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: 18.10.2023

Delivered on: 17.11.2023

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

Appeal Nos.44 and 45 of 2023
and
M.A.Nos.175 and 176 of 2023

R. Mangayarkkarasi ... Appellant in A.No.44 of 2023

R.Kokilam ... Appellant in A.No.45 of 2023

- Vs -

M/s.Shanmugam Foundation P. Ltd.
rep. by its Managing Director
A.V.Ramasamy ... Respondent in both Appeals

Prayer: The appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the common order dated 09.02.2023 made in C.C.P.Nos.34 and 35 of 2021 on the file of the learned Single Member, TNRERA and to pass the order as prayed in

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the above said complaints by the Appellants by allowing the above Appeals with costs.

For Appellants : Mr.V.Ayyadurai, Senior Counsel
(in both Appeals) for Mr.TN.Buvaneswaran

For Respondent : Ms.R.Sasikala
(in both Appeals)

COMMON ORDER

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

1. The Appellant in A.No.44 of 2023 is the daughter of the Appellant in A.No.45 of 2023. One Rangasamy Konar, the father of the Appellant in A.No.44 of 2023 (the husband of the Appellant in A.No.45 of 2023) was the original owner of the land measuring one acre (hereinafter referred to as the project land). He died in the year 1999, leaving behind the Appellants herein and one Sivakalai, daughter of Rangasamy Konar through his 1st wife Lakshmi, as his legal heirs. It is the case of the Appellants that the said Rangasamy Konar bequeathed the project land by executing a Registered Will dated 26.04.1993 to and in favour of the Appellants. As per the terms of the Partition Deed dated 25.01.2010, the Appellant in A.No.44 of 2013 was allotted 0.60 cents and the Appellant in A.No.45 of 2023 was allotted 0.40 cents in the project land.

2. Subsequently, on 04.06.2010, the Appellants have entered into separate Joint Development Agreements with the Respondent/Developer for developing the project land into a real estate project. As per the

terms of the said Joint Development Agreements, the Respondent/ Developer has to obtain necessary building plan approvals and construct 21 villas by providing all amenities such as electricity, water, sewage at their own costs within the project land. Out of the 21 completed villas, 6 villas with all amenities shall be allotted to the Appellants jointly (3 + 3 villas) towards their 30% share and the Respondent/Developer shall be allotted the remaining 15 villas towards their 70% share. In order to facilitate the construction of villas, the Appellants have also executed separate Power of Attorney Deeds dated 04.06.2010 in favour of the Respondent/Developer with the power to sell the villas allotted to their share.

3. As per the two Joint Development Agreements dated 04.06.2010, the Respondent/Developer agreed to complete the construction of all the 21 villas within 36 months from the date of the Joint Development Agreements and also agreed to hand over the 6 villas allotted to the share of the Appellants within the said period of 36 months. In case of any default to complete and hand over the villas to the Appellants within the specified time, the Respondent/Developer agreed to compensate the Appellants by paying a sum of Rs.25,000/- per month to each Appellant till handing over of the villas. It is the case of the Appellants that the Respondent/Developer had constructed 15 villas allotted to their share and not even commenced the construction in respect of the remaining 6 villas allotted to the share of the Appellants, despite expiry of 10 years

since the date of execution of the Joint Development Agreements. In spite of several requests made by the Appellants, the Respondent/ Developer failed to construct the 6 villas and hand over the same to the Appellants. Therefore, the Appellants, after issuing notice dated 03.11.2020 through registered post to the Respondent/Developer, cancelled both the Power of Attorney Deeds dated 04.06.2010 by executing Cancellation Deeds dated 04.11.2020.

4. The Appellants filed separate complaints before the learned Adjudicating Officer, TNRERA, claiming compensation of Rs.1,08,00,000/- and Rs.99,00,000/- respectively, towards the cost of construction and completion of the 6 villas (3 + 3) allotted to the share of Appellants with interest. Each Appellant has further claimed damages at the rate of Rs.25,000/- per month from 04.06.2013 till the date of payment with interest. Similarly, the Appellants have also claimed Rs.10,00,000/- each towards compensation for mental agony.

5. On the other hand, it is the common case of the Respondent/ Developer that immediately after the execution of the Joint Development Agreements dated 04.06.2010 and after complying with all the formalities, when the Respondent/Developer was about to commence the project, they had received a legal notice dated 22.12.2011 from one Sivakalai, who claims to be the daughter of Rangasamy Konar, through his 1st wife. According to the Respondent/Developer, the Appellants have suppressed the fact that Rangasamy Konar had a daughter through his 1st

wife, at the time of the execution of the Joint Development Agreements. Following the legal notice, the said Sivakalai filed a Civil Suit for partition in O.S.No.160 of 2012 on the file of the IV Additional District Court, Coimbatore. The Respondent/Developer was also impleaded as one of the defendants in the said suit. By order dated 20.04.2012 in I.A.No.365 of 2012, interim injunction was granted by the IV Additional District Judge restraining the Respondent/Developer from proceeding with the construction work in the project land. Aggrieved by the said order, a Civil Revision Petition was preferred by the Appellants and the Hon'ble High Court granted an order of stay of the operation of the said interim injunction vide order dated 18.06.2012 in C.R.P.(PD) No.2073 of 2012.

6. It is the case of the Respondent/Developer that by the time when the Civil Suit was instituted by Sivakalai in the year 2012, two years period lapsed out of the three years period agreed for completion of the project. The Respondent/Developer submitted that while the litigation was pending, they had completed 11 villas allotted to their share and sold 9 villas and entered into Agreement for Sale in respect of the remaining plots. It is the case of the Respondent/Developer that the Appellants orally instructed the Respondent/Developer not to construct the villas allotted to their share as they apprehended attachment order from the Court.

7. The suit filed by Sivakalai in O.S.No.160 of 2012 was ultimately dismissed on 16.02.2016. Aggrieved over the Judgment and Decree, the

said Sivakalai preferred an appeal in A.S.No.498 of 2017 before the Hon'ble High Court of Madras. In these circumstances, the Power of Attorney Deeds were cancelled by the Appellants. Challenging the cancellation of Power of Attorney Deeds and for other reliefs, the Respondent/Developer preferred a Civil Suit in O.S.No.368 of 2021 on the file of Sub Court, Coimbatore. As a Counterblast, the Appellants have preferred the complaints before the TNRERA seeking compensation. According to the Respondent/Developer, both the appeals are liable to be dismissed.

8. Both the complaints were originally preferred before the learned Adjudicating Officer, TNRERA seeking compensation. Subsequently, the same was transferred to the file of the learned Single Member. After hearing both sides, the learned Single Member, vide common order dated 09.02.2023, dismissed both the complaints under the wrong impression that the complaints have been filed for refund of the advance amount paid by the Appellants. The learned Single Member also imposed a penalty of Rs.1,00,000/- against each Appellant for not disclosing the details of civil litigations in the Complaint. Aggrieved over the same, the Appellants have preferred the present appeals before this Tribunal.

9. Heard both sides.

10. The Appellants have filed Miscellaneous Applications in M.A.No.175 of 2023 in A.No.44 of 2023 and M.A.No.176 of 2023 in A.No.45 of 2023 under Order 41 Rule 27 of CPC to receive additional documents.

The additional documents sought to be filed are Will dated 26.04.1993 executed by the father of the Appellant in A.No.44 of 2023 (the husband of the Appellant in A.No.45 of 2023) to and in favour of the Appellants, the copies of plaint, written statement, reply statement, judgment and decree passed in O.S.No.160 of 2012 on the file of the IV Additional District Court, Coimbatore and the Memorandum of Grounds of Appeal and judgment in A.S.No.498 of 2017 on the file of the Hon'ble High Court, Madras. All these Court proceedings were admitted by the Respondent/ Developer. The learned counsel for the Respondent has no serious objection for receiving the additional documents. In the interest of justice, M.A.No.175 of 2023 in A.No.44 of 2023 and M.A.No.176 of 2023 in A.No.45 of 2023 are allowed and the additional documents are marked as Exs.A10 to A17 in both the appeals.

11. There is no dispute between the parties as to the terms of the Joint Development Agreements. Admittedly, the Respondent/Developer failed to construct the 6 villas allotted to the share of the Appellants till date. According to the Respondent/Developer, because of the pendency of the Civil Suit for partition and the Appeal suit instituted by one Sivakalai, they were not able to complete the project as per the Joint Development Agreements. As rightly contended by the learned counsel for the Appellants, the interim injunction granted by the IV Additional District Judge in I.A.No.365 of 2012 in O.S.No.160 of 2012 restraining the Respondent/Developer from putting up any construction was in force for

just 2 months period (i.e.) from 20.04.2012, the date on which the IV Additional District Court granted the interim injunction to 18.06.2012, the date on which the Hon'ble High Court granted an order of stay of the operation of the interim injunction. Therefore, the reason stated by the Respondent/Developer for not completing the project as per the terms of the Joint Development Agreements cannot be accepted. The delay of more than 10 years cannot be brushed aside.

12. It is pertinent to note that during the pendency of the Civil Suit and the Appeal Suit, the Respondent/Developer had constructed 11 villas out of 15 villas that fell to their share. Moreover, out of the 11 villas so constructed, the Respondent/Developer was able to sell 9 villas and entered into an Agreement for Sale for the remaining plots by using the Power of Attorney deed executed by the Appellants. When the Respondent/Developer was able to construct 11 villas and sell 9 villas out of 15 villas allotted to their share, they cannot be allowed to take shelter by citing the civil litigations when it comes to the construction of 6 villas allotted to the share of the Appellants. Admittedly, the construction of 6 villas was not even commenced till date. It is unjust and unfair on the part of the Respondent/Developer to plead that they were not able to construct the 6 villas allotted to the share of the Appellants because of the litigations pending before the Court.

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13. Admittedly, the Appellants are the owners of the project land. The Respondent/Developer was invited to develop the land in terms of the Joint Development Agreements and nothing more. As admitted by the Respondent/Developer themselves in their counter filed in C.C.P.Nos.34 and 35 of 2021, the Appellants reposed faith upon the Respondent/ Developer and executed the Power of Attorney Deeds and the Joint Development Agreements. But, the Respondent/Developer failed to honor their promise and has not constructed even a single villa out of the 6 villas that fell to the share of the Appellants. On the other hand, as admitted by the Respondent/Developer in paragraph No.12 of their counter filed in C.C.P.Nos.34 and 35 of 2021, they had constructed 11 villas out of 15 villas that fell to their share and already sold 9 villas and have also entered into Agreement for Sale in respect of the remaining plots.

14. Therefore, it is crystal clear that the Respondent/Developer had intentionally violated the terms of the Joint Development Agreements with a view to enrich them in an unjustifiable manner on the strength of the Power of Attorney Deeds dated 04.06.2010 executed by the Appellants. The act of the Respondent/Developer amounts to unfair trade practice within the meaning of Section 7(1)(c) of the Real Estate (Regulation and Development) Act, 2016.

15. It is not the case of the Respondent/Developer that the Appellants gave their land as charity or as gift to them.

16. Further, the Appellant in A.No.44 of 2023 has claimed a compensation of Rs.1,08,00,000/- and the Appellant in A.No.45 of 2023 has claimed a compensation of Rs.99,00,000/- towards the cost of construction and completion of the respective 3 villas allotted to their share along with interest. The Appellants, independently, have claimed damages at the rate of Rs.25,000/- per month from 04.06.2013 till date of payment with interest. The Appellants also claimed Rs.10,00,000/- each, towards compensation for mental agony. In this regard, the Respondent/Developer has not raised any objection in their counter filed in C.C.P.Nos.34 and 35 of 2021 before the learned Single Member. In support of their claim, the Appellants have produced the Certificate issued by a Civil Engineer dated 01.12.2020 along with detailed report. The Respondent/Developer has not disputed the report of the Civil Engineer, either in the counter filed before the learned Single Member or by filing objections. Hence, the same can be accepted as such for the purpose of arriving at the cost of construction of the 6 villas that fell to the share of the Appellants, which are yet to be constructed.

17. Accordingly, the Respondent/Developer is liable to pay a sum of Rs.1,08,00,000/- to the Appellant in A.No.44 of 2023 and Rs.99,00,000/- to the Appellant in A.No.45 of 2023, towards the cost of construction as per the report of the Civil Engineer dated 01.12.2020 along with interest at 9.25% p.a from the date of the complaint till date

of payment. Further, the Respondent/Developer is also liable to pay Rs.25,000/- per month to each of the Appellant from 04.06.2013 till date of payment towards loss and damages as per the Clause 17 of the Joint Development Agreements dated 04.06.2010. In addition to the above, the Respondent/Developer is also liable to pay a sum of Rs.1,00,000/- to each of the Appellant towards compensation for mental agony.

18. For the reasons stated above, each Appellant is entitled to get refund of the 30% of penalty amount of Rs.30,000/- deposited by them as per Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 and remitted to Government as per Rule 28(2) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017.

19. In the result, the Appeals are allowed with the following directions:

i. The common order passed by the learned Single Member, TNRERA in C.C.P.Nos.34 and 35 of 2021 dated 09.02.2023 is set aside.

ii. The Respondent/Developer is directed to pay a sum of Rs.1,08,00,000/- to the Appellant in A.No.44 of 2023 towards the cost of construction along with interest at 9.25% p.a from the date of the complaint till date of payment.

iii. The Respondent/Developer is directed to pay a sum of Rs.99,00,000/- to the Appellant in A.No.45 of 2023 towards

the cost of construction along with interest at 9.25% p.a from the date of the complaint till date of payment.

iv. The Respondent/Developer is directed to pay a sum of Rs.25,000/- per month to each of the Appellant from 04.06.2013 till date of payment towards loss and damages as per the Clause 17 of the Joint Development Agreements dated 04.06.2010.

v. The Respondent/Developer is also liable to pay a sum of Rs.1,00,000/- to each of the Appellant towards compensation for mental agony.

vi. Each Appellant is entitled to get refund of the 30% of penalty amount of Rs.30,000/- deposited by them as per Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 and remitted to Government as per Rule 28(2) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to:

1. M/s.Shanmugam Foundation P. Ltd.,
   rep. by its Managing Director
   A.V.Ramasamy
   No.43/19, Park Avenue,
   Corporation Colony,
   Arcot Road, Kodambakkam,
   Chennai - 600 024.

2. The Single Member, TNRERA.

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