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 : 08.11.2023

Delivered on : 22.11.2023

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

Appeal Nos.60 to 62 of 2022
and
M.A.Nos.107 to 109 of 2023

Raja Rajangam ... Appellant in A.No.60 of 2022

Madhan Mohan G. ... Appellant in A.No.61 of 2022

1. Dilip Gangadharan
2. Kaveri.K. ... Appellants in A.No.62 of 2022

- Vs -

M/s.Alliance Villas Pvt.Ltd.
rep by its Authorized Signatory
Manivannan.K. ... Respondent in all three cases

Prayer: The appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 against the common order dated 22.08.2022 passed in C.Nos.275 to 277 of 2021 on the file of the Tamil Nadu Real Estate Regulatory Authority

i. to direct the Respondent to take all due measures to rectify the title defect in the project site and to thereby render the project site

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free from any and all title defects within a time stipulated by the Hon'ble Tribunal; and

ii. to direct the Respondent to receive the sale consideration from the Appellant without any interest whatsoever, on the due rectification by the Respondent of the title defects in the Project site in accordance with the preceding direction issued by the Hon'ble Tribunal.

For Appellant (in all 3 Appeals) : Mr. Thomas T Jacob for Ms.M. Stella

For Respondents (in all 3 Appeals) : Mr.O.L.V. Ganesan

COMMON ORDER

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

1. The Appellants in the above three appeals have filed separate complaints in C.Nos.275 to 277 of 2021 before the TNRERA as against the Respondent/Promoter. The Appellants have booked apartments in the residential project developed by the Respondent/Promoter, namely, "Jasmine Springs" situated at Thaiyur, Kelambakkam Post, Old Mahabalipuram Road, Chennai - 103.

2. After booking the apartments and after paying a considerable amount towards the total cost of the apartments, the Appellants/ Complainants raised certain queries with regard to the title of the Respondent/Promoter over the project land. According to the Appellants, the Survey Nos.1373/2BB and 1373/2B7C comprised in

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Patta Nos.3218 and 3219, respectively, do not find place in the FMB sketch pertaining to the project site. It is the case of the Appellants/ Complainants that in one of the parent documents, namely, Sale Deed dated 04.05.2000, there is a mention about the acquisition of 0.03 cents of land by the Highways Department for widening the road and that the Respondent/Promoter failed to provide No Objection Certificate from the Highways Department. The Appellants/ Complainants requested the Respondent/Promoter to rectify this defect through various e-mails. But, the Respondent/Promoter failed to rectify the same. Therefore, the Appellants/Complainants refrained from making any further payments.

3. In all the e-mails, the Appellants/Complainants have stated that they were ready to make further payments subject to the rectification of the defect in title by the Respondent/Promoter. It is the case of the Appellants/Complainants that on 03.08.2021, they received a letter from the Respondent/Promoter demanding payment with interest. On 10.08.2021, they also received another letter from the Respondent/Promoter, in which, the bookings were cancelled for non-payment. Upon reply sent by the Appellants/Complainants through e-mail dated 20.08.2021, the Respondent/Promoter revoked the cancellation through e-mail dated 28.08.2021.

4. Even after revoking the cancellation, the Respondent/ Promoter insisted for further payment with interest. Finally, the Respondent/Promoter sent a reminder letter dated 22.09.2021 demanding payment, for which, the Appellants/Complainants have

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sent a reply through e-mail dated 25.09.2021. Thereafter, the Appellants/Complainants filed complaints before the TNRERA seeking for a direction to rectify the defects in title and to receive the balance Sale Consideration without any interest.

5. On the other hand, it is the case of the Respondent/Promoter that the Appellants/Complainants conveniently failed to see the recitals mentioned in the subsequent Sale Deed dated 05.04.2016 vide document No.3918/2016 with regard to the dropping of acquisition proceedings by the Highways Department in respect of the 0.03 cents. The Respondent/Promoter had also obtained No Objection Certificate dated 15.09.2017 from the Highways Department and communicated a copy to the Appellants/Complainants. According to the Respondent/ Promoter, the Appellants/Complainants have to pay more than Rs.8,00,000/- towards the cost of construction and other expenses. As per the terms of the Construction Agreement, the Respondent/ Promoter is entitled for interest for the delayed payment. The details of booking and payments made by the Appellants/Complainants as per e-mail dated 10.08.2021 are given below:

Sl. No.	Name of the Appellant	Flat Number	Date of agreement	Total cost	Amount paid	Balance
1	Raja Rajangam	912	08.04.2019	24,48,678	18,22,034	6,26.644
2	Madhan Mohan	913	08.04.2019	24,48,928	18,22,035	6,26,643
3	Dilip Gangadharan and Kaveri	806	09.03.2019	25,18,207	18,69,362	6,48,845

Therefore, according to the learned counsel for the Respondent/ Promoter, all the above appeals are liable to be dismissed.

6. After hearing both sides, the TNRERA had dismissed the complaints vide common order dated 22.08.2022. Aggrieved over the same, the Appellants/Complainants have filed the present appeals before this Tribunal.

7. Heard both sides.

8. The Appellants/Complainants have filed Miscellaneous Applications in M.A.Nos.107, 108 & 109 of 2023 in A.Nos.60, 61 & 62 of 2022, respectively, to produce copies of similar documents as additional documents under Order 41 Rule 27 CPC. The documents sought to be filed are in no way relevant for the disposal of the above appeals. Even without those documents, the appeals can be disposed of in a proper manner. Therefore, all the three Miscellaneous Applications are liable to be dismissed.

9. The only issue raised by the Appellants/Complainants over the title of the Respondent/Promoter originated from the recitals found in the Sale Deed dated 04.05.2000 vide document No.853 of 2000 regarding the proposed acquisition proceedings by the Highways Department to an extent of 0.03 cents for the purpose of widening the road. As per the said Sale Deed, out of the total extent of 65 cents, only 62 cents were sold, excluding the said 0.03 cents. Subsequently, the acquisition proceedings by the Highways Department was dropped. The vendor, mentioned in the Sale Deed dated 04.05.2000, also died in the year 2009. Later, the Respondent/Promoter themselves purchased the said remaining 0.03 cents vide Sale Deed dated 05.04.2016 vide

Document No.3918 of 2016 from the legal representatives of the vendor.

10. The Respondent/Promoter also obtained No Objection Certificate (NOC) from the Highways Department on 15.09.2017. The copy of the said No Objection Certificate was also communicated to the Appellants/Complainants for their perusal vide e-mail dated 08.11.2018. The Respondent/Promoter has made available the copies of all the Title Deeds and the No Objection Certificate issued by the Highways Department. After perusing all the relevant Title Deeds and the No Objection Certificate issued by the Highways Department and being satisfied with the title of the Respondent/Promoter, the Construction Agreements were executed by the Appellants/ Complainants in the year 2019.

11. Admittedly, the acquisition proceedings was pending for more than 23 years. For all these years, the Highways Department has not taken possession of the said 0.03 cents of land abutting the Old Mahabalipuram Road on it's western side. If the Appellants/ Complainants had any apprehension about the acquisition of the 0.03 cents, they ought not to have entered into the Construction Agreements during the year 2019 and made further payments. It is pertinent to note that the Appellants/Complainants have not approached the TNRERA seeking refund of the amount paid. If the Appellants/Complainants were not satisfied with the title of the Promoter, they would have sought for refund of the amount paid by them.

12. The Appellants/Complainants have neither come forward to withdraw from the project nor paid the balance Sale Consideration as per the terms of the Construction Agreement. They cannot stand in between these two options with full of apprehension in their mind. When there is no proof with regard to claim of right or title by third parties, no direction can be issued to the Respondent/Promoter to rectify the defects in title. The Appellants/Complainants have already paid 75% of the total costs. Except raising invalid queries as to the title of the Respondent/Promoter, no other valid reason was stated for not making the balance 25% of the total costs, despite the reminders issued by the Respondent/Promoter. In these circumstances, the Appellants/ Complainants are bound to pay interest for the delayed payment as per the terms of the Construction Agreement. We find no reason to interfere with the order of passed by the TNRERA. Hence, all the three appeals are liable to be dismissed.

13. Accordingly, all the above three appeals are dismissed. The applications in M.A.Nos.107 to 109 of 2023 are also dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to :

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2. The TNRERA.

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