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 : 28.08.2023
Delivered on : 20.09.2023

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

Appeal Nos.20 to 22, 58 and 59 of 2023

A.No.20 of 2023

1. Ramasamy Selvaraju
2. Rajeswari Selvaraju ... Appellants

- Vs -

1. M/s.Sobha Limited,
   (Formerly Sobha Developers Ltd.)
   rep. by its Authorized Signatory
   Sabarinath.KN, General Manager

2. M/s. Sri Durga Devi Property Management Pvt. Ltd.,
   rep. by its Authorized Signatory Sudha ... Respondents

A.No.21 of 2023

1. Velmurugan .V
2. Pramila Velmurugan ... Appellants

- Vs -

1. M/s. Sobha Limited,
   (Formerly Sobha Developers Ltd.)
   rep. by its Authorized Signatory
   Sabarinath.KN, General Manager

2. M/s. Sri Kanakadurga Property Developers Pvt. Ltd.,
   rep. by its Authorized Signatory ... Respondents

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A.No.22 of 2023

Vijayan Chandrababu ... Appellant

- Vs -

1. M/s. Sobha Limited,
   (Formerly Sobha Developers Ltd.)
   rep. by its Authorized Signatory
   Sabarinath.KN, General Manager

2. M/s. Sri Kanakadurga Property Developers Pvt. Ltd.,
   rep. by its Authorized Signatory ... Respondents

A.No.58 of 2023

1. Ramasamy Rajasekar
2. Jothi Rajasekar ... Appellants

- Vs -

1. M/s. Sobha Limited,
   (Formerly Sobha Developers Ltd.)
   rep. by its Authorized Signatory
   Sabarinath. KN., General Manager

2. M/s. Sri Kanakadurga Property Developers Pvt. Ltd.,
   rep. by its Authorized Signatory ... Respondents

A.No.59 of 2023

1. T.V.Panchapakesan
2. P.Banumathi ... Appellants

- Vs -

1. M/s.Sobha Limited,
   (Formerly Sobha Developers Ltd.)
   rep. by its Authorized Signatory,
   Sabarinath.KN, General Manager

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2. M/s.Sri Kanakadurga Property Developers Pvt. Ltd.,
rep. by its Authorized Signatory ... Respondents

Prayer: All the appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 in respect of the disallowed reliefs, vide common order passed by TNRERA, in C.Nos.27, 36, 40, 35 and 37 of 2022 dated 08.12.2022.

For Appellants (in all Appeals) : Mr.J.Jayabalan, Mr.P.Babu, Mr.G.Sivakumar

For Respondents : Mr.G.Vivekanand (in all Appeals)

COMMON ORDER

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

1. The appellants in the above appeals are the complainants before TNRERA in respect of the respective complaints filed by them. All the appellants are the allottees of the real estate project by name "Sobha Westhill" promoted by the respondents herein. The complainants have purchased house sites together with a residential villa on various dates from the year 2016 to 2020. It is the case of the appellants that the project has been developed in three phases and that assured amenities were not provided in a full-fledged manner. Therefore, the project required to be registered under Section 3 of The Real Estate (Regulation and Development) Act, 2016. Hence, the appellants have filed separate complaints seeking directions to register the project and also to provide all the amenities as per the brochure and the Construction Agreement.

The complainants have also prayed for a direction to hand over the corpus fund to the Association.

2. On the other hand, the respondents/promoters would claim that the project was only a layout project and all the formalities as mentioned in Rule 2(h)(i) of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 have been complied in the year 2013 itself. It is the case of the respondents that the layout project need not be registered under Section 3 of the Act. According to the respondents, the allottees have already formed an Association which was registered with the Registrar of Societies, Coimbatore vide Certificate of Registration No. SRG/Coimbatore/316/2021 dated 13.12.2021. The said Association was not impleaded as a party in any of the complaints filed. Therefore, all the complaints are bad for non-joinder of necessary parties.

3. The complainants have failed to pay the maintenance charges as per the Construction Agreement for the period from taking possession of the villa till the Association is formed. After the formation of the Association, it is only the responsibility of the Association to collect the maintenance charges. According to the respondents, except the villa intercom connectivity, construction of Association office, shops and sewage treatment plant, all other amenities were provided in the project. After hearing both sides, the TNRERA has directed to register the project by holding that it is an ongoing project. Aggrieved over the order passed by the TNRERA, the appellants have preferred the above appeals before this Tribunal.

4. Heard both sides.

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5. The appellants have sought for the following reliefs in the Memorandum of grounds of appeals :-

(i) To allow the appeals and to modify the order dated 08.12.2022 in C.Nos.27, 36, 40, 35 and 37 of 2022 by granting all the reliefs sought for by the Appellants (except the order of TNRERA as "to Register the entire Real Estate Project" in its order in para/point no.51 and in A.Nos.58 & 59/2023 - para/point no.55 - regarding claims for compensation).

(ii) To direct the Respondents to provide the aforesaid unconstructed/withhold amenities which was promised to the complainants according to the Construction Agreement (dtd 10.12.2014; 01.08.2014) (A.No.59/2023 - Sale Agreement dt. 05.07.2018 and Sale Deed dt.29.08.2018), brochures, advertisements, online publications within the stipulated time frame to be fixed by the Authority/Tribunal.

(iii) To punish the Respondent as per Section 59 of TNRERA Act for not having registered their "ongoing project" (i.e., Phase III) under Section-3 of the Real Estate (Regulation and Development) Act, 2016.

(iv) To direct both the Respondents not to make any advertisement regarding the "ongoing project" (i.e., Phase III) until registering with TNRERA under the Act of 3(1) [prayer not sought for in A.No.58/2023].

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(v) To punish the Respondents for having made false and misleading advertisements without registering the ongoing project till now [prayer not sought for in A.No.58/2023].

(vi) To direct both the Respondents to continue the Maintenance Services of the Community until the construction of balance 10 villas in Phase III is completed and all 35 owners are on board.

(vii) To direct the Respondent(s) or any other formed or any newly registered or existing any Association to collect the maintenance amount according to the construction/ sale agreement i.e., proportionate share of plot area of every unit in each of the phases including the unconstructed units in Phase III in comparison with the total area of Sobha Westhill project.

(viii) To direct both the Respondents to bear the maintenance charges in respect of the incomplete or unsold units, until the construction of balance 10 villas in Phase III is completed and all 35 owners are on board.

(ix) To direct the Respondents to compensate the Complainants/existing owners for the loss of interest on the corpus fund deposited by them from the date of withdrawal of money/s from the same till the present according to Section 18 of TNRERA Act [prayer not sought for in A.No.58/2023].

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(x) All defects to be ascertained, investigated and permanent solution is required by rectifying/repairing with good workmanship and replace where necessary.

(xi) Construction to be strictly restricted to working hours (9AM- 6PM) and Construction work shall be prohibited on Sundays & public Holiday. Additional safety barricades to be built around the construction site to ensure safety of residents & property.

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(xii) To direct the Respondent to compensate the cost incurred for the repair work of the wall seepage.

(xiii) To direct the Respondent to compensate by replacing the window sliding shutters of sound strength to avoid derailing and mesh deforming at their cost.

(xiv) To direct the respondent to compensate by replacing the Bathroom Tiles of anti-skid quality to avoid slippages at their cost.

6. The reliefs sought for in Sl.Nos.(iv), (v) and (ix), mentioned above, are not sought for by the appellants in A.No.58 of 2023. Since the reliefs sought for in Sl.Nos.(x) and (xi) in respect of A.No.21 of 2023, mentioned above, were not sought for by the appellants before TNRERA in the complaint, we are not giving any finding with regard to the same.

7. With regard to the relief in respect of the amenities to be provided, the appellants themselves have furnished the details of pending amenities to be provided before the TNRERA during the course of

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enquiry. The details of pending amenities as furnished by the appellants/complainants before TNRERA in a tabular form are reproduced hereunder:

Sl. No.	Villas and/or facility to be completed	Current status
1	New permanent electrical infrastructure like transformer, DG set at Phase III (Part C)	Only partially completed
2	Villa intercom connectivity with security	Not provided
3	Association office	Not constructed
4	Shops as shown in the approved plans	Not constructed

8. The TNRERA has discussed about the above pending amenities. However no finding or direction was given by the TNRERA in this regard. Hence, we hereby direct the respondents to provide the above pending amenities on or before 31.12.2023 if not provided so far.

9. With regard to the Relief in respect of the registration of the project, the same is not maintainable, as the TNRERA has already directed the respondents to register the project by fixing a dead line.

10. With regard to the Relief in respect of maintenance amount, necessary directions were already given by the TNRERA vide the impugned order.

11. With regard to loss of interest on the corpus fund, the appellants have not furnished any details and statement of calculation of interest in support of their claim. Therefore, the said relief is hereby rejected.

12. In so far as A.No.59/2023 is concerned, the appellants have additionally prayed for the relief of compensation on the ground of certain repair works. In this regard, the TNRERA has given liberty to file a separate complaint before the Adjudicating Officer for compensation. It

is open to the appellants in A.No.59/2023 to file a separate complaint before the Adjudicating Officer, TNRERA for compensation.

13. In conclusion, we hereby direct the respondents to provide the above said pending amenities mentioned in paragraphs No.7 and as directed in paragraph No.8 above, on or before 31.12.2023, if not provided so far.

14. In the result, all the above appeals are partly allowed to the extent stated above. Connected Miscellaneous applications pending, if any, are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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