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 : 01.11.2023

Delivered on : 22.11.2023

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

Appeal No.16 of 2022
and
Appeal No.72 of 2023

Appeal No.16 of 2022:

Rhythm Residents Flat Owners Welfare Association,
rep. by its President and Authorized Signatory,
R.Padmanabhan ... Appellant

- Vs -

1. M/s. Yes & Yes Premier Hi-tech Homes
   India Pvt. Ltd.,
   rep. by its Executive Director, B.Ravi

2. A.K.Balasubramanian ... Respondents

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Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to modify the order dated 30.12.2021 passed in C.No.135/2021 passed by the Tamil Nadu Real Estate Regulatory Authority and consequently to,

i. Direct the 1st Respondent builder to complete all pending works with reference 'A' Block in Rhythm Residency at RS No. 931/2/B2 of Vadamugam, Vellode Village, Erode in all respects including the promised allied facilities assured to be provided in the project and submit a report thereof within a time frame as may be fixed by the Tribunal.

ii. Set aside the finding of the Authority in paragraph 38 of the impugned order and further direct the 2nd Respondent to cancel the Gift Deed executed whereby the UDS has been illegally donated to his daughter Mrs.B.Radha and any subsequent transfers and hand over the illegally donated land to the Complainant Association to comply with the same. In the event of non-compliance on the part of the Respondent and the Promoter group to comply with the said direction, direct the Authority to initiate appropriate steps to cancel the illegal donation of the UDS land of the Complainant by the Promoters to Mrs.B. Radha in document No.1196 dated 21.04.2017 on the file of Sub-Registrar of Avalpoondurai and any subsequent transfer/encumbrance arising out of the said illegal gift holding the Respondents liable for all the cost and consequences and protect the property rights of the Appellant Association.

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For Appellant : Mr. S. Rajasekar

For Respondents : Ms.Dakshayani Reddy, Senior Counsel
for Ms.K.C.Aarthi

Appeal No.72 of 2023:

1. M/s. Yes & Yes Premier Hi-tech Homes
India Pvt. Ltd.,
rep. by its Executive Director, B.Ravi & Another

2. A.K.Balasubramanian ... Appellants

- Vs -

Rhythm Residents Flat Owners Welfare Association,
Now rep. by its President and Authorized Signatory,
R.Padmanabhan ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to allow the appeal by setting aside the order dated 30.12.2021 in C.No.135 of 2021 passed by TNRERA, in so far as direction to register the project by treating the same as an on-going project and in directing the 1st appellant to construct and complete all pending amenities as promised in the brochure for this Real Estate Project as well as in the Memorandum of Agreements and to direct the members of the respondent to pay all the pending sale consideration dues together with interest, that they owe for their respective residential

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units and to comply with the direction given by the Authority in para 33 which reads as "However, the allottees shall pay the balance sale consideration outstanding as per the Memorandum of Agreement. Interest shall be chargeable only at the rate of interest prescribed by this Authority which is SBI Marginal Cost Lending Rates (MCLR) that is currently 7.3% plus 2% as stipulated in the Act", within a time frame fixed by this Tribunal to enable the Appellant to complete the Rain Water Harvesting and Sewerage Treatment Plant.

For Appellants : Ms.Dakshayani Reddy, Senior Counsel
for Ms.K.C.Aarthi

For Respondent : Mr. S. Rajasekar
for Mr.Sashidhar Sivakumar

COMMON ORDER

Both the appeals are filed against the very same order passed by the TNRERA in C.No.135 of 2021 dated 30.12.2021 by either party to the complaint. Hence, we dispose of both the appeals by this common order. To avoid confusion, the parties hereinafter will be referred to as per their rank and status before the TNRERA in C.No.135 of 2021.

2. The common facts that are relevant for the disposal of the above appeals are as follows:

The Complainant is the registered Association in respect of the real estate project, namely, "Rhythm Residency" situated at Vadamugam

Vellode village, Erode District. The Respondents are the Promoters of the said real estate project. The Complainant Association preferred a complaint before the TNRERA against the Respondents/Promoters. According to the Complainant Association, the Executive Director of the 1st Respondent Company, namely, B.Ravi is the son of the 2nd Respondent, namely, A.K.Balasubramanian.

3. The 2nd Respondent is the land owner of the project land measuring 14,837 sq. ft. He wanted to develop a multi-storied residential complex in his land. He obtained the necessary approval for the building plan in the year 2010. Thereafter, on 27.12.2010, he entered into a Joint Venture Agreement with the 1st Respondent Company for constructing the multi-storied residential complex. As per the Joint Venture Agreement, the 1st Respondent was authorized to enter into Construction Agreements with the prospective purchasers of apartments. As per the approved plan, the 1st Respondent, originally, proposed to construct 60 apartments in two Blocks (i.e.) Block-A and Block-B. Each Block consists of five floors with six apartments in each floor. But only four floors were constructed in each Block. Thus, in all, 48 apartments were only constructed in two Blocks, each having 24 apartments.

4. Admittedly, the members of the Complainant Association are only the allottees of Block-A. It is the case of the Complainant Association that as per the approved plan, the Respondents/Promoters are supposed to build a three storied building to provide amenities like modern gym,

community hall, penthouse, children's park in a land pocket measuring 1528 sq. ft. According to the Complainant Association, though the Respondents/Promoters have completed Block-A and Block-B, failed to provide the amenities as per the brochure released in the year 2010. The allottees of both Blocks are entitled for undivided share over the entire extent of the project land measuring 14,837 sq.ft., depending upon the size of the apartment purchased by them.

5. It is the case of the Complainant Association that the 2nd Respondent/Promoter, being the land owner, on 21.04.2016, executed a Gift Deed to and in favour of his daughter B.Radha in respect of the entire Block-B along with the proportionate right of UDS over the project land and also the adjoining land measuring 1528 sq.ft., where the amenities were promised to be provided. According to the Complainant Association, the said Gift Deed is illegal and liable to be cancelled.

6. On the other hand, it is the case of the Respondents/Promoters that as per Schedule-IV of the Memorandum of Agreement, under the head "Recreations", it has been mentioned as "By the own interest of Promoters, Children play area, space in Roof Garden for Small Functions, Modern Gym, and Community hall will be made available for common use". According to the Respondents/Promoters, the term "By the own interest of Promoters" cannot be construed as the Respondents/ Promoters have agreed to provide those amenities free of cost. The learned Counsel for the Respondents/Promoters contended that the said

Clause contained in Schedule IV should be read with Clause 17 of the Memorandum of Agreement. According to the learned Counsel, the Respondents/Promoters have only expressed their readiness to provide those amenities on payment of additional cost by the flat purchasers.

7. It is the case of the Respondents/Promoters that they have already provided all the basic amenities such as drinking water connection, lift and lighting facilities for the common area, car parking and two-wheeler parking. According to the Respondents/Promoters, they never agreed to provide security room with intercom facilities, CCTV. In this connection, the learned Counsel for the Respondents/Promoters, cited Clause 17 of the Memorandum of Agreement and contended that the Respondents/Promoters are not bound to provide the facilities such as security room with intercom facilities and CCTV.

8. Further, it is the case of the Respondents/Promoters that in view of huge amount being due and outstanding from the flat purchasers, only 24 apartments were constructed in each Block instead of 30 apartments, as originally proposed. Further, the Joint Venture Agreement between the 1st Respondent/Promoter and the 2nd Respondent/Promoter was also cancelled by them. Later, the 2ndRespondent/Promoter, as the owner of the project land, had executed a Gift Deed on 21.04.2016 in respect of the entire Block-B apartments with proportionate right of UDS, to and in favour of his daughter B.Radha. According to the Respondents/Promoters,

all the allottees knew very well about the execution of the Gift Deed by the 2nd Respondent/Promoter to his daughter Mrs.B.Radha.

9. After the execution of the Gift Deed, the said B.Radha, as the owner of the Block-B apartments, took steps to obtain electricity connection for the 24 apartments in Block-B. At this juncture, the Complainant Association had challenged the execution of the Gift Deed by filing a Civil suit in O.S.No.11 of 2018 on the file of the Subordinate Court, Perundurai, Erode District and the same is pending. Whileso, the same relief cannot be sought for in the complaint filed before the TNRERA. Therefore, according to the learned Counsel for the Respondents/Promoters, the appeal is liable to be dismissed.

10. Heard both sides.

11. The Appellant in A.No.16 of 2022 had filed an application in M.A.No.133 of 2022 under Order 41 Rule 27 CPC to receive the copy of the Settlement Deed dated 21.04.2016 executed by A.K.Balasubramaniam to and in favour of his daughter B.Radha, as an additional document. The said application was allowed by this Tribunal 20.01.2023. The document sought to be marked is received as an additional document.

12. Admittedly, the extent of the project land is 14,837 sq. ft. in R.S.No.931/2/B2 of Vadamugam Vellode Village, Erode District. The building plan was approved by the President of Vadamugam Vellode Panchayat vide Serial No.37 dated 21.01.2010. As per the said approved building plan, it was originally proposed to construct 60 apartments in

two Blocks (i.e.) Block-A and Block-B, each having five floors with six apartments in each floor. However, only four floors were constructed in each Block. In all, 24 apartments in each Block were constructed. Thus, only 48 apartments were constructed in the two Blocks.

13. Admittedly, the members of Complainant Association are only the allottees of Block-A. The complaint was filed seeking for directions to provide certain amenities as per the brochure and to direct the 2nd Respondent/Promoter to cancel the Gift Deed dated 21.04.2016 executed by him in favour of his daughter B.Radha. The Complainant Association admitted in the Plaint filed in O.S.No.11 of 2018 pending on the file of the Subordinate Court, Perundurai, Erode District that the 24 apartments in Block-A were handed over to the allottees during 2013 and they have performed house-warming ceremony during June 2013 itself. Even in the Complaint, in paragraph 10(d), it was admitted by the Complainant Association that all the 24 flats in Block-A were sold in the year 2015 itself.

14. Insofar as the 24 apartments in Block-B is concerned, the 2nd Respondent executed a Gift Deed on 21.04.2016 in respect of the entire 24 apartments comprised in Block-B to and in favour of his daughter B.Radha with proportionate right of UDS over the project land. The execution of such Gift Deed in relation to Block-B is not going to affect the rights of the allottees of Block-A in any manner. Admittedly, the total extent of the project land is 14,837 sq. ft. As per the Memorandum of

Agreement for Construction, the allottees of Block-A and Block-B can claim their UDS over the common area only within the said 14,837 sq. ft.

15. As found from the Schedule of property annexed to the Plaint in O.S.No.11 of 2018 filed by the Complainant Association, an extent of 29 ½ X 70 = 2065 sq.ft., allegedly covered in the Gift Deed dated 21.04.2016 has been described as the suit property (hereinafter referred to as disputed property). According to the Complainant Association, the disputed property forms part and parcel of the project land measuring 14,837 sq.ft. But, the Complainant Association failed to produce any evidence to prove this aspect. As per the rough sketch filed by Complainant Association along with the Plaint in O.S.No.11 of 2018, the disputed property alleged to have been located on the Eastern side of the entire project land, is located within the same boundaries given for the project land.

16. Upon perusal of the rough sketch filed by the Complainant Association in O.S.No.11 of 2018, the disputed property found lying to the North of the 30 feet road that runs East to West. On the contrary, as per the Gift Deed dated 21.04.2016, the extent of the property mentioned as 2000 sq.ft. is said to be lying to the South of the 30 feet road that runs East to West. Therefore, when the identity and location of the disputed property itself is not clear, the prayer of the Complainant Association in A.No.16 of 2022 to direct the 2nd Respondent/Promoter to cancel the Gift Deed dated 21.04.2016, cannot be granted. The parties have to seek their

remedies only in the Civil Suit in O.S.No.11 of 2018 pending on the file of the Subordinate Court, Perundurai, Erode District. Hence, the appeal in A.No.16/2022 is liable to be dismissed.

17. Insofar as the appeal in A.No.72 of 2023 is concerned, the same has been preferred by the Respondents/Promoters in C.No.135 of 2021 as against the directions to register the real estate project with the TNRERA before 28.02.2022 and to provide and complete all the amenities as promised in the brochure published by the Respondents/Promoters without insisting for any separate payment from the allottees.

18. Insofar as the direction to register the real estate project with the TNRERA is concerned, the TNRERA had observed that the Respondents/Promoters have failed to provide modern gym, penthouse, roof garden, community hall, standby generator and children's play area as mentioned in the brochure and consequently, issued directions to provide the amenities as per the brochure and also to register the real estate project with the TNRERA by holding that the project is an ongoing project within the meaning of the proviso to Section 3(1) of the Act. The TNRERA had issued those directions by relying upon the brochure released by the Respondents/Promoters.

19. We have carefully perused the copy of brochure issued by the Respondents/Promoters, in which, it has been clearly mentioned that as many as 9 amenities will be provided for the common use of the allottees in the upcoming real estate project, namely, "Rhythm Residency". Even

as per the case of the Respondents/Promoters, only 3 amenities such as drinking water connection, 2/4 wheeler parking and lift were provided in the project. The remaining 6 amenities are yet to be provided. That include security rooms with intercom facility, standby generator facility, community hall, children's play area, modern hi-tech gym and roof garden. Admittedly, these amenities are not provided till date in the real estate project.

20. Apart from the brochure, in the Memorandum of Agreement, the Respondents/Promoters have also agreed to provide children's play area, space in roof garden for small functions, modern gym and community hall out of their own interest. In Schedule-IV of the Memorandum of Agreement under the head "Recreations", the Respondents/Promoters have specifically agreed to provide those amenities, which is reproduced hereunder:

> Schedule IV: Recreations
>
> "By the own interest of Promoters, children play area, space in roof garden for small functions, modern gym and community hall will be made available for common use."

The contention of the learned counsel for the Respondents/Promoters that the term "By the own interest of Promoters" cannot be construed as the Respondents/Promoters have agreed to provide those amenities free of cost, cannot be accepted. The Respondents/Promoters are bound to

provide all the amenities as mentioned in the brochure and Memorandum of Agreement. Admittedly, the assured amenities are not provided by the Respondents/Promoters till date.

21. Before the TNRERA, the Respondents/Promoters produced the Completion Certificate dated 28.01.2023 issued by the President of the Village Panchayat. The President of the Village Panchayat is not the authority to issue the Completion Certificate. The Completion Certificate should be issued only by the Plan Sanctioning Authority and not by the President of the Village Panchayat, in his individual capacity. Therefore, the said Completion Certificate shall not improve the case of the Respondents/Promoters in any manner, whatsoever. That apart, mere taking possession of the apartments in Block-A and performing house-warming ceremony shall not absolve the liabilities of the Respondents/ Promoters. When the amenities are not provided in entirety by the Respondents/Promoters till date, the project should be construed only as an ongoing project within the meaning of the proviso to Section 3(1) of the Real Estate (Regulation and Development) Act, 2016, which requires registration with the TNRERA. In these circumstances, we do not find any ground to interfere with the directions issued by the TNRERA. Consequently, the appeal in A.No.72 of 2023 is also liable to be dismissed.

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22. In the result, both the appeals in A.No.16 of 2022 and A.No. 72 of 2023 are dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to :

1. M/s. Yes & Yes Premier Hi-tech Homes India Pvt. Ltd.,
   rep. by its Executive Director, B.Ravi
   having its registered office at
   No.14A, Sathi Road, Near Soolai,
   Erode - 638 004,
   Tamil Nadu.

   Also at
   Door No.9, Brindha Nagar,
   Thindal Post, Erode Taluk,
   Erode - 638 012,
   Tamil Nadu.

2. A.K.Balasubramanian
   Door No.9,Brindha Nagar,
   Thindal Post, Erode Taluk,
   Erode - 638 012.

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3. Rhythm Residents Flat Owners Welfare Association,
   Now rep. by its President and Authorized Signatory
   R.Padmanabhan
   Atthappampalayam,
   Vallipurathanpalayam Post,
   Erode - 638 212.

4. The TNRERA, Chennai.

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