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 : 13.09.2023

Delivered on : 27.09.2023

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

Appeal Nos.34 and 43 of 2022
and
M.A.Nos.64, 167 to 169 of 2023 in Appeal No.34 of 2022
and
M.A.No.108 of 2022 in Appeal No.43 of 2022

Appeal No.34 of 2022:

Vandana Parvez ... Appellant

- Vs -

1. IVR Hotels & Resorts Private Ltd.
2. Kotak Alternate Opportunities (India) Fund
3. Kotak India Realty Fund
4. Kotak Alternate Asset Managers Limited
5. IVR Prime Urban Developers Ltd.
6. Soma Hotels & Resorts Ltd.
7. E. Sudhir Reddy
8. E. Sunil Reddy
9. E. Ella Reddy
10. M. Mahesh
11. Subhangi Kulkarni ... Respondents

(R4 - amended as per the order dated 11.09.2023 made in Memo (SR).No.974/2023)

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016

a) to set aside the observations made in order dated 10.06.2022

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in C.No.336 of 2019 on the file of TNRERA:-

(i) role of respondent 2 to 4 is that of an investor only;

(ii) only respondent 1 is promoter of Aavisa project;

iii) only SPV Company advertised & promoted project;

iv) Aavisa project abandoned by the SPV Company alone;

v) land cover of the Aavisa project is 168 acres only.

b) to take cognizance of the offence committed by the Directors of the Respondent Companies u/s 172, 177, 191, 192, 193, 196, 199, 200, 209 of IPC punishable u/s 340 read with 191 of CrPC and direct the concerned Judicial Magistrate to conduct and enquire and proceed in accordance with law.

c) to direct the Respondent Companies to pay for the cost of this litigation.

Appellant : Dr.Vandana Parvez, party-in-person

For Respondents : Mr. Thiryambak J. Kannan
Ms.E.N.Haree Priya
Ms. Varsha K.S (R1)

Ms.J.Prageetha Rinu Senan
representing Mr.N.Ramakrishnan (R2 to R4)

R5, R6, R9 to R11 - No appearance

Ms.Deepika Murali and
Mr.Bhadri Narayanan (R7 & R8)

Appeal No.43 of 2022:

IVR Hotels & Resorts Pvt. Ltd.,
rep. by its Director E.C.Theodore Solomon ... Appellant

- Vs -

1. Vandana Parvez
2. Kotak Alternate Opportunities (India) Fund
3. Kotak India Realty Fund
4. Kotak Alternate Asset Managers Limited
5. IVR Prime Urban Developers Ltd.

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6. Soma Hotels & Resorts Ltd.
7. E. Sudhir Reddy
8. E. Sunil Reddy
9. E. Ella Reddy
10. M. Mahesh
11. Subhangi Kulkarni
12. RIHIM Developers Private Limited ... Respondents

(R4 - amended as per the order dated 11.09.2023 made in Memo (SR).No.976/2023; R12 - impleaded vide order dated 11.09.2023 made in M.A.No.20 of 2023)

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the impugned order dated 10.06.2022 in C.No.336 of 2019 passed by the TNRERA.

For Appellant : Mr. Thiryambak J. Kannan
Ms.E.N.Haree Priya
Ms. Varsha K.S

For Respondents :Dr.Vandana Parvez, party-in-person (R1)

Ms.J.Prageetha Rinu Senan
representing Mr.N.Ramakrishnan (R2 to R4)

R5, R6, R9 to R11 - No appearance

Ms.Deepika Murali and
Mr.Bhadri Narayanan (R7 & R8)

Mr.S.Amogh Simha (R12)

COMMON ORDER

The brief facts that are relevant for the disposal of the above appeals are as follows:

1. The appellant in A.No.34/2022, appearing in person, is the Complainant/Allottee before the TNRERA in C.No.336/2019. The appellant in A.No.43/2022 is the 1st Respondent/Promoter before the TNRERA in the same C.No.336/2019. Both the Complainant/Allottee and the 1st Respondent/Promoter have preferred the above appeals as

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against the order passed by the TNRERA in the above said C.No.336/2019 dated 10.06.2022. For the sake of convenience, the parties hereinafter will be referred to as per their rank and status before TNRERA in C.No.336/2019.

2. The 1st Respondent/Promoter commenced a real estate project by acquiring and developing approximately 700 acres of land for development, comprising Golf course, Golf club, Hotel, Residential, Commercial and Retail Space Development under the name and style of "AAVISA". Within the said project, the 1st Respondent/ Promoter carved out 52 acres for developing a residential block named as "SAMTEN". Nearly 239 luxury and premium villas were proposed to be constructed in the said residential block. The 1st Respondent/Promoter obtained report from the State Level Environmental Impact Assessment Authority of Tamil Nadu on 03.08.2009.Necessary DTCP approval was also obtained on 16.08.2010.

3. The Complainant/Allottee and the 1st Respondent/Promoter entered into an Agreement for Sale on 09.12.2011 in respect of a vacant plot bearing plot No.262 measuring 1980 sq. ft. in "SAMTEN" block which forms part of the AAVISA project. The Complainant/ Allottee and the 1st Respondent/Promoter also entered into a Construction Agreement on the same day i.e. 09.12.2011 itself, to construct a residential building having 2150 sq. ft. which was later revised to 2356 sq. ft. by the Complainant/Allottee. Following the Agreement for Sale, the said plot No.262 measuring 1980 sq.ft., was conveyed to the Complainant/Allottee vide Registered Sale Deed dated 04.01.2012.

4. The Complainant/Allottee had preferred the complaint before TNRERA, with a single prayer to direct the 1st Respondent/Promoter to register the "AAVISA" project with TNRERA. It is the case of the

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Complainant/Allottee that even as on date, the real estate project is an ongoing project as the 1st Respondent/Promoter failed to provide various amenities in the "AAVISA" project as promised in the brochure. After enquiry, the complaint was initially dismissed by TNRERA by order dated 21.11.2019. The Complainant/Allottee preferred an appeal before this Tribunal in A.No.3 of 2021 and by order dated 27.09.2021, the same was allowed by this Tribunal by remitting the matter back to TNRERA with a direction to restore the complaint and to decide the matter afresh in accordance with law. As directed by this Tribunal, the TNRERA, after hearing both parties, once again passed the impugned order on 10.06.2022 by allowing the complaint. The TNRERA, vide the impugned order dated 10.06.2022, had given a finding that the project is an on-going project and directed the 1st Respondent/Promoter to register the project.

5. According to the Complainant/Allottee, the Respondents 2 to 12 are also the Promoters of the project and that the TNRERA ought to have directed all the Respondents, including the Respondents 2 to 12,to take steps to register the project with TNRERA. Hence, the Complainant/Allottee preferred the appeal in A.No.34 of 2022.

6. It is the case of the 1st Respondent/Promoter that the project is a layout project. The roads and open spaces were gifted to the local authority on 31.08.2010 itself and the DTCP approval was also obtained in the year 2010 itself. The learned counsel for the 1st Respondent/Promoter contended that as per Rule 2(h)(i) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, the layout project, in which land is developed into plots, the roads and open spaces gifted to the local bodies prior to coming into force of sub-section (1) of Section 3 of the Real Estate (Regulation and Development) Act, 2016, hence, it is excluded from the definition of

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"on-going project". According to the learned counsel for the 1st Respondent/Promoter, the order of the TNRERA directing the 1st Respondent/Promoter to register the project is liable to be set aside. Challenging the impugned order, the 1st Respondent/Promoter preferred the other appeal in A.No.43 of 2022.

7. According to the Respondents 2 to 4, they are only investors in the 1st Respondent/Promoter Company and they are not Promoters of the real estate project. The Respondents 2 to 4 claim to have invested a sum of Rs.250 crores in the 1st Respondent/Promoter Company and acquired 28.61% stake in the 1st Respondent Company pursuant to the Joint Venture Agreement dated 05.12.2007. The learned counsel for the Respondents 2 to 4 contended that they are not necessary parties and both the appeals are liable to be dismissed in so far as the Respondents 2 to 4 are concerned.

8. The Respondents 5 to 11 are the Directors of the 1st Respondent/Promoter Company. During the pendency of the appeals, the 12th Respondent in A.No.43 of 2022 has been impleaded as per the order of this Tribunal passed in M.A.No.20 of 2023 dated 11.09.2023.

9. Heard both sides.

10. In so far as A.No.34 of 2022is concerned, after the matter was remitted back to the TNRERA for fresh disposal as per the order of this Tribunal in A.No.3/2021 dated 27.09.2021, the Complainant/ Allottee, filed an affidavit dated 22.11.2021, praying the TNRERA to enquire into the following issues also in addition to the main relief, prayed earlier in the complaint, seeking direction against the respondents to register the real estate project namely "AAVISA":

a. The asset stripping of the AAVISA Golf Township project being developed by the respondent No.1 (M/s. IVR Hotels and Resorts - Special Purpose Vehicle Company) supported by the

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Kotak Group Companies who are the investor promoters of the project.

b. The insolvency of M/s. IVRCL Limited (Holder Promoter - Parent company of M/s.IVR Hotels and Resorts) and asset stripping of the AAVISA Golf Township project by their creditors, the State Bank of India.

c. The discrepancy in the representations made by the Kotak Group related to the AAVISA Golf Township project.

d. The devaluation of the lands of the AAVISA Golf Township project.

e. The financial mismanagement of the respondent No.1 i.e., M/s.IVR Hotels and Resorts.

f. The resignation of Statutory Auditor M/s. SMSR & Company LLP on 24.11.2016, an auditing company of M/s.IVR Hotels and Resorts clearly highlighting their inability to complete the audit in view of the non-availability of data related to the payments made by AAVISA home-buyers.

g. Promoters not bringing the above to the attention of the regulators or any legal forum. Instead bifurcating and truncating the project lands for personal gains motivated by crony capitalism.

11. According to the Complainant/Allottee, the TNRERA has failed to consider those issues in the impugned order. Aggrieved over the same, the Complainant/Allottee preferred the appeal in A.No.34 of 2022, though the prayer for direction to register the project was granted in her favour.

12. The above mentioned issues, raised subsequently by the Complainant/Allottee before the TNRERA after the matter was remitted back to TNRERA by the order of this Tribunal in A.No.3 of

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2021 dated 27.09.2021, are beyond the scope of the Real Estate (Regulation and Development) Act, 2016. It is also pertinent to note that this Tribunal, while disposing of the A.No.3 of 2021, remitted the matter back to the TNRERA only for deciding the matter afresh. This Tribunal did not give any liberty to the Complainant to raise additional prayers or to amend the complaint. The Real Estate Regulatory Authority is not empowered to probe into or investigate the financial dealings of the 1st Respondent/Promoter Company with its alleged parent company M/s. IVRCL Limited.

13. In this regard, the Complainant/Allottee already moved the NCLT and filed applications by raising all the above mentioned issues against the 1st Respondent/Promoter and M/s.IVRCL. The NCLT, by its order dated 07.02.2020, dismissed the applications filed by the Complainant/Allottee on the ground that the complainant has no locus standi to challenge the fraudulent transactions and that the subject matter of the applications i.e., the assets of the M/s. IVR Hotels and Resorts Pvt. Ltd. are being fraudulently alienated/truncated by the corporate debtor, was not covered by the Insolvency and Bankruptcy Code (IBC). The Complainant/Allottee cannot raise the same issues again either before the TNRERA or before this Tribunal. Neither the TNRERA nor this Tribunal is empowered to enquire into the financial dealings of the promoter company. Therefore, the appeal preferred by the Complainant/Allottee in A.No.34/2022 is liable to be dismissed.

14. With regard to the role of Respondents 2 to 4 are concerned, none of the documents produced by the parties would establish that they are also Promoters along with the 1st Respondent. On the contrary, the documents clearly establish that they are only investors. Hence, the TNRERA, rightly did not give any direction to the

respondents 2 to 4. In these circumstances, the contention of the complainant in this regard is rejected.

15. In so far as A.No.43 of 2022 preferred by the 1st Respondent/ Promoter is concerned, the contentions of the learned counsel for the 1st Respondent/Promoter that the project was only a layout project and all the formalities as per Rule 2(h)(i) were completed in the year 2010 itself, cannot be accepted, as the brochure issued by the 1st Respondent/Promoter in respect of the real estate project, assured more amenities which are yet to be provided. As rightly pointed out by the TNRERA, the 1st Respondent/Promoter has released a detailed brochure in respect of the real estate project "AAVISA" in which the 1st Respondent/Promoter promised to provide Golf Course and Golf Club over 168 acres of land. Moreover, villa plans of various types were also seen advertised in the brochure. Further, the 1st Respondent/Promoter also assured to provide amenities such as Water Treatment Plant, Sewage Treatment Plant, rain water harvesting, underground cabling, energy saving electrical devices, 24 hours power backup, cable network, 24 hours security among other amenities. All those amenities, including the Golf Course and the Golf Club are not provided in the project till date. Therefore, the real estate project "AAVISA" was an ongoing project as on 01.05.2017, on which date Section 3 of the Real Estate (Regulation and Development) Act, 2016 was very much in force. Consequently, the real estate project is required to be registered as per Section 3(1) of the said Act. We find no valid reason to interfere with the order passed by TNRERA, directing the 1st Respondent/Promoter to register the project. Hence, the appeal preferred by the 1st Respondent/Promoter in A.No.43 of 2022 is also liable to be dismissed.

16. The 1st Respondent Company in A.No.34 of 2022 has filed an application in M.A.No.64 of 2023 under Order 41 Rule 27 CPC, to receive additional documents. The applicant has not given any acceptable reason for not producing the documents at the earliest point of time. Hence, M.A.No.64 of 2023 seeking to file additional documents is liable to be rejected.

17. The appellant in A.No.34 of 2022, appearing in person, has filed an application in M.A.No.167 of 2023 under Order 41 Rule 27 CPC to receive additional documents. The additional documents, running to pages, are in no way connected with the appeal. The appeals can be disposed of even without those documents. No reason has been stated for not filing the additional documents before TNRERA. The applicant has not given any acceptable reason for not producing the documents at the earliest point of time. Moreover, the applicant has already filed documents in volumes I to VII. Hence, M.A.No.167/2023 seeking to file additional documents is liable to be rejected.

18. The appellant in A.No.34 of 2022, appearing in person, has filed an application in M.A.No.168 of 2023 to permit her to include the paragraph No.6 to paragraph No.119 mentioned in the affidavit filed in support of the application, as additional grounds of appeal in A.No.34 of 2022. We have carefully perused the affidavit filed in support of the application. The particulars furnished in paragraph Nos.6 to 119 of the affidavit are only history of the case and some citations and not additional grounds of appeal. Already sufficient grounds of appeal have been raised by the applicant in her Memorandum of Appeal. Hence, M.A.No.168 of 2023 is liable to be rejected.

19. The appellant in A.No.34 of 2022, appearing in person, has filed an application in M.A.No.169 of 2023 to implead the proposed parties as respondents 12 to 14 in A.No.34 of 2022. In the affidavit

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filed in support of the application, the applicant has not stated any valid reason as to how the proposed parties are proper and necessary parties to this appeal in A.No.34 of 2022. Hence, M.A.No.169 of 2023 is liable to be rejected.

20. The appellant in A.No.43 of 2022 has filed an application in M.A.No.108 of 2022 to remove the respondents 7 to 11, who have been relieved of their Directorships of the applicant Company. Since the respondents 7 to 11 were already parties before the TNRERA, there is no necessity for exonerating them at the appellate stage. Hence, M.A.No.108 of 2022 is liable to be rejected.

21. In the result, both the appeals in A.No.34 of 2022 and A.No.43 of 2022 are dismissed. The applications in M.A.Nos.64, 167, 168, 169 of 2023 and 108 of 2022 are also dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

Under the Real Estate (Regulation And Development) Act, 2016

Reserved on : 13.09.2023

Delivered on : 27.09.2023

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

M.A.(SR).Nos.733 & 734 of 2023
in Appeal No.34 of 2022
and M.A.(SR).No.735 of 2023
in Appeal No.43 of 2022

COMMON ORDER

The appellant in A.No.34 of 2022, appearing in person, has filed the application in M.A.(SR).No.733 of 2023 to include as many as 23 reliefs as additional reliefs, which includes specific reliefs with regard to declaration and granting of perpetual & mandatory injunctions. The Registry raised a query with regard to the maintainability of the application as the Complainant has filed the said application for declaration, injunction and consequential relief under Sections 34, 36, 38 & 39 and compensation under Section 21 of the Specific Relief Act r/w 151 of the CPC. If this application is allowed at the appellate stage, it would, not only alter the nature and character of the complaint, but also would cause serious prejudice to the other side. There is no provision under the Act to grant relief sought for in the application. In these circumstances, the application is not maintainable and is liable to be rejected.

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2. The appellant in A.No.34 of 2022, appearing in person, has filed an application in M.A.(SR).No.734 of 2023 seeking to issue necessary directions to the Director of the Town and Country Planning, State Environmental Impact Assessment Authority, Central Ground Water Authority and Tamil Nadu Pollution Control Board to conduct on ground investigation of the violations committed by the respondents. The Registry raised a query with regard to the maintainability of the application as the Complainant has filed the above application under Section 151 CPC to direct the authorities. This application is beyond the scope of the case. Further, there is no provision under the Act to give such a direction to the authorities. In these circumstances, the application is not maintainable and is liable to be rejected.

3. The Complainant/1st Respondent, appearing in person, in A.No.43 of 2022 has filed an application in M.A.(SR).No.735 of 2023 under Section 193 r/w 195 (1)(b)(i) of the CrPC r/w 151 of CPC r/w 53(5) of the RERA Act to take cognizance of the perjuries perpetrated by the Directors and Signatories of the Appellant Company and to direct the concerned Judicial Magistrate to conduct an enquiry and proceed in accordance with law and to grant Rs.1,00,00,000/- (Rupees one crore) as cost of litigation to the Complainant. The Registry raised a query with regard to the maintainability of the application as the Complainant has filed the above application by wrongly mentioning the Sections as 193 r/w 195(1)(b)(i) of CrPC instead of mentioning Sections 193, 195 of IPC. Further, it is pertinent to note that for the very same relief, the Complainant filed an un-numbered petition before the Hon'ble High Court in C.M.P.(SR).No.34132 of 2022 in C.M.S.A.No.79 of 2021 under Sections 172, 177, 191, 192, 193, 196, 199, 200 and 209 of IPC punishable under Section 340 r/w 191 of CrPC. The Registry of the

Hon'ble High Court raised a query with regard to the maintainability of the said petition, since the said petition has been filed challenging the judgment dated 09.02.2022 passed in C.M.S.A.No.79 of 2021, which was dismissed as withdrawn. In the said petition, the Complainant sought for a direction to the concerned Judicial Magistrate to conduct and enquire and proceed in accordance with law. After hearing the submissions of the Complainant, the Division Bench of the Madras High Court, by order dated 13.06.2022 rejected the petition in C.M.P.(SR).No.34132 of 2022 as not maintainable. After the order passed by the Hon'ble High Court, the Complainant filed the present un-numbered application before this Tribunal, though the Hon'ble High Court has not granted any liberty to her to again file such an application. Though the TNRERA has granted the relief sought for by the Complainant for registering the 1st Respondent's project, for the reasons best known to her, she has filed the appeal in A.No.34 of 2022.Taking into consideration the contentions raised by both sides, this Tribunal dismissed both the appeals filed by the Complainant/ Allottee in A.No.34 of 2022 as well as the appeal filed by the 1st Respondent/Promoter in A.No.43 of 2022, by a common order today. The present un-numbered application filed by her does not disclose any cognizable offence, warranting any direction to the Judicial Magistrate. Section 195 of IPC deals with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment. The said provision is not applicable to the case on hand. Section 193 of IPC deals with punishment for false evidence. In the case on hand, the Promoter has not given or fabricated any false evidence before this Tribunal. Therefore, Section 193 is also not applicable to the facts of the

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present case. In such view of the matter, the query raised by the Registry of this Tribunal with regard to the maintainability of the application in M.A.(SR).No.735 of 2023 is upheld. Accordingly, the application is liable to be rejected as not maintainable.

4. In the result, the applications in M.A.(SR).Nos.733, 734 of 2023 in A.No.34 of 2022 and M.A.(SR).No.735 of 2023 in A.No.43 of 2022 are rejected as not maintainable.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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