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: 17.11.2023

Delivered on: 20.12.2023

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

Appeal Nos.26 to 29 of 2023
and
M.A.Nos.79 to 82 of 2023

M/s. Lancor Holdings Ltd.,
rep. by its Vice President J.M.Chandrasekar
... Appellant in all the appeals

- Vs -

Suguna Muruganandam ... 1st Respondent in A.No.26 of 2023

R.Kanagalakshmi ... 1st Respondent in A.No.27 of 2023

Guru Ramasamy Gurumoorthy ... 1st Respondent in A.No.28 of 2023
rep. by POA R.Mohan

R. Thilagavathy ... 1st Respondent in A.No.29 of 2023

Jeayam Shelters Pvt. Ltd.,
rep. by its Chairman ... 2nd Respondent in all the appeals

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Prayer: These appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the common order dated 14.12.2022 passed in C.C.P.Nos.11 to 14 of 2021 by the learned Single Member, TNRERA insofar as it relates to the direction to the Appellant to pay a sum of Rs.1,00,000/- for purported violation of Section 3(1) of the RERA Act and to allow the Appeals.

For Appellant (in all the appeals) : Ms.S.P.Arthi

Respondents 1 & 2 (in all the appeals) : No representation

COMMON ORDER

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

1. The 2nd Respondent is the Promoter of a residential apartment project by name "Jeyam Your Dream". The said project is situated at Adambakam Village, Alandur Taluk, Chengelpet District. The 1st Respondent, in all the appeals, are the Allottees of the said project. The 1st Respondent/Allottees and the 2nd Respondent entered into separate Construction Agreements on various dates in the year 2011. They have also paid the cost of construction and the value of UDS to the 2nd Respondent/Promoter on various dates. As per the Construction Agreement, the 2nd Respondent/Promoter agreed to complete the project within a period of 18 months from the date of obtaining the Planning Permission from the CMDA. But due to land acquisition by the

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Government, there was some delay in getting the Planning Permission from the CMDA.

2. It is the case of the Allottees that the project was not commenced even after the expiry of 6 years. The 2nd Respondent/ Promoter, in order to complete the project, engaged the Appellant by entering into a Memorandum of Understanding with the Appellant on 08.08.2017. All the Allottees of the project were also made as parties to the said Memorandum of Understanding. As per the said Memorandum of Understanding, the Appellant was contemplating to take over the project with the co-operation of all the stake holders concerned.

3. It is the case of the Allottees that immediately after signing the Memorandum of Understanding, the Appellant changed the name of the project as "LANCOR AURORA". The Appellant also advertised about the project "LANCOR AURORA" and distributed brochures relating to the project. It is the case of the Allottees that all the Allottees have not signed the said Memorandum of Understanding. As no consensus was reached between the parties concerned, the Appellant was not able to continue with the project.

4. Hence, the Allottees decided to withdraw from the project. They originally filed separate Complaints in C.C.P.Nos.11 to 14 of 2021 before the learned Adjudicating Officer, TNRERA seeking refund of the entire amount paid by them with interest and also for compensation for the mental agony suffered by them. After the judgment of the Hon'ble Supreme Court rendered in Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & others [2021 SCC Online SC 1044], all the

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Complaints were transferred to the file of the learned Single Member, TNRERA for disposal.

5. It is the case of the Appellant that though the Memorandum of Understanding was executed, some of the Allottees, whose names are mentioned in the Agreement, have not come forward to sign the Agreement. According to the Appellant, the said Memorandum of Understanding was never acted upon and that it was a loose arrangement with further formalities to be performed and preconditions to be met. It is the case of the Appellant that the Memorandum of Understanding was not acted upon for want of co-operation from all concerned. According to the learned counsel for the Appellant, the Appellant cannot be termed as a Promoter on the basis of the said Memorandum of Understanding, the terms of which became incapable of execution.

6. Further, it is the case of the Appellant that no newspaper advertisement was issued by the Appellant in respect of the project. According to the Appellant, the brochure was distributed only to the existing Allottees for the purpose of understanding. According to the learned counsel for the Appellant, Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 was not violated by the Appellant. The learned counsel for the Appellant contended that the learned Single Member had imposed penalty of Rs.1,00,000/- in each case, without having any proof of advertisement on record and prayed to set aside the said portion of order passed against the Appellant by allowing all the appeals.

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7. After hearing both sides, the learned Single Member imposed a penalty of Rs.1,00,000/- in each case, for violation of Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 against the Appellant. Aggrieved over the same, the Appellant has filed these Appeals.

8. Heard both sides.

9. The Appellant has filed these Appeals as against the order imposing penalty of Rs.1,00,000/- in each case, for violation of Section 3(1) of the Real Estate (Regulation and Development) Act, 2016. Section 3(1) of the said Act, is extracted below:

> *Section 3(1): No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.*

10. While admitting that the project was not registered with the TNRERA, the learned counsel for the Appellant contended that no newspaper advertisement was issued by the Appellant in respect of the project and that the copy of the alleged newspaper advertisement was not produced and marked as an exhibit. Further, according to the learned counsel, the brochure was distributed only to the existing Allottees for the purpose of understanding. It is pertinent to note that the Appellant in their counter filed before the learned Single Member admitted that they have effected advertisement about the project. But, the only explanation offered by the Appellant was that the

advertisement was effected only for the purpose of calling for any claims and objections from the public.

11. The learned counsel for the Appellant further contended that the copy of such publication was not produced and marked by the Allottees. The Appellant admitted effecting of advertisement, but contended that the advertisement was effected only for the purpose of calling for objections from the Public. The Appellant failed to produce a copy of such publication and mark the same as an exhibit on their side to prove their contention.

12. The 2nd Respondent/Promoter also admitted in their counter filed before the learned Single Member that based on the Memorandum of understanding, the Appellant effected advertisement soliciting purchasers and released brochures dated 27.02.2018 by giving full particulars of the renamed project "LANCOR AURORA".

13. Admittedly, the real estate project was not registered with TNRERA till date. Therefore, issuing advertisement and distributing brochures about an unregistered real estate project is a clear violation of Section 3(1) of the Real Estate (Regulation and Development) Act, 2016. It is an admitted fact that the Appellant, with an intention to take over the real estate project from the 2nd Respondent, entered into the Memorandum of Understanding with the 2nd Respondent/ Promoter. Immediately after entering into the Memorandum of Understanding, the Appellant renamed the project by incorporating their Company name as "LANCOR AURORA" and effected advertisement soliciting purchasers and released brochures about the renamed project. The above acts of the Appellant itself is sufficient to

hold that the Appellant was also a Co-Promoter within the definition of Section 2(zk)(v) of the Real Estate (Regulation and Development) Act, 2016. It is immaterial whether the Memorandum of Understanding dated 08.08.2017 was acted upon or not. It is pertinent to note that the Appellant has not taken any steps to cancel the said Memorandum of Understanding dated 08.08.2017 so far.

14. As per Section 59 of the Real Estate (Regulation and Development) Act, 2016, the TNRERA is empowered to impose penalty for violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016. We find no ground to interfere with the order passed by the learned Single Member, TNRERA imposing penalty against the Appellant. All the appeals are liable to be dismissed.

15. In the result, all the appeals are dismissed. As the Appellant had already deposited a sum of Rs.30,000/- in each case with this Tribunal under Section 43(5) of the Real Estate (Regulation and Development) Act 2016 and the same was remitted to the Government, the Appellant is directed to remit forthwith, the balance penalty amount of Rs.70,000/- in each case, with the learned Single Member, TNRERA. Connected Miscellaneous Applications are closed.

CHAIRPERSON

JUDICIAL MEMBER

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Copy to:

1. Suguna Muruganandam
   No.C-105, Dugar Estate,
   No.89, MTH Road,
   Ambattur, Chennai - 600 053.

2. R.Kanagalakshmi
   Wife of R.Mohan
   No.52, Janalakshmi Nagar,
   Semmandalam, Cuddalore - 607 001.

3. Guru Ramasamy Gurumoorthy
   Son of Ramasamy Kondalroyal,
   rep. by POA R.Mohan,
   No.28B, Type II Quarters, Block 4,
   Neyveli - 607 801.

4. R.Thilagavathy
   Wife of Venkatakrishnan,
   No.27, Janalakshmi Nagar,
   Semmandalam, Cuddalore - 607 001.

5. Jeayam Shelters Pvt. Ltd.,
   rep. by its Chairman,
   No.244, MTH Road,
   Villivakkam, Chennai - 600 049.

6. The learned Single Member, TNRERA.
   (For taking necessary steps to recover the balance penalty amount of Rs.70,000/- in each case as ordered.)

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