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: 21.02.2024

Delivered on: 06.03.2024

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

Appeal No.37 of 2023
and
M.A.No.186 of 2023

M/s.Hiranandani Realtors Private Limited
rep. by its Manager (Legal)
R.Nagaraj ... Appellant

- Vs -

Hiranandani Amalfi Owners Association
rep. by its Secretary,
Rajesh Mohan ... Respondent

The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the paragraph Nos.34 to 40, 43 to 45, 47 and 49 passed in impugned order dated 21.12.2022 passed in C.No.292 of 2021 on the file of the Tamil Nadu Real Estate Regulatory Authority.

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For Appellant : Mr. G.Vivekanand

For Respondent : Mr. S.R.Raghunathan
for Ms. Vaishali.R

ORDER

The Promoter has filed the above appeal to set aside the paragraph Nos.34 to 40, 43 to 45, 47 and 49 of the impugned order dated 21.12.2022 made in C.No.292 of 2021 on the file of the TNRERA. It would be appropriate to extract those paragraphs, which reads as follows:

> "...
>
> 34. Therefore, this Authority directs the Respondent Promoter to provide copies of documents in this list filed on 25.08.2022 wherever the status of handing over is stated as pending before 28.02.2023 without fail, if not done already.
>
> 35. Clause 2.8 of the Construction Agreement gives the manner of use and handover of corpus fund by the Respondent Promoter. As per this Clause 2.8, the Allottee shall handover Rs.98,500/- to the Respondent Promoter as corpus fund for the Amalfi Building at the time of handing over of the apartment to the Allottee.
>
> 36. It is also stated in this clause that the corpus fund shall be utilized towards major infrastructure in maintenance of this Building and other infrastructure facilities and amenities in the said Complex. The Promoter shall transfer the residual amounts after deducting the expenses incurred, without any interest to the Association of Apartment Owners as and when formed.
>
> 37. As per Clause 2.8(iii) of this Agreement, the Promoter shall be entitled to retain 30% from the Deposit collected herein as a security for the payment of proportionate share of all the outgoing in respect of maintenance and upkeep of all the common areas and facilities including the internal roads and club house till completion of development of said complex. The residual balance of the 30% of the above deposit retained by the Promoter will be handed over to the Apex Association or Federation of Associations only on the completion of the development of the said Complex.

38. Therefore, it is clear that the Complainant Association which is a registered society is the Association of Allottees for this Amalfi Tower maintaining the maintenance of common areas of this Tower from 01.01.2022.

39. Therefore, the Respondent Promoter is bound to transfer 70% of the Corpus fund after deducting the eligible expenses as provided for in of Clause 2.8(iii). Therefore, this Authority directs the Respondent Promoter to do so before 28.02.2023 without fail.

40. The Respondent Promoter shall transfer the balance 30% of the corpus fund to Apex association of individual Tower Associations on completion of development of this entire real estate project.

...

43. As regards the water seepage and structural defects, etc., the Respondent Promoter shall comply with the provisions of Section 14(3) of the Act and the Allottees in this Tower shall bring to the notice of the Promoter any water seepage and structural defects as per Section 14(3) of the Act.

44. Regarding the provision of intercom facility or DID facility, this Authority directs the Respondent Promoter to provide such facilities to the Allottees strictly as per the Construction Agreement. The Construction Agreement provides for intercom facility or DID facility from all apartments to security guards at the main entrance (page No.60 of the Complaint).

45. Therefore, this shall be done before 31.03.2023 without fail.

...

47. While accepting the Respondent Promoter's submission, the Authority directs the Respondent Promoter to ensure full compliance in terms of provision of access to internal roads strictly as per the approved plan.

...

49. With the above findings and directions, this Complaint is disposed of."

2. The brief facts that are relevant for the disposal of the above appeal are as follows: The Appellant is the promoter of a Township model real estate project under the name and style of "House of Hiranandani" (hereinafter referred to as the project) at Egattur, Old Mahabalipuram

Road, Thiruporur Taluk, Chengelpet District. As found from Clause-H of the Construction Agreement, the Appellant/Promoter has already completed Phase-1 comprising of 6 residential towers by name 1. Seawood, 2. Pinewood, 3. Brentwood, 4. Greenwood, 5. Birchwood and 6. Bridgewood and handed over possession to the respective allottees. The Phase-2 comprises of 7 residential towers by name 1. Oceanic, 2. Edina, 3. Bayview, 4. Sinovia, 5. Tiana, 6. Amalfi and 7.Anchorage. The Respondent Association is the Association of allottees/purchasers in the Amalfi Tower. The dispute involved in this case relates to the Amalfi tower alone.

3. The Respondent Association preferred a complaint in C.No.292 of 2021 before the TNRERA. The reliefs sought for in the said complaint are with regard to a) handing over of documents, b) handing over of 70% of corpus fund, c) replacement of Generator, d) carrying out civil repair works, e) providing CCTV cameras, f) providing access road, g) providing car parking as per the approved plan and h) providing visitor's car parking in accordance with the Tamil Nadu Combined Development and Building Rules, 2019.

4. It is the case of the Appellant/Promoter that all relevant documents were handed over to the Respondent Association with due acknowledgment from the Secretary of the Respondent Association, which were already produced before the TNRERA. With regard to the refund of corpus fund, the learned Counsel for the Appellant/Promoter

contended in his written submission that the term "Township corpus fund" was created for the maintenance of the entire Township project which is spread over 120 acres comprising of various common amenities, commercial spaces, school, etc. Further, it is stated that the Appellant/Promoter has an inherent and manifest discretion to decide as to whom they should nominate to receive the balance Township corpus fund. According to the learned Counsel for the Appellant/Promoter, there is no agreement or privity of contract between the Appellant and the Respondent Association for refund of the said corpus fund.

5. With regard to civil repair works, the learned Counsel submitted that no materials were produced by the Respondent Association, except some photographs to prove the water seepage. Therefore, according to the learned Counsel, the appellant need not carry out any civil repair works as directed by the TNRERA.

6. With regard to providing CCTV camera, the learned Counsel for the Appellant contended that the Appellant nowhere agreed to provide CCTV cameras to every apartment. Further, the learned Counsel contended that the Appellant had already provided DID facility for each apartment in the Amalfi Tower. In addition, the Appellant has also provided CCTV coverage for the entire township.

7. With regard to providing direct access road and providing car parking, the learned Counsel for the Appellant submitted that the Appellant has provided car parking, visitor's car parking and road

facilities as per the approved plan. According to the learned Counsel, the Respondent Association did not understand the concept of combined basement of Phase-2 buildings which are interconnected with each other. Therefore, the learned Counsel contended that the order passed by TNRERA is liable to be set aside.

8. After hearing both sides, the TNRERA has issued various directions as prayed for by the Respondent Association vide its order dated 21.12.2022 in C.No.292 of 2021. Aggrieved over the same, the Appellant/Promoter has preferred the above appeal before this Tribunal.

9. Heard both sides.

10. According to the Appellant/Promoter, the total extent of the Township project, namely, "House of Hiranandani" is spread over 120 acres of land and comprised in several Survey Numbers. As per Clause-H of the Construction Agreement dated 20.03.2020, the Appellant/ Promoter already constructed 6 residential towers namely, 1. Seawood, 2. Pinewood, 3. Brentwood, 4. Greenwood, 5. Birchwood and 6. Bridgewood and handed over possession to the respective allottees and was in the process of constructing Phase-2 comprising of 7 towers by name, 1. Oceanic, 2. Edina, 3. Bayview, 4. Sinovia, 5. Tiana, 6. Amalfi and 7. Anchorage.

11. According to the Appellant/Promoter, they have commenced the project even prior to 2012 and started delivery of possession of the apartments since the year 2012, which means that the Appellant/

Promoter had commenced the project much prior to the introduction of Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as Act). But at the same time, the Appellant/Promoter has not completed the project till today. As such, the real estate project is an ongoing project as on date. Therefore, as per Section 3 of the Act, this project should have been registered as a single real estate project under Section 3 of the Act.

12. On the contrary, the Appellant/Promoter, instead of registering the entire project as a single project with TNRERA, very cleverly and with a view to circumvent the provisions of the Act, have registered only 3 residential towers which are in Phase-2 construction, as if those towers are separate and standalone projects. The registration was effected after 01.05.2017 i.e., the date on which Section 3 of the Act came into force. The details of registration in respect of the remaining four residential towers in Phase-2, namely, 1. Oceanic, 2. Edina, 3. Bayview, 4. Sinovia, are not available in the website of the TNRERA. The details of the 3 towers registered with TNRERA are as follows:

S.No.	Name of the residential tower	Registration Number
1	Anchorage	TN/01/Building/102/2017
2	Amalfi	TN/01/Building/104/2017
3	Tiana	TN/01/Building/105/2017

Upon further verification from the website of the TNRERA, it could be seen that during the pendency of the complaint before the TNRERA, the

Appellant/Promoter had registered 2 residential towers in the year 2021, 1 residential tower in the year 2022 and an admin block in the year 2023 in the same real estate project. The details of registration are as under:

S.No.	Name of the residential tower	Registration Number
1	Octavius	TN/01/Building/424/2021
2	Verona	TN/01/Building/425/2021
3	Bay Haven	TN/01/Building/232/2022
4	Gateway House (Admin Block)	TN/01/Building/171/2023

13. Be that as it may, as per Clause 2.8(i) of the Construction Agreement dated 20.03.2020, the Appellant/Promoter admittedly collected a sum of Rs.98,500/- towards "Township corpus fund" from each allottee of the Amalfi tower. The Appellant/Promoter also agreed to transfer the residual amounts, after deducting any expenses incurred, without any interest, to the Association of apartment owners as and when formed. As per Clause 2.8(iii), the Appellant/Promoter shall be entitled to retain 30% from the deposit collected as security for the payment of maintenance charges for the entire Township area including common areas. The residual balance of 30% of the deposit which is retained by the promoter shall be handed over to the Apex Association or Federation of Associations, only on the completion of the development of the said complex. A combined reading of Clause 2.8(i) and Clause 2.8(iii) would make it clear that the Appellant/Promoter is bound to transfer 70% of the

Township corpus fund to the Association of apartment owners on the date on which the Allottees Association was formed.

14. From the written submissions submitted by the learned Counsel for the Appellant/Promoter, it appears that the Respondent Association filed an Execution Petition in E.P.No.23 of 2023 before TNRERA, seeking for recovery of 70% of the corpus fund amounting to Rs.1,23,90,875/- by attaching the property of the Appellant/Promoter. In the written submissions, the Appellant/Promoter had admitted that 70% of the corpus fund comes to Rs.1,23,90,875/-. Further, the learned Counsel for the Appellant/Promoter contended that the execution proceedings initiated in respect of recovery of 70% of corpus fund without seeking to execute the other directions of TNRERA is barred by estoppel. The said contention of the learned Counsel for the Appellant/Promoter with regard to execution proceedings need not be considered as no appeal has been preferred against the execution proceedings.

15. At the time of filing the above appeal, the Appellant/Promoter had deposited a sum of Rs.1,24,91,055/- under Section 43(5) of the Act and the same was deposited in a Nationalized Bank. Further, in the written submissions it has been stated that if this Tribunal directs the Appellant to return the corpus fund to the Respondent Association, the same may be done after taking into consideration the expenditure of Rs.36,11,055/- incurred by the Appellant.

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16. As per Clause 2.8(i) of the Construction Agreement, the Promoter is bound to transfer the residual amounts after deducting any expenditure incurred without interest to the Association of apartment owners as and when formed. The Appellant/Promoter failed to provide the details of expenditure allegedly incurred by them towards maintenance of the Amalfi tower. Hence, the Appellant/Promoter is bound to return the 70% of Township corpus fund.

17. The other contentions raised by the learned Counsel for the Appellant/Promoter that the return of corpus fund does not mean to an individual tower and the Appellant/Promoter has an inherent and manifest discretion to decide as to whom they should nominate to receive the remaining corpus fund are hereby rejected in view of Clause 2.8(i) of the Construction Agreement. Having agreed in the Construction Agreement, the Appellant/Promoter cannot deny the refund of the 70% of corpus fund to the Allottees Association. Subject to the conditions contained in Clause 2.8(iii) of the Construction Agreement, the Appellant/Promoter is entitled to retain the remaining 30% of the corpus fund till the completion of the entire project. The Appellant/Promoter, knowing fully well that it may take several years to complete the entire Township project spread over 120 acres of land, had inserted Clauses 2.8(i) and 2.8(iii) in the Construction Agreement dated 20.03.2020 by which the Appellant/Promoter agreed to refund 70% of the corpus fund to the Association of Allottees of Amalfi tower and to retain the remaining

30% of corpus fund till the completion of the entire Township project. Hence, the Appellant/Promoter cannot now turn around and take a contrary stand.

18. With regard to handing over of documents to the Respondent Association, the learned Counsel for the Appellant/Promoter contended that the Appellant is entitled to develop the real estate project in a phased manner. Further, according to the learned Counsel, the Respondent Association is entitled to demand the documents pertaining to the Amalfi tower alone and not all the documents pertaining to the entire Township project. It is an admitted fact that the members of the Respondent Association are the allottees of the Amalfi residential tower, which forms part of the entire Township project namely, "House of Hiranandani". Further, the 30% of Township corpus fund contributed by the Allottees of Amalfi tower has been retained by the Appellant/Promoter towards the maintenance of entire Township project and other common areas. The Respondent Association, having contributed 30% towards Township corpus fund, are entitled for all the documents pertaining to the entire Township project.

19. As already stated, though the entire Township project commenced before the introduction of the Act, the Appellant/ Promoter ought to have registered the entire Township project as a single project because the same is an ongoing project till date. By no stretch of imagination, it can be said that the Amalfi tower is a standalone project.

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The Appellant/Promoter had themselves admitted in their written submission that the Amalfi tower forms part of the entire Township project. Simply because the Amalfi tower was registered as a standalone project with TNRERA by suppression of facts, it cannot be held as a standalone project.

20. The planning permission originally obtained was often revised for each and every tower. In all the original/revised planning permissions, the same Survey Numbers pertaining to the 120 acres of land have been mentioned. Therefore, the Appellant/Promoter is bound to hand over all the documents pertaining to the entire project to the Respondent Association as the Amalfi tower forms part of the entire Township project.

21. With regard to the issue of civil repair works, the learned Counsel for the Appellant/Promoter contended in his written submission that there was no water seepage in the Amalfi tower and that the issue was raised for the first time in the complaint filed before TNRERA. According to the learned Counsel for the Appellant/Promoter, the Respondent Association have not produced any materials to prove the alleged water seepage except few photographs. The TNRERA, in its order dated 21.12.2022 in C.No.292 of 2021 in paragraph 43 had issued the following directions:

> *"43. As regards the water seepage and structural defects etc. the respondent/promoter shall comply with the provisions of Section 14(3) of the Act and the allottees in this tower shall bring to the*

notice of the promoter any water seepage and structural defects as per Section 14(3) of the Act."

We find no illegality in the directions given by the TNRERA with regard to the civil repair works.

22. With regard to the issue of providing CCTV cameras, no direction has been given by the TNRERA in paragraph No.44 of the order passed by it to provide CCTV camera. The TNRERA has only directed the Appellant/Promoter to provide intercom facility or DID facility as per the Construction Agreement. Therefore, the contention of the Appellant/ Promoter is rejected.

23. With regard to the issue of car parking, the TNRERA in paragraph 48 of the order had directed the Appellant/Promoter to ensure car parking in full compliance as per the plan approved by the Mamallapuram Local Planning Authority. It is needless to say that the Appellant/Promoter is bound to put up construction as per the plan approved by the Planning Authority. Hence, we find no illegality in the said direction given by the TNRERA. The learned Counsel for the Appellant/ Promoter contended that the entire Township project is being developed in a phased manner and the project is still an ongoing project and the Appellant/Promoter is yet to complete the entire Phase-2 towers. It is the case of the Appellant/Promoter that the car parking are being provided at the common basement interconnecting all the Phase-2 buildings (7 towers) including the disputed Amalfi tower. The learned Counsel for the Appellant/Promoter, by referring the project as an

ongoing project as on date, contended in his written submission that the prayer sought to realign the car parking slot is premature and unsustainable. In these circumstances, we concur with the direction given by the TNRERA with regard to the issue of car parking.

24. The learned Counsel for the Appellant/Promoter did not cite any judgment while making his oral submissions. The learned Counsel enclosed the following ten judgments along with the written submission:

(i) The judgment reported in **(2002) 2 Supreme Court Cases 256 [Om Prakash Gupta Vs. Ranbir B.Goyal]** pertains to Rent Control and Eviction proceedings.

(ii) The judgment reported in **(1994) 1 Supreme Court Cases 1 [S.P.Chengalvaraya Naidu (Dead) by Lrs. Vs. Jagannath (Dead) by Lrs. and Others]** relates to judgment or decree obtained by fraud to be treated as nullity.

(iii) The judgment reported in **(2005) 4 Supreme Court Cases 605 [MCD Vs. State of Delhi and another]** relates to Probation of Offenders Act, 1958.

(iv) The judgment reported in **(2009) 5 Supreme Court Cases 713 [Vimal Chand Ghevarchand Jain and others v. Ramakant Eknath Jadoo]** relates to Transfer of Property Act and Civil Procedure Code.

(v) The judgment reported in **(2005) 5 Supreme Court Cases 784 [United India Insurance Co. Ltd. And another Vs. Samir Chandra Chaudhary]** relates to Sections 31 and 58 of the Evidence Act.

(vi) The judgment reported in **(2012) 6 Supreme Court Cases 430 [A.Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and Others]** pertains to Specific Relief Act, Code of Civil Procedure, Property Law, Duty of Courts to discern the truth from pleadings, documents and arguments of parties.

(vii) The judgment reported in **(1994) 1 Supreme Court Cases 502 [Svenska Handelsbanken v. M/s.Indian Charge Chrome and others]** relates to Section 92 proviso 1 of the Evidence Act, Code of Civil Procedure and Sale of Goods Act.

(viii) The judgment reported in **AIR 1984 AP 75 [D.K.V.Prasada Rao and others Vs. The Government of Andhra Pradesh, rep. by its Secretary, Home Department, Secretariat Buildings, A.P. Hyderabad and another]** relates to A.P. Cinemas (Regulation) Act, 1955.

(ix) The judgment reported in **(1969) 2 Supreme Court Cases 289 [Indu Bhushan Bose v. Rama Sundari Debi and another]** relates to the scope of legislation on regulation of house accommodation in cantonment area.

25. On a careful reading of the judgments referred above, it is clear that the facts and circumstances of the case on hand are completely different from the facts and circumstances of those judgments. Hence, the said judgments are not applicable to the case on hand.

26. The learned Counsel for the Appellant has also enclosed the judgment reported in **(2021) 18 Supreme Court Cases 1 [Newtech Promoters & Developers Private Limited Vs. State of Uttar Pradesh and others]** in the written submission, wherein, the Hon'ble Supreme Court dealt with the provisions of the Real Estate (Regulation and Development) Act, 2016 in entirety, including the provisions of Section 43(5) and held that the Promoter, who is challenging the order of the Real Estate Regulatory Authority or Single Member or Adjudicating Officer, must comply with the provisions of Section 43(5) by making the pre-deposit.

27. This is a land-mark judgment ruling the field today. However, the Appellant/Promoter cannot take shelter under any of the findings given by the Hon'ble Supreme Court in the said judgment. Since the facts and circumstances of the case on hand are completely different, the ratio laid down by the Hon'ble Supreme Court in the said judgment is not applicable.

28. On the other hand, the learned Counsel for the Respondent Association in his written submission has raised a new issue with regard to the reduced UDS area to the disadvantage of the Allottees of Amalfi tower. Further, the learned Counsel in his written submission contended that the Appellant/Promoter, in order to circumvent the legal obligations and to evade transfer of exact extent of undivided share, have registered the Amalfi tower as if it was a separate standalone project. According to the learned Counsel, this act of the Appellant/Promoter has resulted to

the disadvantage of the allottees of Amalfi tower. Consequently, the learned Counsel for the Respondent Association sought for a direction against the Appellant/Promoter to execute a Rectification Deed in this regard. This issue was never raised before the TNRERA. Therefore, the relief prayed for by the learned Counsel for the Respondent Association with regard to the UDS, cannot be granted by this Tribunal as it would cause great prejudice to the Appellant/Promoter.

29. In the light of the above discussions, we are of the view that the appeal is devoid of merits and the same is liable to be dismissed. Accordingly, the appeal is dismissed. The Respondent Association is entitled to withdraw the entire amount deposited by the Appellant/ Promoter as per Section 43(5) towards 70% of corpus fund with accrued interest. Connected Miscellaneous application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to

1. The TNRERA.

2. Hiranandani Amalfi Owners Association
   represented by its Secretary Rajesh Mohan,
   Amalfi, 5/63, Old Mahabalipuram Road,
   Egattur, Chennai - 600 130.

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