BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL
CHENNAI

Monday the 26th day of September 2022

CORAM : Miss. LEENA NAIR, ADMINISTRATIVE MEMBER
&
Mr.R.PADMANABHAN, JUDICIAL MEMBER

Appeal No.09 of 2022

M/s.Jayaswathy Construction Private Limited
Rep. by K.G.Janakiraman ... Appellant

-Vs-

S.Ravichandran ... Respondent

This is an appeal U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by TNRERA in C.No.159/2021 dated 30.12.2021.

S.Ravichandran ... Complainant

-Vs-

M/s.Jayaswathy Construction Pvt. Ltd.
Rep. by K.G.Janakiraman ... Respondent

This appeal was taken on file on 07.03.2022 and came up for final hearing on 23.09.2022 in the presence of M/s.S.Xavier Felix, F.Camilus Selva F.Jescintha Sheela, V.Jayakrithika, R.Sudhanda, and M.Mubeen, Counsels for the appellant and M/s.G.Prabhakaran, K.Ganesan, Ganesh V Aranala, M.Abinu Monisha, Counsels for the respondent. Having heard the

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arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

For the sake of convenience the parties hereinafter will be referred to as per their rank and status before the TNRERA.

The case of the complainant in brief are as follows:

1. By Sale deed dated 03.09.2020 the Complainant / Allottee purchased 356 sq.feet of undivided share of land out of the total project area of 3874 sq. feet of land comprised in T.S. number 8/4, Block 1, Ayanavaram Village, Ayanavaram Taluk within the Greater Chennai Corporaton limits. The sale consideration of Rs. 7,16,300/- for this undivided share portion was paid separately to its owner. The Complainant also entered into an agreement for construction of a flat with the respondent / Promoter. The Complainant / Allottee paid the entire construction cost of Rs. 45,00,000/-. By Construction agreement dated 03.09.2020 the Complainant was allotted a residential flat bearing No. "A" situated in the ground floor of the proposed apartment known as " JC's SWATHY MEADOWS " having super built up area of 740 sq.feet and also a reserved Car parking in the stilt floor of the apartment to be constructed in the entire 3874 sq. feet of land.

2. While the project was pending, the Director of the Respondent /Promoter company who signed in the agreements namely K.J. Jayasrinivasan died. The respondent / promoter herein is the father of the said K.J.Jayasrinivasan and also the Managing Director of the Respondent /Promoter company. Subsequently when the Complainant met the

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Respondent / Promoter he initially denied the receipt of Rs. 45,00,000/- by his son. Later upon seeing the proof of payments he accepted the receipt of Rs. 45,00,000/-by his son. However he demanded a further sum of Rs. 6,00,000/- as additional payment for completing the flat and to handover possession. The Complainant also paid the said amount of Rs. 6,00,000/-to the employee of the company by name Murugesan and obtained a receipt in the letter head of the company. Inspite of the receipt of the entire payment the respondent / Promoter did not come forward to hand over the possession. The project was also not registered with the TNRERA. Therefore the respondent may be directed to hand over possession of the flat with all amenities and car parking as agreed and may also be directed to register the project with TNRERA. Hence the complaint.

The case of the respondent in brief is as follows:

3. The land proposed to be developed was subdivided into three portions even before building approvals were granted by the Chennai Metropolitan Development Authority. Separate approvals were issued for constructing three flats one in each sub division. However, at the time of construction two plots comprised in two sub divisions were combined together and six apartments were constructed as 'A' Block. Another three apartments were constructed as 'B' Block on the third plot. The complainant was allotted an apartment in this 'A' block. The land area over which "A" block was constructed is only 238 square meters. Therefore, the land on which the "A" block was developed was comprised in a separate sub division and the extent was only 238 square meters. As per Section

3(2)(a) of the Real Estate (Regulation and Development) Act, 2016 the project need not be registered.

4. Further, the receipt dated 28.01.2021 in respect of the alleged payment of Rs.6,00,000/- is a forged one. The complainant never paid Rs.6,00,000/- to the respondent as stated by him. Including interest the complainant is liable to pay a sum of Rs.8,90,000/-. As per the agreement, possession letter will be given only after the allottee paid all the dues to the builder. Therefore, no question of handing over of possession arises when the complainant was due to pay a sum of Rs.8,9,000/- to the respondent. Hence the complaint is liable to be dismissed.

5. After hearing both sides the learned members of the TNRERA allowed the compliant as prayed for and directed the respondent to hand over possession of the flat after completing in all respects on or before 28.02.2022. The respondent was further directed to register the project with TNRERA on or before 28.02.2022. Aggrieved over the same the respondent preferred this appeal before this Tribunal.

6. Heard both sides.

7. Points for consideration:-

   1. Whether the project is exempted from registration under Section 3(2)((a) of the Real Estate (Regulation and Development) Act, 2016 ?
   2. Whether the appeal is deserves to be allowed?

Point No.1:

8. The total extent of the project area is about 3874 sq. ft. It appears that the survey number has been sub divided into three before the

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approval was obtained. According to the case of the respondent he obtained three separate approvals for constructing apartments one in each sub division. But at the time of construction he clubbed two sub divisions and constructed six apartments and named it as "A" Block. Likewise he constructed three apartments over the third sub division and named it as "B" Block. The complainant was allotted his apartment in Block 'A'. According to the respondent the 'B' block was meant for his sister's family. It is an admitted fact that in all, the respondent had constructed 9 apartments both in 'A' and 'B' blocks.

9. As rightly pointed out by the members of TNRERA, it has been clearly described in schedule -A of the construction agreement dated 3.9.2020 that the 356 sq. ft of UDS was sold to the complainant out of the total extent of 3874 sq. ft. Further in all 9 apartments were constructed in two blocks, over the 3874 sq. ft. of land. As admitted by the respondent / Promoter had taken steps to get the survey number sub divided into three sub divisions, before he applied for building approval. The intention was to avoid registration with TNRERA. The creation of sub division in the survey numbers have no relevancy and immaterial also. The entire 3874 sq. ft of land has been developed as a single project namely "JC's Swathy Meadows". Since the number of apartments exceeds 8, the project will not come within the exempted category under Section 3(2)(a) of the Real Estate (Regulation and Development) Act, 2016. We answer this point accordingly.

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Point No.2:

10. As per the construction agreement dated 3.9.2020 the total construction cost was fixed at Rs.34,83,700/- only (page No.49, at page 51 of the typed set of the respondent/promoter). The respondent/promoter himself had admitted that he had received Rs.45,00,000/- as found from the receipt dated 21.9.2020 (refer page No.27 of the typed set of the respondent/promoter). However at page 87 of the same typed set the appellant had furnished the details of the amount received. Here, the respondent had admitted that he had received Rs.45,10,000/- from the complainant/allottee. But according to the complainant, including the disputed amount of Rs.6,00,000/-, he had paid Rs.51,10,000/- to the respondent/builder as stated in his complaint at page 6 of the Typed set filed by the respondent/promoter. If calculated the Complainant had paid Rs.16,26,300/- over and above the construction cost mentioned in the agreement.

11. It the specific case of the respondent/ Appellant that the receipt for Rs.6,00,000/- dated 28.01.2021 is a forged one. The initial burden is on the respondent to prove this allegation of fraud. The respondent had failed to discharge the initial burden. The respondent not even prepared to deny specifically that the person who signed the receipt dated 28.01.2021 by name Murugesan was not working in their company. In the written argument filed by the respondent also, it was simply stated that the receipt was not signed by the Managing Director of the company. On any account, even this disputed amount of Rs. 6,00,000/- was excluded, the complainant has still paid an excess amount of

Rs.10,26,300/- over and above the cost of the apartment as agreed in the construction agreement. Therefore, the respondent is bound to hand over possession to the complainant as directed by the TNRERA immediately without any further delay. In these circumstances there is no merit in the appeal. The appeal has been filed with a view to harass the complainant and to delay the handing over of possession. The complainant is at liberty to file a separate complaint for compensation before the Adjudicating Officer for the delayed handing over of possession. Hence the appeal is deserves to be dismissed with the costs. We answer this point accordingly.

12. In the result, the appeal is hereby dismissed. The appellant is hereby directed to hand over possession of the apartment to the Complainant / Allottee forthwith. Further the Respondent / Promoter shall pay a sum of Rs.50,000/- to the Respondent towards costs incurred by him in defending this appeal. Connected Miscellaneous Applications pending if any are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on this 26th day of September 2022.

Sd/- xxxx
ADMINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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