BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Monday the 21st day of November 2022

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

Appeal No.42 of 2022

M/s Alliance Villas Pvt Ltd,
Formerly rep. by Dega Srinivasulu Reddy and
Now Rep. by Authorized Signatory K.Manivannan ... Appellant

-Vs-

P.S.Srinivasan ... Respondent

This appeal is filed U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the Single Member Bench, Tamil Nadu Real Regulatory Authority in C.C.P.No.172 of 2020 dated 27.07.2022.

This appeal was taken on file on 16.09.2022 and came up for admission on 02.11.2022 in the presence M/s AAV Partners, P.H.Manoj Pandian, and N.Zahid Ahmed, Counsels for the appellant. Having heard the

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counsel for the appellant and having stood over for consideration till this date, this Tribunal delivered the following:

ORDER

1. The promoter who suffered an order of refund against cancellation, passed by the Single Member, attached to the TNRERA in C.C.P.No.172 of 2020 dated 27.07.2022 is the appellant herein.

2. It is the case of the appellant that the respondent as an allottee booked a villa bearing unit No.624, in the real estate project namely "Alliance Humming Gardens" Phase II at Thaiyur Village, Thiruporur Taluk, Kanchipuram District. Initially the respondent paid an advance amount of Rs.1,00,000/- on 31.08.2019. Immediately the appellant provided the soft copies necessary title deeds, building approval and other revenue records relating to the real estate property. After being satisfied with regard to the title of the appellant with the property, the respondent came forward to execute agreement for sale and construction agreement on 07.12.2019. Later the respondent also paid a further sum of Rs.25,00,000/- on 30.12.2019. Subsequently, the respondent through his advocate raised some queries and clarifications through email in respect of the title relating to the real estate property. The same was clarified by the appellant through email.

3. The Counsel for the appellant contended that the respondent failed to make further payments as per the payment schedule. Instead, quoting the adverse legal opinion of his advocate, the respondent cancelled the

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booking and was demanding refund of the full amount paid by him. According to the counsel, the appellant is having valid and marketable title over the real estate property and there is no necessity for him to refund the amount paid. Even otherwise, as per clause 5(a) of the construction agreement, the appellant is entitled to retain the booking amount to be calculated at 10% of the total cost in the event of the respondent cancel/withdraw from the project. Therefore the counsel for the appellant prayed to admit this appeal and to issue notice to other side.

4. The matter came up for admission on 02.11.2022. Heard the counsel for the appellant and perused the entire case records.

5. There is no dispute between the parties as to the booking of a villa by the respondent and the payment of Rs.1,00,000/- as advance on 31.08.2019 and the payment of Rs.25,00,000/- on 30.12.2019 by the respondent to the appellant. As per the booking form available at page 2 and 3 of the typed set of the appellant, the total unit cost was fixed at Rs. 67,37,670 and the booking amount was fixed at Rs.6,73,767/- being the 10% of the unit cost. Out of this booking amount the respondent paid Rs.1,00,000/- as initial payment on 31.08.2019. Even at the time of making this initial payment the respondent had made a clear endorsement in his own hand writing in the said booking form itself that the property will be purchased subject to his lawyer's verification of title deeds. The said endorsement is reproduced hereunder.

"Agreed to buy Villa No.624 for Rs.75,00,000/- all inclusive, and advance of Rs.1,00,000/- has been given. Property will be bought subject

to lawyer's verification of clear title deeds. In the event of title not clear the amount has to be returned. Final decision is based on our advocate's opinion."

The case of the respondent was that he requested the appellant to furnish the copy of title deeds and other documents relating to the approval of the project for legal scrutiny, immediately after making the first payment of Rs.1,00,000/- on 31.08.2019 as advance. But the appellant did not come forward to provide the copies of relevant documents of title and other documents relating to approvals, to the respondent. On the other hand the appellant, while asserting their title over the property, insisted the respondent to make further payment of Rs.25,00,000/- for providing the relevant documents. Later an agreement for sale of undivided share and construction agreement were executed between the parties on 07.12.2019. No payment was made on the date of execution of those agreements. Only after making the payment of Rs. 25,00,000/-on 30.12.2019, the appellant handed over the soft copies of the relevant documents to the respondent in the form of a compact disc.

6. Thereafter the respondent with the help of his advocate scrutinized the documents of title provided by the appellant. In fact the advocate nominated by the respondent had discussed with the appellant on behalf of the respondent, and had sent, vide email dated 06.05.2020, as many as 16 queries to the appellant and sought clarifications with regard to the title to the property. The appellant had sent a reply email on 04.06.2020 with insufficient particulars. The respondent's advocate and the respondent

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were not satisfied with the clarifications of the appellant. Following the adverse legal opinion, the respondent cancelled the booking and informed the same to appellant vide email dated 16.07.2020 itself. The respondent also demanded refund of the entire amount paid by him. The respondent sent another follow up email on 18.08.2020 in this regard.

7. Further the respondent also issued a legal notice through his advocate on 25.08.2020 demanding repayment of Rs.26,00,000/- with interest at 18% p.a. and also compensation for the mental agony. It appears from the legal notice issued by the respondent that the respondent is a senior citizen and a physically challenged person. The appellant issued a reply notice on 15.09.2020 denying the allegations contained in the notice issued by the respondent's advocate. Even in the said reply notice the appellant had expressed his willingness to refund the advance amount subject to deduction of 10% of the total cost of the villa as per the terms of the Construction agreement.

8. Felt aggrieved the respondent preferred a complaint before the Adjudicating Officer, attached to TNRERA, claiming refund and compensation. Pending enquiry and following the judgment of the Hon'ble Supreme Court in M/s.Newtech Promoters and Developers Pvt. Ltd. Vs. State of U.P. and others, the complaint was transferred to the Single Member Bench of the TNRERA for disposal. Even during the course of enquiry before the Single Member of TNRERA, the appellant failed to plead and provide the necessary details of their title to the property.

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9. Admittedly from January 2020 and till June 2020 email correspondences were going on between the advocate for the respondent and the appellant, regarding the doubts raised in connection with the title of the appellant over the property. This itself shows that the necessary documents of title were provided to the respondent after he made the payment of Rs.25,00,000/- on 30.12.2019. Therefore, the contention of the counsel for the appellant that the respondent made the payment of Rs.25,00,000/- only after satisfying himself about the title of the appellant over the property cannot be accepted. Even otherwise the respondent has got every right to withdraw from the project at any time, if he is not satisfied with the title of the appellant. There cannot be any estoppel or waiver against the respondent. The reasons for withdrawal from the project are more important than the stage of withdrawal.

10. Similarly the contention of the counsel for the appellant that they are entitled to deduct 10% of the total cost cannot be accepted, as they have failed to establish their title to the property. The respondent cannot be penalized for the omissions of the appellant. On the other hand the respondent had made it very clear at the first instance itself that the property will be purchased subject to lawyer's verification of title deeds. Had the appellant provided the necessary title deeds to the respondent immediately after the receipt of Rs.1,00,000/- on 31.08.2019, the respondent would not have paid the further payment of Rs.25,00,000/- on 30.12.2019.

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11. As per Rule 17(1)(e)(ii)(B) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 the promoter shall ensure that the authenticated copy of the legal title deed including an up to date encumbrance certificate, extract/certificate of revenue authorities reflecting the title of the promoter to the land, shall be made available on its website in respect of the project. There is no whisper about the compliance of this Rule 17(1)(e)(ii)(B) by the appellant.

12. With regard to the directions of the TNRERA to issue notice of revocation of registration of the project under section 7 of the Act and to stop further sale in this project till the issue of title is settled, are concerned, the TNRERA has got power to issue such directions and conduct inquiry as per Sections 35 and 36 of the Act. The proposed inquiry is at the preliminary stage and no final order has been passed. Hence nothing can be decided in this appeal on this issue. The appellant is directed to face the inquiry and in the event of any adverse order passed, the appellant is at liberty to file a separate appeal. As there is no scope for further hearing of the appeal the same is liable to be dismissed at the admission stage itself.

13. In the result, the appeal is dismissed at the admission stage itself. Connected Miscellaneous applications, pending if any, are hereby closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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