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: 25.08.2023

Delivered on: 20.09.2023

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

Appeal No.31 of 2023

M/s Rammiyam Homes
Represented by its Partner
Saravanan.R

... Appellant

- Vs -

1. Yasmin.I.
2. S.Padmini

... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order passed, by the learned Single Member, TNRERA, in C.No.39 of 2022 dated 30.12.2022.

For Appellant : M/s.S.Karthikei Balan & Ms.M.Sree Vishwanthini

For 1st Respondent : Mr. D.G.Hariprasath

2nd Respondent given up in the appeal

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ORDER

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

1. The 1st respondent/complainant is an allottee of a residential project by name "Rammiyam Skanda Villa" at Velacherry, Chennai. The 2nd respondent herein is the owner of two adjacent vacant plots bearing plot Nos.17 and 18. The appellant/promoter and the 2nd respondent/ land owner entered into a Memorandum of Understanding on 27.03.2017 for development of the said residential project. The total extent of the project land is 3811 sq. ft. or 354 sq. m. In the said land 8 residential apartments were constructed. As per the approved plan, there should be 4 car parking and 8 two-wheeler parking. But the appellant/promoter violating the approved plan provided 8 car parking however has not provided any two-wheeler parking.

2. It is the case of the 1st respondent /complainant that there was no co-ordination in parking the cars and two-wheelers among the allottees, which resulted in chaotic parking of both two-wheelers and four-wheelers. Ultimately, it affected the convenient ingress and egress in the ground floor apartment allotted to the 1st respondent/ complainant. Further, it is the case of the 1st respondent/complainant that there is water seepage on the wall. Inspite of this defect in construction being brought to the knowledge of the appellant/promoter, there was no response to rectify the same.

3. The appellant/promoter and the 2nd respondent, though engaged a counsel, have not chosen to file any counter or objections

to the complaint preferred by the 1st respondent/complainant. However, they have submitted their arguments before the learned Single Member, TNRERA.

4. The learned Single Member, TNRERA, after hearing both sides, passed the impugned order on 30.12.2022. The learned Single Member directed the appellant/promoter to allot 4 car parking to the first 4 allottees and to refund the car parking charges actually collected from the remaining 4 allottees. Further, the learned Single Member also imposed a penalty of Rs.1,00,000/- against the appellant/promoter for not registering the project and also directed the appellant/promoter to register the project within 30 days. Further, a penalty of Rs.50,000/- was also imposed upon the appellant/promoter under Section 7(A)(iii) of the Real Estate (Regulation and Development) Act, 2016. The learned Single Member also directed the appellant/promoter to rectify the defects in construction leading to water seepage within 30 days. Aggrieved over the same, the appellant/promoter preferred this appeal before this Tribunal.

5. Heard both sides.

6. The 1st respondent/complainant had produced the copy of the approved plan before the learned Single Member, TNRERA along with the photographs. As per the approved plan, there was only 4 car parking and 8 two-wheeler parking proposed to be provided. The appellant/promoter, violating the approved plan, provided 8 car parking without any two-wheeler parking. Admittedly, the 1st respondent/complainant is an allottee of flat No.1 in the ground floor. The photographs filed by the 1st respondent/complainant before

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TNRERA clearly shows the congestion in the parking area of the apartment. Since two-wheelers are also parked along with the cars, great inconvenience is being caused to the allottees of the ground floor flats to have ingress and egress to their apartment.

7. Inconvenience is being caused to the allottees of the ground floor because of the violation committed by the appellant/ promoter. In order to give relief to the ground floor allottees, the learned Single Member, TNRERA had rightly directed to allot 4 car parking to 4 allottees on the basis of seniority between the allottees in terms of their date of construction agreement and to refund the car parking charges actually collected from the remaining 4 allottees. The learned Single Member, TNRERA also gave liberty to the appellant/promoter to allot 8 two-wheeler parking on the basis of seniority between the allottees in terms of their date of construction agreement.

8. Further, the learned Single Member, TNRERA imposed a penalty of Rs.50,000/- for providing false documents to the allottees under Section 7(A)(iii) of the Real Estate (Regulation and Development) Act, 2016 . As per Section 61 of the said Act, if any promoter contravenes any other provisions of this Act other than that provided under Section 3 or Section 4 or the Rules or Regulations made thereunder, he shall be liable to a penalty which may extend upto 5% of the estimated cost of the real estate project as determined by the Authority. In as much as the appellant/promoter violated the approved plan, the imposition of penalty of Rs.50,000/- by the learned Single Member, TNRERA cannot be held erroneous.

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9. Lastly, the learned Single Member, TNRERA also imposed a penalty of Rs.1,00,000/- against the appellant/promoter for not registering the real estate project with TNRERA as per Section 3 of The Real Estate (Regulation and Development) Act, 2016. Admittedly, there are only 8 apartments constructed over the project land measuring an extent of 3811 sq. ft. or 354 sq. m. as per the approved plan. As per Section 3(2)(a) of the Act, if the area of land proposed to be developed does not exceed 500 sq. m. or the number of apartments proposed to be developed does not exceed 8, inclusive of all phases, the real estate project need not be registered under Section 3(1) of The Real Estate (Regulation and Development) Act, 2016.

10. Here in the case on hand, the area of the land developed was only 354 sq. m. and the apartments constructed were only 8 in numbers. Hence, the real estate project is exempted from registration as per Section 3(2)(a) of the Act. Therefore, the contrary conclusion arrived by the learned Single Member, TNRERA is required to be set aside by allowing this appeal in part. Accordingly, the impugned order of the learned Single Member, TNRERA in so far as the imposition of penalty of Rs.1,00,000/- under Section 3(1) read with Section 59 of the Act is set aside and in other aspects the impugned order of the learned Single Member, TNRERA remains unaltered.

11. In the result,

(i) The appeal is partly allowed and the order of the learned Single Member, TNRERA directing the appellant/promoter to pay a penalty of Rs.1,00,000/- under Section 3 read with Section 59 of the Act is set aside.

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(ii) The penalty amount of Rs.1,00,000/- already deposited by the appellant/promoter under Section 43(5) of the Act is ordered to be refunded to the appellant with interest accrued thereon.

(iii) With regard to the penalty amount of Rs.50,000/- imposed under Section 7(A)(iii) read with Section 61 of the Act and deposited by the appellant/promoter under Section 43(5) of the Act, the Registry is directed to remit the same with accrued interest to the Government forthwith.

Connected Miscellaneous applications pending, if any, are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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