, M/s. SPR & RG Constructions Private Limited
3. M.G. Surendranath
   Director, M/s. SPR & RG Constructions Private Limited ... Appellants

- Vs –

V.K. Vijayaraghavan ... Respondent

PRAYER :To set aside the Order passed by the Tamil Nadu Real Estate Regulatory Authority in C No.442 of 2019 dated 21.03.2022.

For Appellants : Mr.A.Thiyagarajan, Senior counsel
for Mr.P. Mohan Kumar

For Respondent : Mr.A. Neelakantan and Mr.Rahul Neelakantan

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ORDER

1. The brief facts that are relevant for the disposal of the appeal are as follows:

2. The Appellants are the promoter of a real estate project by name 'Osian Chlorophyll'. The project site is located at Karambakkam village, Chennai Bye-pass Road, Porur. The total extent of the project site is about 9 acres and 9 cents (about 3,96,000 sq. ft.). Even before obtaining the CMDA approval, the Appellants started booking of apartments. The Respondent/Complainant booked an apartment by entering into an agreement of sale and construction on 13.07.2012. Likewise, several other persons have also booked their flats in the project. As per the terms of the construction agreement the project was supposed to be completed within 36 months from 31.03.2012 i.e., on or before 31.03.2015. Subsequently the building plan was approved by the Chennai Metropolitan Development Authority on 04.09.2012. As per the approved plan nine blocks were proposed to be constructed by the Appellants. Each block will have ground+ 14 floors with combined basement 1 & 2. In all 950 dwelling units were proposed to be constructed by the Appellants. It appears that the apartments were handed over to the allottees belatedly. The Respondent preferred the complaint not on the ground of delay in handing over of possession, but on the ground of serious violation of the original approved plan, structural stability etc.

3. According to the Respondent/Complainant, after two years the Appellant / Promoter had applied for revised plan approval on

17.07.2014 without the knowledge and consent of the allottees and got the revised plan approval after four years i.e on 20.07.2018. While the application for revised plan approval was pending, the Appellant/Promoter continued with construction by giving a clear go bye to the original approved plan and committed serious violations. It is the case of the respondent/Complainant that the objections raised by the allottees at that time were not at all considered by the appellant/Promoter. The number of dwelling units were increased to 1,050 from 950 dwelling units. Due to increase of 100 dwelling units, the promised common areas such as club houses, parking lots meant for four wheelers and two wheelers are the most affected ones by the adverse impact caused. As per the original plan approval 950 dwelling units with 1245 car parking units and 1264 two wheeler parking units were contemplated. But as per the revised plan approval the number of dwelling units increased to 1050. Consequently, the car parking units reduced to 1062 from 1245 and the two wheeler parking units reduced to 257 from 1264.

4. Aggrieved over the issue of shrinkage in the common areas such as club house, car parking and two wheeler parking units the Respondent/Complainant preferred a complaint before the TNRERA in C.No.442/2019. After hearing both sides, the said complaint was allowed by the TNRERA vide the impugned order and necessary directions were issued to the Appellants/Promoters for restoration of the club houses area to 5432.35 sq.m. as per the original approved plan after getting approval from Chennai Metropolitan Development Authority, subject to permissible FSI. In respect of the other reliefs sought for by the Respondent/Complainant in his complaint necessary directions were also

issued by the TNRERA. Aggrieved over the order passed by TNRERA the present appeal has been preferred by the Appellants/Promoters.

5. Heard both sides.

6. Before delving into the facts of the present appeal, it is highly relevant to discuss about the five complaints preferred by some other five allottees of the same Real Estate project "Osian Chlorophyll" before the TNRERA in C.Nos. 21 & 38 to 41 of 2020 for various reliefs. All the said five complainants, among other reliefs, they have also prayed for a direction against the Appellants/Promoter to restore the club houses area as per the initial approved plan and as per the construction agreement. The complainants in C.No.38 to 41 of 2020 also prayed for an additional direction against the Appellants/Promoter, to transfer the corpus fund to the allottees association.

7. All these five complaints were allowed by the TNRERA on merits on 10.06.2022 by referring to the impugned order dated 21.03.2022 in C.No.442 of 2019 which was earlier in point of time. It should be noted that in the above mentioned order dated 21.03.2022 in C.No. 442 of 2019, the TNRERA has given a clear finding that the reduction of the club house area from 5432.35 sq. m. to 2071.67 sq. m. was not proper. If calculated the club house area was reduced by 3360.68 sq. m. After discussing in detail the TNRERA has directed the Appellants/Promoter to restore the club house area to its promised extent of 5432.35 sq. m. and other amenities as per the initial approved plan.

8. Subsequently the TNRERA, while disposing the batch of complaints in C.No.21, 38 to 41 of 2020 on 10.06.2022, instead of discussing the issue of club house once again had referred and concluded that the

order passed by it in C.No.442/2019 dated 21.03.2022 holds good in respect of the issue of club house area.

9. In so far as the additional issue of corpus fund raised in C.Nos. 38 to 41 of 2020, the TNRERA directed the Appellants/Promoters to transfer the corpus fund along with interest after deducting the expenditure incurred from the corpus fund for the purposes for which the corpus fund is intended for, to the association of allottees on or before 31.08.2022. Against the said common order dated 10.06.2022 the Appellants/Promoters have preferred five separate appeals before this Appellate Tribunal.

10. Before entertaining those appeals the Appellant/Promoter, was directed to make pre deposit of the entire corpus fund amount with interest as per Section 43(5) of The Real Estate (Regulation and Development) Act, 2016. Despite opportunities were given to the Appellants/Promoters to make the pre deposit, they have failed to deposit the same. Subsequently, on 19.04.2023 the Appellants/Promoters sought permission to withdraw those five appeals. Accordingly, those five appeals were dismissed as withdrawn on 19.04.2023. Consequent to such withdrawal of the appeals, the common order passed by TNRERA impugned in those five appeals became final. As a result, the Appellants/promoters have no subsisting right to agitate the same issue with regard to restoration of club house and other amenities in a parallel proceeding namely in the present appeal. The Appellants/Promoters cannot be allowed to blow hot and cold. If really, the Appellants/Promoters wanted to agitate the issue with regard to club house and other amenities before this Tribunal, they should have prosecuted the other five appeals preferred by them. By withdrawing

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the appeals they have made it clear that they were satisfied with the order of the TNRERA and the findings rendered therein.

11. Coming to the facts and circumstances involved in this appeal the same is liable to be dismissed for the simple reason that the promoters have indulged in unilateral alteration of the approved plan and thereby reduced the promised club house area from 5432.35 sq. m. to 2071.67 sq. m. There is a reduction of the club house area to an extent of 3360.68 sq. m. This is a clear violation of the construction agreement as well as the initial approved plan issued by the CMDA. Moreover the application for the revised plan approval was submitted on 14.07.2014 behind the back of the allottees. The revised plan was in fact approved by the CMDA on 20.07.2018. While the application for revised plan approval was pending the Appellants/Promoters continued with the construction as if the revised plan was approved. It is quite interesting to note that within 3 days from the date of approval of the revised plan, the promoters have applied for completion certificate i.e on 23.07.2018. The CMDA has also issued the completion certificate on 06.09.2018. Even in the application for completion certificate dated 23.07.2018 the promoters with all boldness have stated that the construction of building as per the revised plan was completed in all respects even prior to 31.05.2017 in respect of 1050 dwelling units. This is a candid admission made by the Appellants/Promoters.

12. The Appellants/Promoters deliberately violated the terms of the Construction agreement of year 2012 with a view to enrich themselves at the cost of the allottees. The Appellants/Promoters never bothered about the rights of the allottees who have booked their apartment in the year 2012 and paid several crores of rupees for the construction of their

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dream house with moderate amenities. But they have been deprived of the club house and car parking units and other amenities as per the construction agreement. The rights of the allottees over the UDS area, club houses and other common amenities gets seriously infringed because of the revised plan approval that was obtained behind their back, nearly six years after the construction agreement.

13. When similar order of the TNRERA have become final upon dismissing of the other connected appeals, preferred by the Appellants, by order of this Tribunal dated 19.04.2023, we do not find any reason to give a finding in this appeal with regard to the same issue regarding the same club house. Once the appellant chose to withdraw the appeals, which were filed challenging the findings of TNRERA with regard to club house, they cannot be allowed to re-agitate the very same issue in the present appeal which has already become final.

14. The impugned order of TNRERA in fact gave some reliefs to the allottees and we find no valid reasons to interfere with the same. Hence the appeal is liable to be dismissed.

15. In the result, the appeal is dismissed as devoid of merits. Connected Miscellaneous applications are closed.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
ADMINISTRATIVE MEMBER

Sd/-xxxx
JUDICIAL MEMBER

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