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:15.09.2023

Delivered on: 27.09.2023

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

Appeal No.17 of 2023
and
M.A.Nos.61 and 62 of 2023

M/s. Bahri Estates Pvt. Ltd.
rep. by its Chairman & Managing Director,
rep. by its Authorized Representative, John Richard ... Appellant

- Vs -

BBC-SOS Association
rep. by its Secretary ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 praying to set aside the order passed by TNRERA in C.No.7/2022dated 02.03.2023 and to dismiss the complaint.

For Appellant : Mr.S.Kamalesh Kannan

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ORDER

The brief facts that are relevant for the disposal of the above appeal are as follows:

1. The Promoter of a real estate project, who suffered an order directing to register the real estate project at the hands of the TNRERA, is the appellant in this appeal. The learned counsel for the Appellant contended that the appellant is the promoter of a real estate project namely, "Bahri Beautiful Country" situated at Genguvarpatti Village, Theni District. The respondent is the registered Association of allottees of the said real estate project. It is the case of the Appellant/Promoter that the DTCP approval was obtained in the year 2009 vide approval No.13/2009 dated 18.03.2009. The Open Space Reservation and the road portions were gifted to the local body in the year 2009 and 2010 and the District Collector also issued completion certificate on 15.09.2011.

2. According to the learned counsel for the Appellant/Promoter, the provisions of the Real Estate (Regulation and Development) Act 2016, which came into force in the year 2016 and the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, which came into force in the year 2017 are not applicable to the layout project promoted by the appellant. The learned counsel for the Appellant/ Promoter contended that, even otherwise, in as much as the Appellant/ Promoter already complied with the conditions imposed in Rule 2(h)(i) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, way back in the year 2009 itself, the project is exempted from registration with TNRERA, therefore, the impugned order of the TNRERA

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directing the Appellant/Promoter to register the project is liable to be set aside.

3. On the other hand, the case of the Respondent/Complainant as found from the Complaint, is that the said real estate project was launched in the year 2009 with three major components namely, 1. Anandham Senior Citizen Community, 2. Hill View Villas and 3. Common amenities and recreation zone. The DTCP approval was obtained on 18.03.2009. As per the DTCP approved plan, 298 villa plots with common amenities and recreation zone were proposed to be developed within the project land measuring 122.95 acres. It is the case of the Respondent/Complainant that villas were also constructed by the Appellant/Promoter by entering into Construction Agreements with the plot buyers. The Appellant/Promoter also advertised about construction of various types of villas. So far, more than 170 villas were constructed by the Appellant/Promoter by entering into Construction Agreements with the plot buyers. According to the Respondent/Complainant, the real estate project is a villa project and not merely a layout project.

4. As per the DTCP approved plan and as per the brochure released, the Appellant/Promoter promised to provide a Club house measuring 40,000 sq. ft., Swimming pool, Health club, Golf Course etc., within the said project. So far, no such amenities were provided by the Promoter till date.

5. Further, it is the case of the Respondent/Complainant that one Mr.V. Ramasubbu, Advocate of Srivaikundam preferred a complaint against the Appellant/Promoter and other Government agencies in O.A.No.149/2016 before the National Green Tribunal, Southern Zone,

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Chennai alleging serious violations of Environmental Rules and Wild life regulations. During the course of enquiry, the National Green Tribunal, Southern zone, Chennai, appointed a Joint Committee to make a spot visit at the project site and to submit a detailed report. The Joint Committee also visited the project site during the year 2020 and submitted a detailed report to the NGT during December 2020.From the report of the Joint Committee, it is clear that the promised amenities were not provided till December 2020. According to the Respondent/ Complainant, the project was an ongoing project as on 01.05.2017 and the real estate project "Bahri Beautiful Country" should be registered with TNRERA.

6. Further, it is the case of the Respondent/Complainant that the Appellant/Promoter, violating the DTCP approval dated 18.03.2009, merged the plot Nos.295, 296 and 297 together and created another residential project by name "Santhosam Retirement Community". The Promoter obtained a separate DTCP approval for constructing 49 row houses in the said new project vide approval letter No.2433/2017/MR3dated 05.03.2018 and also obtained the building permission vide letter No. 51/2017-18 dated 15.03.2018 issued by the Special Officer, G.Kallupatti Panchayat, Periakulam Taluk, Theni District. The Appellant/Promoter also registered the same with TNRERA vide Registration Certificate No.TN/021/building/0105/2018 dated 04.04.2018.According to the Respondent/Complainant, the said new real estate project, namely "Santhosam Retirement Community" was an embedded project within the "Bahri Beautiful Country". According to the Respondent/Complainant, inasmuch as the "Bahri Beautiful Country" is a

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villa project and promised amenities are not provided till date, the project is an ongoing project as on date, hence, the same has to be registered with TNRERA.

7. Heard the learned counsel for the appellant.

8. There is no dispute between the parties as to the fact that the Appellant/Promoter got the DTCP approval vide approval No.13/2009 dated 18.03.2009 in respect of the real estate project "Bahri Beautiful Country". The Open Space Reservation and the road portions and other common areas were gifted to the local body in the year 2009 and 2010.It is also an admitted fact that the said real estate project was launched in the year 2009 with three major components namely, 1. Anandham Senior Citizen Community, 2. Hill View Villas and 3. Common amenities and recreation zone.

9. The learned counsel for the Appellant/Promoter argued that the real estate project "Bahri Beautiful Country" is only a layout project as per the approval of the DTCP dated 18.03.2009. Therefore, according to the learned counsel, the provisions of the Real Estate (Regulation and Development) Act 2016, which came into force in the year 2016 and the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, which came into force in the year 2017 are not applicable to the layout project promoted by the appellant. The learned counsel for the Appellant/Promoter argued that, even otherwise, in as much as the Appellant/Promoter already complied with the conditions imposed in Rule 2(h)(i) of the Tamil Nadu Real Estate (Regulation and Development) Rules 2017, (with regard to gifting of the OSR land and road portions to the

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local body) way back in the year 2009 itself, the project is exempted from registration with TNRERA.

10. As rightly observed by the TNRERA the Appellant/Promoter also advertised through the brochure about construction of villas for the buyers of the plots. The brochure contains several types of villa plans. The Appellant/Promoter admits that so far, more than 170 villas were constructed by them by entering into Construction Agreements with the plot buyers. Even at the time of submitting the application for allotment of plots, the buyers were asked to mention the type of villa they prefer to construct in the proposed plot to be purchased. A copy of the Application format for allotment of plot has also been provided by the available in the Typed set of the Appellant/Promoter. In all there are only 298 plots available in the project. Out of which, 170 villas were already constructed by the Appellant/Promoter. Therefore, the real estate project is clearly a villa project and not merely a layout project as contended by the learned counsel for the Appellant/Promoter.

11. Admittedly, as per the DTCP approved plan and as per the brochure released, the Appellant/Promoter promised to provide a Club house measuring 40,000 sq. ft., Swimming pool, Health club, Golf Course etc., within the said project. So far, no such amenities were provided by the promoter till date. Further, one Mr.V. Ramasubbu, Advocate of Srivaikundam, preferred a complaint against the Appellant/Promoter and other Government agencies before the National Green Tribunal, Southern Zone, Chennai, in O.A. No.149/2016. The said application was filed in the year 2016. During the course of enquiry, the National Green Tribunal, Southern zone, Chennai, appointed a Joint Committee to make a spot

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visit at the project site and to submit a detailed report. The Joint Committee also visited the project site during the year 2020 and submitted a detailed report to the NGT during December 2020. As per the said report of the Joint Committee, the promised amenities were not provided till December 2020.

12. When the application in O.A. No.149/2016 was pending for enquiry, the Appellant/Promoter, violating the DTCP approval dated 18.03.2009, merged the unsold plot Nos.295, 296 and 297 in the real estate project "Bahri Beautiful Country" and developed another residential project and named the new project as "Santhosam Retirement Community" in the year 2018. The DTCP also granted approval for the same, vide approval letter No.2433/2017/MR3dated 05.03.2018. The Appellant/Promoter proposed to construct 49 residential buildings in the said new project. The Appellant/Promoter also obtained the building permission vide letter No. 51/2017-18 dated 15.03.2018 from the Special Officer, G.Kallupatti Panchayat, Periakulam Taluk, Theni District. That apart, the Appellant/Promoter also registered the said new project with TNRERA vide Registration Certificate No.TN/021/building/0105/2018 dated 04.04.2018. From the details furnished by the Appellant/Promoter with the TNRERA, it could be seen that 49 residential buildings were proposed to be constructed in the said new project "Santhosam Retirement Community".

13. In the said facts and circumstances, it is needless to say that the proposed new project namely "Santhosam Retirement Community" is clearly an embedded project within the "Bahri Beautiful Country". The Appellant/Promoter themself had come forward to register

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a portion of the real estate project "Bahri Beautiful Country" by cleverly merging the extent of three unsold plots and by assigning a new project name as "Santhosam Retirement Community".

14. Be that as it may, in as much as the "Bahri Beautiful Country" is considered to be a villa project and that the promised amenities such as Club house measuring 40,000 sq. ft., Swimming pool, Health club, Golf Course etc., are not provided till date, the project should be considered as an ongoing project as on 01.05.2017. Consequently, the real estate project "Bahri Beautiful Country" is required to be registered with TNRERA. The impugned order passed by the TNRERA directing the Appellant/Promoter to register the real estate project "Bahri Beautiful Country" is perfectly correct and do not require any intervention by this Tribunal. Consequently, the appeal is liable to be dismissed at the admission stage itself.

15. In the result, the appeal is dismissed at the admission stage itself. Connected miscellaneous applications are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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