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 26th day of April 2023

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

Appeal No. 16 of 2023

1. M/s. M.S.Builders,
   Represented by its Director

2. M/s. MS Foundations Pvt.Ltd.,
   (Formerly known as MS Land Promoters Private Limited)
   Represented by its Directors.

... Appellants

- Vs –

G.K.Vijay ... Respondent

PRAYER : Appeal to set aside the order dated 03.01.2023, passed by the Single Member, attached with the Tamil Nadu Real Estate Regulatory Authority in C.C.P.No.140 of 2021.

Counsel for Appellants : Mr.S.Chakravarthy

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ORDER

1. The facts involved in this appeal, in brief, are as follows: The appellants, as promoters, had developed a layout project at Vayalanallur, Poonamallee Taluk, Thiruvallur District in the year 2014. Initially the layout was not approved by the concerned authorities. Suppressing the fact that the lay out was not an approved one, the appellants offered to sell the Plot No. 10 to the respondent. Believing the words of the appellants, the respondent agreed to purchase the Plot No.10. The respondent paid a total sum of Rs.10,00,000/- to the appellants on three different dates from 28.02.2014 to 22.09.2014 for which the appellants issued receipts.

2. Subsequently, the appellants obtained planning approval from Chennai Metropolitan Development Authority, Chennai on 04.11.2019. To the shock and surprise of the respondent, plot No.10 booked by him has been earmarked as open space reserved for public purpose (OSR) and marked as 'Park' in the approved layout. The respondent expressed his intention to withdraw from the project and demanded the appellants to refund the advance amount of Rs.10,00,000/- with interest. Being an ongoing project, the layout project ought to have been registered with the TNRERA.

3. As the appellants failed to repay the advance amount of Rs.10,00,000/- with interest, the respondent preferred a complaint before TNRERA in CCP No.140 of 2021. After enquiry the Single Member

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attached to the Tamil Nadu Real Estate Regulatory Authority by his impugned order directed refund of the advance amount of Rs.10,00,000/- with interest at 9.30% from the date of payment till realization. A penalty of Rs.1,00,000/- was also imposed against the appellants for not registering the project as required under Section 3 of the Real Estate (Regulation and Development) Act, 2016. Aggrieved over the same, the appellants have preferred this appeal.

4. The appeal was listed for admission on 24.04.2023. Heard the counsel for the appellants. Records perused.

5. The appellants admit the receipt of Rs.10,00,000/- from the respondent during 2014 as advance, in respect of plot No.10 comprised in the "Kamakshi nagar" layout project developed by the appellants. The appellants also admit that, initially the layout was not approved by the concerned authorities during 2014. The appellants were able to get the planning approval from the Chennai Metropolitan Development Authority only on 04.11.2019. As per the approved plan, plot No.10, earlier booked by the respondent, has been earmarked for developing a 'Park' and thus reserved for public purpose.

6. After realizing the fact that he has been cheated, the respondent opted to withdraw from the project and demanded the appellants to return the advance amount paid by him along with interest. The approved layout has been produced by the respondent and marked as Ex.A2 before the TNRERA. The appellants admit that the plot No.10 has been reserved for public purpose as per the approved plan. Consequently, plot No.10 cannot be sold to anyone. As per Section

18(1) of The Real Estate (Regulation and Development) Act, 2016, once the allottee intended to withdraw from the project, the promoter of the layout project is bound to return the amount received by him with interest.

7. Viewing from any angle, the appellants are bound to return the advance amount of Rs.10,00,000/- with interest as ordered by the Single Member attached with the Tamil Nadu Real Estate Regulatory Authority. Likewise, by not registering the project, the appellants have apparently violated Section 3 of the Real Estate (Regulation and Development) Act, 2016. Therefore, the appellants are liable to pay the penalty of Rs.1,00,000/- imposed by the Single Member. We find no merits in the appeal. Therefore, the appeal is liable to be dismissed at the stage of admission itself.

8. In the result, the appeal is dismissed at the admission stage itself. Earlier the appellants, as per Section 43(5), have deposited a total sum of Rs.19,32,661/-. Out of this amount, the penalty amount of Rs.1,00,000/- has been remitted to Government on 13.04.2023. After expiry of appeal time, the respondent is entitled to withdraw the balance amount of Rs.18,32,661/- with subsequent interest accrued from the bank investment.

Sd/. xxxx
CHAIRPERSON

Sd/. xxxx
JUDICIAL MEMBER

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