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 :14.06.2023

Delivered on:26.06.2023

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

Appeal Nos.1 to 4 and 10 of 2023

Appeal No.1 of 2023

Col R.Ganesan ... Appellant

- Vs -

1. Army Welfare Housing Organization,(A.W.H.O)
Rep. by its Managing Director,
2. The project Director,
A.W.H.O. Raman Vihar,
Coimbatore - 641 049 ... Respondents

Prayer:

a. Execution of sale deed with the buyers correctly conveying the UDSL as required to do so as per the survey numbers of the land on which building approval has been accorded by LPA Coimbatore for construction of this project; and
b. To set aside the order passed by TNRERA dated 26.10.2022 in C.No.451/2019 and to allow the appeal as prayed.

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Appeal No.2 of 2023

Capt. P.S.Dheenadayalan (Retd.) ... Appellant

- Vs -

1. Army Welfare Housing Organization (A.W.H.O),
   Rep. by its Managing Director,
2. Project Director,
   A.W.H.O. Raman Vihar,
   Coimbatore ... Respondents

Prayer:

a. To allow the appeal and to set aside the impugned final orders of the TNRERA dated 26.10.2022 passed in C.No.106/2020.
b. To order AWHO Raman Vihar, Coimbatore, project Promoter AWHO society, to register unbiased conveyance/sale deed with correct UDSL vide DTCP approved plan No.R.C.No.11444/2011/CP dated 24.10.2011, as more than 20 months have passed after the appellant fully paid as per promoter's demand and took over the DU / flat.
c. To order Promoter AWHO to stop manipulation of documents/alterations/transfer of DTCP approved AWHO Raman Vihar,Coimbatore project land & reverse altered/ manipulated/reclassified project land documents, including patta of the project land.
d. To declare the car parking slot (OCPF-07) sold to me for an amount of Rs.4,14,055/- as illegal, null and void.
e. To order the promoter to refund the cost of car parking thus illegally sold along with interest applicable.
f. To order the Corporation of Coimbatore and the Fire & Rescue Services Department to inspect all the towers, Common Spaces, Public utilities in the entire RV Complex for similar or other violations in allotment of Egress Route/Fire Tender Access area as car parks.
g. To order the Promoter AWHO society to draft an unbiased sale deed draft as part of seeking unbiased sale deed with correct UDSL.

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Appeal No.3 of 2023

Sub Maj/H/Lt K.Shunmugavelu ... Appellant

- Vs -

1. Army Welfare Housing Organisation (A.W.H.O),
   Represented by its Managing Director.
2. The Project Director,
   A.W.H.O. Raman Vihar,
   Coimbatore ... Respondents

Prayer:

a. To allow the appeal and set aside the order passed by TNRERA in C.No.117/2020.
b. To order the promoter AWHO society, AWHO Raman Vihar, Coimbatore, to register unbiased conveyance/sale deed with correct UDSL vide DTCP approved plan No.R.C.No.11444/2011/CP dated 24.10.2011, as more than 30 months have passed after the appellant fully paid as per promoter's demand and took over the DU / flat.

Appeal No.4 of 2023

Col. Sreeghanlal P Raman (Retd.) ... Appellant

- Vs -

1. Army Welfare Housing Organization (A.W.H.O),
   Represented by its Chairman
2. Army Welfare Housing Organization (AWHO),
   Represented by its Managing Director. ... Respondents

Prayer:

a. To order the promoter AWHO society, AWHO Raman Vihar, Coimbatore, to register unbiased conveyance/sale deed with correct UDSL vide DTCP approved plan No.R.C.No.11444/2011/CP dated 24.10.2011, in appellant's name/(each allottee's name) as

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more than 30 months have passed after the appellant fully paid as per promoter's demand and took over the DU / flat.

b. To order the promoter AWHO society to hand over the copies of following documents to the appellant since no copies of the following had been given to the appellant. The appellant and aggrieved allottees of the said project earnestly request to order promoter AWHO of Raman Vihar project, Coimbatore to hand over certified copies of all project documents to the appellant/Allottees (who have paid full cost and taken over the DU (but promoter has not delivered the product legal rights through registered sale/conveyance deed till date).

c. To allow the appeal and set aside the order passed by TNRERA in C.No.153/2021 dated 26.10.2022.

Appeal No.10 of 2023

Raman Vihar Apartments Owners Association,
Rep by its President
Lt Col P Sankarappan ... Appellant

- Vs -

Army Welfare Housing Organization (A.W.H.O)
Rep. by its Managing Director. ... Respondent

Prayer:

a. To allow the appeal and to set aside the order dated 26.10.2022 passed in C.No.226/2021 by TNRERA and allow the prayer sought for in the complaint.

b. To declare that the Respondent has filed incorrect details while submitting its Application for Registration in Application in TN/11/Building/0130/2021 dated 22.04.2021 and consequently direct the Respondent to resubmit its application with the correct Carpet Area Statement for the 496 Dwelling Units totaling to 28.5 Acres as per the extent in the DTCP approved No.R.C.No.11444/2011/CP dated 24.10.2011;

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c. To declare that all agreements, deeds, registrations and acts done pursuant to the incorrect registration in TN/11/Building/0130/2021 dated 22.04.2021 are null and void;

d. For permanent injunction restraining the Respondent, its men, agents from attempting to either fence, obstruct, segregate and interfering with the appellant's peaceful possession of the Open Space in the project.

e. For permanent injunction restraining the Respondent from carrying out any activity other than the activities approved under the DTCP approval No.R.C.No.11444/2011/CP dated 24.10.2011.

f. To punish the Respondent for having violated the provision of RERA, for providing false information.

For Appellants

A.No.1 of 2023	: Mr.K.R.Samratt
A.No.2 of 2023	: Capt. P.S.Dheenadayalan (Retd.)- Party in person
A.No.3 of 2023	: Mr.R.Ramasubramaniam Raja& Ms. Kannammai, ME
A.No.4 of 2023	: Mr.R.Ramasubramaniam Raja& Ms. Kannammai, ME
A.No.10 of 2023	: Mr.Srinath Sridevan, Senior Counsel for Mr.R. Ramasubramaniam Raja and Ms. Kannammai, ME

For Respondents : M/s. AAV Partners through Mr.P.H.Manoj Pandian and Mr.N.Zahid Ahmed (in all appeals)

COMMON ORDER

The above Appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 against the Common Order passed by the Tamil Nadu Real Estate Regulatory Authority in C.Nos.451/2019, 106/2020, 226 of 2021, 153/2021 and 117/2020respectively dated 26.10.2022.The counsel for the appellant in A.Nos.3 and 4 of 2023 adopted the arguments of the learned Senior Counsel for the Appellant in A.No.10 of 2023.

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

The Army Welfare Housing Organization, New Delhi (hereinafter referred to as AWHO) undertook a demand survey to ascertain the viability of a housing project at Coimbatore during April 2005. In this connection, the AWHO issued a paper publication in 'Times of India', Newspaper dated 06.04.2005. Vide this paper publication, the AWHO invited applications from retired/serving Army Personnel interested in purchasing a dwelling unit at Coimbatore. The AWHO had clearly mentioned in the said paper publication, that the required land will be bought after seeing the response from retired/serving Army Personnel and the project will be planned thereafter. The AWHO, with the demands from few hundred army personnel and anticipating the future escalation of demands, decided to go ahead with the project as per the Army Welfare Housing Organization Rules 1987 as amended from time to time. These Rules are referred to by the AWHO as the Master Brochure.

3. Accordingly the AWHO, out of it's own fund purchased an extent of 33.66 acres of land situated at Chinnavedampatti village, Coimbatore (North)from 8 different persons during the period from February 2008 to August 2008 (Refer page 39 of the Additional TS of the Appellant). Initially, the AWHO proposed to develop the land by constructing 912 dwelling units in **two phases** (Refer page 2 of the Common typed set of the Respondent). However as there was no immediate increase in demand for the proposed dwelling units, the AWHO decided to construct 496 dwelling units in Phase-I in a portion of the land purchased i.e. in 23.58 acres by keeping the remaining portion of land i.e. 10.08 acres for future development in Phase-II.

4. After mutation being carried out in revenue records and after getting the change in classification of land proposed to be developed, the AWHO had applied for and got building permission for constructing 496 dwelling units in 23.58 acres only. The AWHO then started booking in respect of the 496 dwelling units from 2012 onwards. Along with the booking letter issued to each allottee, Appendix 'A' to 'E' was also enclosed. The Appendix 'E' is the technical brochure prepared by AWHO in respect of the 23.58 acres for constructing 496 dwelling units only. Though the remaining 10.08 acres of land found place in the technical brochure it has been clearly mentioned as 'land left for future development'.(Refer pages 17 to 32 at page 18 of the Common typed set of the Respondent).

5. Thus out of 33.66 acres of land purchased, an extent of 10.08 acres was earmarked for future development as per the technical brochure. The remaining 23.58 acres of land has been earmarked for Phase-I. Out of this 23.58 acres of land 05.15 acres were gifted to the Coimbatore City Municipal Corporation for the formation of roads and Open Space Reservation (OSR). The 496 dwelling units were proposed to be constructed in the balance 18.43 acres with all common amenities.

6. Out of the 496 dwelling units proposed in phase-I, the AWHO had constructed only 400 dwelling units and all of them were handed over to the allottees with some delay. Earlier the AWHO sent separate written communication on 04.06.2015 to each allottee (Refer page 136 of the Common type set of the respondent) in which the AWHO explained the reasons for the delay in completing the project. Further in the same communication the allottees who are not satisfied with the reasons stated for the delay, were given an option to withdraw from

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the project with an assurance to refund the entire amount with interest and without any levy of any penalty. But nobody had come forward to withdraw from the project.

7. Now it is the case of the Appellants/allottees that they have got right of UDS over the entire 33.66 acres of land and that the AWHO has no right to carve out this 10.08 acres for future development. The appellants/Allottees contended that as per section 14 (2) of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) a Promoter shall not make any alterations in the approved plan without the consent of 2/3rd of allottees. According to the Appellants/allottees, the said 10.08 acres of land should remain as open space forever. The appellants/Allottees further contended that the AWHO has now allotted 184.23 sq. m. (1983.04 sq.ft.) as UDS to each allottee. If the said 10.08 acres of land is subjected to allotment of UDS, each allottee will get an increased UDS of 330.57 sq. m. (3558.23 sq. ft.).

8. As the AWHO refused to part with the 10.08 acres of land, all the appellants/allottees herein have preferred separate complaints before TNRERA with a prayer to direct the AWHO to execute sale deed with increased UDS of land among other reliefs. The TNRERA by its common order dated 26.10.2022 has rejected all the contentions of the Appellants/allottees with regard to the 10.08 acres of land reserved for future development. Consequently the prayer to direct the AWHO to execute sale deed with increased UDS of land was also rejected. Aggrieved over the common order passed by the TNRERA, the Appellants/allottees have preferred these appeals.

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9. Heard both sides.

10. There is no dispute between the parties that the AWHO, out of its own funds had purchased 33.66 acres of land at Chinnavedampatti Village, Coimbatore (North) from 8 different persons as early as in the year 2008 itself i.e., during the period from February to August 2008. (Refer page 39 of the Additional typed set of the Appellant). It is not the case of the Appellants/Allottees that the AWHO had purchased the land out of the funds collected from the allottees. Considering the lesser number of allottees applied for dwelling units which was around 400, the AWHO decided to construct 496 dwelling units at the first Phase with all common amenities such as Roads, Club house, Swimming pool, Garden area, Shop areas, Pump house, Power house (Electricity sub station) and a vast extent of OSR within 23.58 acres and to keep the remaining 10.08 acres of land for future development.

11. Accordingly a building plan was prepared for the construction of 496 dwelling units within 23.58 acres and the same was approved by the competent authority. In the approved development plan, the remaining 10.08 acres have been shown as "open space". It is the case of the Appellants that since the 10.08 acres has been mentioned as "open space" in the approved plan, the allottees have right of UDS over the said portion also.

12. The intention of the AWHO since the conception of the project can be gathered from the other facts and circumstances of the case. The site plan initially prepared by the AWHO was in respect of the proposed 912 dwelling units at Chinnavedampatti, Coimbatore. The copy of the said site plan is available at page No.2 of the typed set of the Respondent/Promoter. Even in the said site plan, it has been clearly mentioned that the 912 dwelling units were proposed to be

constructed in **two phases**. Later, due to poor demand, the AWHO proposed to construct only 496 dwelling units in Phase-I with separate common amenities within 23.58 acres and to keep the remaining 10.08 acres at the south west corner as open space for future development. This is evident from the technical brochure attached as Appendix-'E' to the booking letter issued to each allottees during July 2012. A copy of such technical brochure is available at page No.17 to 32 @ page 18 of the typed set filed by the Respondent. In the said technical brochure, it has been clearly mentioned that the disputed land area at the south west corner of the site plan as "land left for future development". By enclosing the Appendix-E to the booking letter the AWHO clearly disclosed it's intention to all the allottees including the appellants, that the 10.08 acres of land is reserved for future development.

13. Therefore right from the beginning the AWHO actually intended to construct 912 dwelling units in two phases. To start with, 496 dwelling units were proposed to be constructed in Phase-I out of which 400 dwelling units were already constructed as on date. The remaining 96 dwelling units in Phase-I are yet to be constructed. The building permission issued by the Commissioner, Coimbatore Municipal Corporation dated 02.04.2012 already expired on 31.03.2014. Before proceeding with the construction of the remaining 96 dwelling units in Phase-I, the AWHO has to necessarily get revival of the building permission dated 02.04.2012 from the Coimbatore Municipal Corporation.

14. Moreover, as per the approved building plan, the AWHO has provided all the common amenities such as Roads, Club house, Swimming pool, Garden, Shop areas, Pump house, Power house

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(electricity sub station) and OSR within the 23.58 acres in respect of the 496 dwelling units. When all the amenities are available within the 23.58 acres there is no need arises for the appellants/allottees to lay any claim over the 10.08 acres of land left for future development by the AWHO. The Appellants/Allottees are already entitled for UDS of 184.23 sq. m. equivalent to 1983.04 sq.ft. with all common amenities. Therefore the expectations of the appellants to have UDS of 330.57 sq. m. (3558.23 sq. ft.) cannot be justified.

15. So far as the contention of the appellants, to the effect that, in view of the provisions of Section 14(2) of the Act, the Respondents are precluded from constructing Phase-II open space is concerned, the learned counsels appearing for the Appellants, while making their submissions, have categorically admitted that the Appellants are not the owners of the disputed open space area measuring an extent of 10.08 acres and the Respondent is the absolute owner of the said extent of land. When the Appellants are not the owners of the disputed open space earmarked for future development, the provisions of Section 14(2) has no application. Only in the event of the Respondent making any alterations or additions in Phase-I, where 400 out of 496 dwelling units were constructed, the provisions of Section 14(2) can be applied.

16. Above all there was no Construction Agreement or Agreement for sale executed between the Appellants/Allottees and the AWHO. As such they have no legal right to insist the AWHO to hand over the 10.08 acres to the Allottees' Association. Simply because the land measuring an extent of 10.08 acres have been mentioned as "open space" in the approved plan and for the reasons discussed above it cannot be said

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that the Allottees have any right over the said 10.08 acres of land reserved for Phase-II.

17. It is needless to say that the AWHO is bound to provide separate common amenities for the proposed Phase-II. The AWHO cannot utilize the common amenities provided in Phase-I while developing the 10.08 acres open space reserved for Phase-II. Further in the event of the Respondent putting up any construction in the open space it is needless to say that they have to get appropriate planning permission from the appropriate Planning authority under Section 49 of the Town and Country Planning Act 1971. In the event of any planning permission being granted in favour of the Respondent and if the Appellants are aggrieved over the same, it is open to them to file an appeal under Section 79 of the Town and Country Planning Act, if so advised.

18. The TNRERA has considered all the relevant facts and circumstances and passed a considered order in accordance with law. We find no reasons to interfere with the impugned Common order passed by the TNRERA. Consequently all the appeals are liable to be dismissed.

19. In the result, A.Nos.1 to 4 and 10 of 2023 are dismissed. Connected Miscellaneous applications pending, if any, are closed.

Sd/- xxxx
CHAIRPERSON

Sd/-xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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