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: 28.07.2023

Delivered on: 07.08.2023

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

Appeal No.44 of 2022
And
M.A.Nos. 8 and 127 of 2023

M/s. Serene Kshetra Owner's Association
rep by its Secretary S.S.Raghavan ... Appellant

- Vs -

1. M/s. Serene Senior Living Pvt. Ltd.
   rep. by its Director
2. M/s.Adinath Srinivasa Foundations LLP,
   rep. by its Designated Partner
3. M/s. Columbia Pacific Communities Private Ltd.,
   (formerly known as M/s.Serene Senior Care Private Ltd.)
   rep. by its Chief Executive Officer Mohit Nirula

... Respondents

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

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of dismissal of the complaint passed by the TNRERA in C.No. 244 of 2021 dated 22.08.2022.

For Appellant : Mr.Ralph V. Manohar

For Respondents 1 & 2: Mr.P.H.Manoj Pandian, Senior Advocate for Mr.C.Kaveen

For Respondent No.3 : Mr.M.S.Krishnan, Senior Advocate for Mr.Sam Jayaraj Houston & M/s.Sarvabhauman Associates

ORDER

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

1. The appellant namely M/s Serene Kshetra Owner's Association is an association of allottees of the villa project by name "Serene Kshetra". The 1st respondent company is the owner of the entire project land. The 2nd respondent is the developer. The 3rd respondent is the present service provider for the allottees who are mostly senior citizens. Both the 1st and 2nd respondent entered into a marketing agreement dated 11.06.2015. As per the said marketing agreement, the 2nd respondent, as the developer, proposed to construct 400 units of villas of various types in an area measuring 3,47,638 sq. ft. and various other buildings for providing senior care services in an area measuring 35,750 sq. ft. The villa project area was meant for sale to the allottees. But the Common Amenities Area (CAM area) are not meant for sale to the allottees. The allottees have no right over the CAM area. The buildings proposed to be constructed for providing

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senior care services in the CAM area includes staff housing, club house, amenities building, services block etc. As per the marketing agreement dated 11.06.2015 the CAM area is for the exclusive use of the 1st respondent or to his nominee.

2. In order to provide special senior care services to the aged allottees, the 1st respondent engaged the services of the erstwhile company of the 3rd respondent namely M/s. Serene Senior Care Private Limited provider, who are specialists in providing senior care service. According to the appellant, M/s. Serene Senior Care Private Limited was a subsidiary company of the 1st respondent. As per clause 7 of the said marketing agreement dated 11.06.2015, the 2nd respondent sold the land earmarked for common amenities to the 3rd respondent namely M/s. Serene Senior Care Private Limited (service provider) vide three sale deeds. As per the sale deed dated 27.07.2017, an extent of 12,129 sq. ft of land was conveyed. Similarly, vide another sale deed dated 27.07.2017 an extent of 4,992 sq. ft. of land was conveyed. Vide the third sale deed dated 14.12.2017, an extent of 1880 sq. ft. land was conveyed to the erstwhile service provider namely M/s. Serene Senior Care Private Limited. It is the case of the appellant that the 2nd respondent have no right to execute such sale deeds in favour of the service provider namely M/s. Serene Senior Care Private Limited, as the property covered in the said three sale deeds forms part of the undivided share sold to the allottees of the appellant Association.

3. The villa project is an integrated senior citizens' residential project consisting of 400 units. Most of the allottees are senior citizens/retirement community. The allottees, at the time of their purchase of villas in the project, have also entered into an agreement

with the then service provider by name M/s. Serene Senior Care Private Limited. As per the agreement, the service provider agreed to provide senior care services such as a) catering services b) housekeeping and preventive maintenance services c) supportive health care services d) security services e) concierge services and f) property management services, upon the terms and conditions mentioned in the Services Agreement.

4. Subsequently, the 3rd respondent herein, said to have acquired and took over the said M/s. Serene Senior Care Private Limited along with the properties covered under the above said three sale deeds and also the CAM area and is continuing to provide necessary senior care services to the allottees. It is the case of the appellant that neither the 2nd respondent have right to execute such sale deeds in favour of the erstwhile service provider namely M/s. Serene Senior Care Private Limited, nor the 3rd respondent, who stepped into the shoes of the erstwhile service provider namely M/s. Serene Senior Care Private Limited, have any right or title over the properties covered in the said three sale deeds. Therefore, the 2nd respondent and the 3rd respondent are bound to execute cancellation deeds in respect of those three sale deeds referred above. The appellant had also prayed for a direction to the respondents to transfer the said property and also to hand over the CAM area along with services amenities provided therein to and in favour of the appellant association.

5. After hearing both sides, the TNRERA dismissed the complaint filed by the appellant vide the impugned order dated 22.08.2022. Aggrieved over the same, the appellant has preferred this appeal before this Tribunal.

6. Heard both sides.

7. At the outset, in the complaint preferred before TNRERA, the appellant prayed for a direction against the respondents 2 & 3 to cancel the three sale deeds executed by the 2nd respondent in favor of the 3rd respondent in document Nos. 2004 and 2006 of 2017 dated 27.07.2017 and in document No.4942 of 2017 dated 14.12.2017. The learned counsel for the appellant, at the time of his argument before this Tribunal, also prayed for such a direction against the respondents 2 & 3. On the other hand, the learned counsel appearing for the respondents 1 & 2 submitted that such a relief with regard to cancellation of sale deeds is beyond the jurisdiction of this Tribunal. The learned counsel further submitted that such a relief can be granted only by a competent civil court. In support of his contention, he relied upon the full bench judgment of the Madras High Court reported in 2011 (1) L.W. 673 M/s. Latif Estate Line India Ltd., Vs Mrs. Hadeeja Ammal and others. In paragraph 59 of the said judgment it was held as follows:

> *59. .....In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of sale deed on the ground inter alia of fraud or any other valid reasons.*

The prayer of the appellant to direct the respondents 2 & 3 to cancel the three sale deeds executed by the 2nd respondent in favor of the 3rd respondent in document Nos. 2004 and 2006 of 2017 dated 27.07.2017 and in document No.4942 of 2017 dated 14.12.2017, would amount to praying for cancellation of the sale deeds. Such a relief cannot be granted under the provisions of the Real Estate (Regulation

and Development) Act, 2016, either by TNRERA or by this Real Estate Appellate Tribunal for want of jurisdiction.

8. Coming to the other aspects of this case, as per the details given in the Construction Agreement dated 11.06.2015 executed between the 1st and 2nd respondents, the 1st respondent is the owner of a total extent of 15.79 acres comprised in various survey numbers situated in both Valluvapakkam and Nathapettai village limits, Wallajabad Taluk, Kancheepuram District. Out of the total extent of 15.79 acres owned by the 1st respondent, an extent of 9.81 acres allotted for the construction of 400 villas of different types. The allottees have no right, whatsoever, over the balance extent of land. The appellant failed to establish that the Common Amenities Area falls within the villa project area and the allottees have right of UDS over the Common Amenities Area also.

9. The allottees, at the time of their purchase of villas in the project, have also entered into an agreement with the service provider by name M/s. Serene Senior Care Private Limited. As per the terms of the said services agreement, the allottees have specifically agreed that the CAM area exclusively belongs to the M/s. Serene Senior Care Private Limited, for providing senior care services. The clauses 1 to 5 under the heading 'Common Amenities Area' (CAM) at page 7 of the Services Agreement will make it clear that the allottees have no right, whatsoever, over the CAM area meant for providing senior care services by the service provider. In this regard the learned counsel for the appellant relied upon the judgment of Hon'ble Supreme Court rendered in Experion Developers Private Limited Vs Sushma Ashok Shiroor reported in CDJ 2022 SC 419. In the said judgment in

paragraph 8.2, Hon'ble Supreme Court after referring to the judgment in Pioneer Urban Land infrastructure Limited Vs Govindan Raghavan held as follows;

> *"6.8 A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder.*
> *7. In view of the above discussion, we have no hesitation in holding that the terms of the apartment buyer's agreement dated 8-5-2012 were wholly one-sided and unfair to the respondent flat purchaser. The appellant builder could not seek to bind the respondent with such one-sided contractual terms."*
> *9.1 The principle laid down in Pioneer's case has been followed consistently in many cases where the terms of the Apartment Buyer's Agreement were found to be one-sided and entirely loaded in favour of the Developer, and against the allottee at every step. The following are instances where the terms of the Apartment Buyer's Agreement were found to be oppressive, constituting unfair trade practice and the Court has not given effect to such terms of the Agreement:*

The above judgment of the Hon'ble Supreme Court relied upon by the learned counsel for the appellant is not applicable to the facts of the present case on hand, for the reason that the terms of the Agreement of Sale executed between the developer and the buyer was in dispute in the above case cited supra. Whereas in the present case before us, the dispute between the parties relates to the services agreement executed between the buyer and the service provider. Therefore, the said judgment is not applicable to this case.

10. The details of senior care services provided by the service provider are listed out in Annexure-I of the Service Agreement. As per Annexure-I of the said agreement the service provider agreed to provide senior care services such as a) catering services b) housekeeping and preventive maintenance services c) supportive health care services d) security services e) concierge services and f) property management services, upon the terms and conditions mentioned in the Services Agreement. Unlike in other residential projects the common amenities in this project are different in the sense they are senior care oriented. It includes staff housing, club house, amenities building, services block etc.

11. There is no connection between the villa project land and the 'Common Amenities Area' (CAM). Since most of the allottees are senior citizens/retirement community, the senior care services listed out in Annexure-I of the Service Agreement are being provided by the service provider. Earlier, the erstwhile service provider, namely, M/s. Serene Senior Care Private Limited, have provided the service. Now the said service provider company has been acquired by the 3rd respondent as admitted by the appellant. It is an admitted fact that the erstwhile service provider, namely, M/s. Serene Senior Care Private Limited, have purchased the Common Amenities Area (CAM) for valid consideration through three registered sale deeds. After acquiring the assets and liabilities of the M/s. Serene Senior Care Private Limited, the 3rd respondent company namely, M/s.Columbia Pacific Communities Private Limited stepped into the shoes of the erstwhile service provider company and became the owner of the CAM area along with the common amenities. The 3rd respondent, being the

present service provider, have got every right over the Common Amenities Area. In these circumstances, we find no ground to interfere with the order passed by the TNRERA. Consequently, the appeal is liable to be dismissed.

12. In the result, the appeal is dismissed. Connected Miscellaneous applications pending are closed.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
JUDICIAL MEMBER

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