BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

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

Wednesday the 12th day of April 2023

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

Appeal No. 11 of 2023

M/s.Color Homes Developers Pvt. Ltd.,
Represented by its Authorized Signatory
V.Durairaj .... Appellant

..Vs..

1. S.Sudarsan Babu
2. M/s.Silver Sands Property Development Pvt. Ltd.
   Represented by its Director G.Ramesh ....Respondents

PRAYER : Appeal to set aside the order dated 29.09.2022, passed by Tamil Nadu Real Estate Regulatory Authority in C.No.246 of 2021.

For Appellant : Mr. Ralph V. Manohar, Advocate
For 1st Respondent : Mr.R.D.Ashok, Advocate
For 2nd Respondent : None appeared despite notice served through RPAD.

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ORDER

1. The appeal was listed for admission on 27.03.2023. Vide notice ordered in M.A.No.4 of 2023 to condone the delay of 8 days in filing the appeal, the 1st respondent already entered appearance through his counsel.

2. The facts involved in this appeal, in brief are as follows:

3. The 2nd respondent company herein is the land owner / Promoter. The appellant company is the authorized co-promoter. The first respondent is the allottee/ purchaser. The 2nd respondent owned a landed property measuring about 20 acres, situated at Sorancheri Village, Poonamallee Taluk, Thiruvallur District, comprised in several survey numbers. As the land owner, the 2nd respondent company intended to develop their land into a residential layout project with amenities. The name of the project was "Poonamalle Farms". The roads and open spaces were gifted to the local body namely the Commissioner, Poonamallee Panchayat Union vide gift deed dated 06.12.2013. The planning permission for the proposed layout project was approved by the CMDA on 03.02.2014 subject to obtaining necessary sanction from the local body concerned.

4. The appellant, who is the co-promoter, was authorized by the 2nd respondent herein to carry out the development activities and for providing various amenities in the project. The appellant collected a sum of Rs.9,52,000/- from each purchaser of the plots as development

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charges. As per the brochure 405 constructed villas were proposed over 20 acres of land. A detailed brochure was printed and distributed and also advertised to attract buyers.

5. Attracted by the list of amenities mentioned in the brochure, the 1st respondent entered into an agreement for sale on 21.01.2017 with the 2nd respondent for purchasing a vacant plot. The cost of the vacant plot was fixed at Rs.22,62,000/-. Further on the same day i.e., on 21.01.2017, a development agreement was also entered into between the appellant and the 1st respondent. As already stated the appellant separately collected a sum of Rs.9,52,000/- from the 1st respondent / allottee, towards development charges. As per clause 8 of the development agreement dated 21.01.2017 the appellant was agreed to complete the development activities and shall provide the amenities within a period of two years from the date of agreement.

6. As the appellant failed to carry out the development activities and also failed to provide the amenities as promised by him in the brochure, the 1st respondent preferred a complaint before the RERA in C.No.246 of 2021. The 2nd respondent herein was arrayed as the 1st respondent in the said complaint, who remained exparte before the RERA. Even in this appeal proceedings the 2nd respondent failed to appear despite notice served on him.

7. The RERA, after hearing the 1st respondent and the appellant, passed the impugned order dated 29.09.2022. The RERA gave a finding that the Real estate project namely 'Poonamallee Farms' was in fact a Villa project and not a lay out project as claimed by the appellant and

that the benefit of exemption under Rule 2(h)(i) of the Tamil Nadu Real Estate (Regulation and Development) Rules 2017 is not available to the project in dispute. The RERA also held that, since the common amenities such as club house and other facilities have not been provided for in all respects as on 01.05.2017 i.e., the date of commencement of Section 3 of the Real Estate (Regulation and Development) Act, 2016, the real estate project is an ongoing project. Consequently the RERA directed the promoters to register the project with TNRERA on or before 31.12.2022. Assailing the said order the appellant has preferred this appeal before this Tribunal.

8. Heard both sides.

9. Firstly the learned counsel for the appellant contended that as per the approvals issued by the CMDA and the local body, the project was only a layout project, and not a Villa project. Secondly the learned counsel for the appellant contended that since the roads and open spaces were gifted to the local body on 06.12.2013, the project was not an ongoing project as on 01.05.2017 and exempted from Registration. The learned counsel relied upon Rule 2(h)(i) of the Tamil Nadu Real Estate (Regulation and Development) Rules 2017 in support of his contention.

10. The learned counsel for the appellant further contended that as per the clause 4 and 5 of the development agreement the club house and designated shop areas shall be accessible to the allottee/purchaser only on payment of requisite fee as fixed by the developer. Therefore,

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according to the learned counsel for the appellant, the club house and the other designated shop areas are to be excluded from the amenities.

11. The 2nd respondent company being the land owner, obtained the planning permission from the Chennai Metropolitan Development Authority for developing a layout project. After getting such approval in it's name, the 2nd respondent company joined hands with the appellant company and handed over the land to the appellant for developing the land into a Villa project. The appellant had collected a sum of Rs.9,52,000/- and misled the purchasers by stating that the amount will be utilized towards the expenses for carrying out the development activities and for providing various amenities as mentioned in the brochure. But contrary to the promises given in the brochure, the appellant incorporated clauses 4 and 5 in the development agreement so as to retain full control over the club house and some designated shop areas.

12. Further both the appellant and the 2nd respondent, by incorporating unreasonable restrictions had compelled the purchasers of the plots to enter into a construction agreement with the appellant for constructing Villas. We have carefully perused the brochure in respect of the project in question, which is found in page 28 to 50 (typed set of the appellant). The brochure contains, among other amenities, three types of Villa plans such as luxury villa, deluxe villa and grand villa. Thus as evident from the brochure relating to the project, it is quite clear that the promoters had in fact intended to develop a Villa project by illegally converting an approved lay out project into an unapproved Villa project.

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Therefore the contention of the learned counsel for the appellant that it was only a layout project cannot be accepted.

13. Not stopped with that, the promoters have also compelled the purchasers to have their house constructed through the appellant, by putting specific restrictions in the agreement for sale. Thus the appellant and the 2nd respondent attempted to circumvent various laws and rules relating to town planning. The Real Estate (Regulation and Development) Act, 2016 has been enacted with a view to protect the innocent purchasers/allottees from such greedy promoters.

14. Now let us consider the unreasonable restrictions contained in the agreement for sale dated 21.01.2017, entered into between the 1st respondent/allottee and the 2nd respondent/land owner. The unreasonable restrictions that are mentioned in paragraph 3 of the agreement which are extracted hereunder for ready reference.

"3.3 The purchaser shall enter into agreement of construction for the construction of his residential plot into individual house/villa/row houses or any such type with only M/s.Color Homes Developers Pvt. Ltd. or its any authorized agency/ies.

3.4 If the purchaser desire to construct his residential plot into individual house / villa /row houses or any such type on his own he shall be at his liberty to do so only after the lapse of TWO YEARS from the date of registration of the sale deed in his favour and after due written consent from M/s.Color Homes Developers Pvt. Ltd. or association formed, which consent shall not be withheld unreasonably."

15. The above restrictions contained in the agreement for sale and the details with regard to Villas mentioned in the brochure, if read together would clearly establish that the promoters of the project clearly

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intended to develop an unapproved Villa project in an approved lay out project. Rule 2(h)(i) of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 applies only to lay out projects and has no application to a Villa project. In any real estate project, if the assured the amenities are not provided in all respects as on 01.05.2017, the project shall be considered as an ongoing project within the meaning of the first proviso to Section 3 of The Real Estate (Regulation and Development) Act, 2016. Therefore, the direction given by the TNRERA to register the said project is perfectly valid and there is no ground to interfere with the same.

16. In the result, the appeal is dismissed at the admission stage itself. No costs.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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