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 No.47 of 2023

M/s. Prathiksha Properties
A Partnership Firm represented by its partner
K.S.Ramakrishnan ... Appellant

- Vs -

Kotteeswari ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 12.10.2022 passed by the Tamil Nadu Real Estate Regulatory Authority in C.No.1 of 2022.

For Appellant : Mr. K.Vasanthanayagan

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ORDER

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

1. The respondent/Complainant is an allottee of two apartments in the real estate project namely "Prathiksha Attius" situated at Vilankurichi Village, Ganapathy, Coimbatore. The appellant is the promoter of the said real estate project. Both the appellant/Promoter and the respondent/allottee entered into a registered Construction Agreement on 15.06.2017. As per the said Construction Agreement, flat No.C-1 was allotted to the respondent/allottee. The cost of construction was fixed at Rs.55,14,609/-. On the same day, the appellant/promoter executed a registered Sale Deed in respect of the undivided share of land for a sum of Rs.3,18,900/-. As per the Construction Agreement, the appellant/promoter agreed to hand over possession within 18 months from the date of the Agreement. As the appellant/promoter failed to hand over the apartment, the respondent/allottee preferred a complaint in C.No.481/2019 before the TNRERA. When the matter was pending for enquiry, the parties themselves amicably settled the dispute and the appellant/promoter agreed to hand over the property before August 2020. As such, said complaint was disposed of as withdrawn.

2. Subsequently, the respondent/allottee came forward to purchase another apartment in the same real estate project. Both the appellant/promoter and the respondent/allottee entered into a registered Construction Agreement on 05.03.2020. As per the said Construction Agreement, flat No.A-2 was allotted to the

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respondent/allottee. The cost of construction was fixed at Rs.58,29,825/-. On the same day, the appellant/promoter executed a registered Sale Deed in respect of the undivided share of land for a sum of Rs.2,82,800/-.

3. It is the case of the appellant/promoter that in respect of flat No.C-1, the respondent/allottee paid a sum of Rs.55,80,969/- towards the total cost of construction and other expenses and the respondent/allottee is yet to pay a sum of Rs.9,77,166/-. Likewise, in respect of flat No.A-2, the respondent/allottee paid a sum of Rs.60,75,000/- towards the total cost of construction and other expenses and yet to pay a sum of Rs.7,30,733/- as balance. In all, the respondent/allottee is still liable to pay a sum of Rs.17,07,899/- to the appellant/promoter in respect of both the apartments.

4. Demanding the said amount, the appellant/promoter issued two separate legal notices dated 27.01.2022. Immediately, the respondent/allottee preferred the present complaint in C.No.1/2022 before the TNRERA, demanding handing over of possession of the apartments. The appellant/promoter submitted that they are ready to complete the work and hand over possession of the property after the respondent/allottee paying the entire amount due.

5. The appellant/promoter also contended that as per Section 3(2)(a) of the Real Estate (Regulation and Development) Act, 2016, the project is exempted from registration as the total extent of the project land is 442.78 sq. m. and 8 apartments were constructed and that the TNRERA has no jurisdiction to decide the complaint.

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6. The TNRERA, after hearing both sides, has passed the impugned order directing the appellant/promoter to hand over the two apartments on or before 31.12.2022 after receiving the balance construction costs, if any, payable by the respondent/allottee. Aggrieved over the same, the appellant/promoter has preferred this appeal before this Tribunal.

7. Heard the learned counsel for the appellant.

8. It is contended by the learned counsel for the appellant/promoter that the respondent/allottee is still liable to pay a balance amount of Rs.17,07,899/- in respect of both the apartments and that the TNRERA instead of directing the respondent/allottee to pay the said balance amount, directed the appellant/promoter to hand over possession of the two apartments on or before 31.12.2022. In so far as the flat No.C-1 is concerned, the total cost of construction was fixed at Rs.55,14,609/- inclusive of three phase electricity connection. But in the legal notice issued by the appellant/promoter and in the counter filed by the appellant/promoter before the TNRERA, the appellant/promoter had stated that the total cost of construction was fixed at Rs.65,58,135/- without any details for the difference in the amount stated. Further, in the same legal notice the appellant/promoter admitted that the respondent/allottee paid a sum of Rs.55,80,969/-. As per the construction agreement dated 15.06.2017, the respondent/allottee have to pay only a sum of Rs.55,14,609/- towards cost of construction. If calculated, the respondent/allottee have paid a sum of Rs.66,360/- over and above the amount mentioned in the construction agreement.

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9. Likewise, in respect of flat No.A-2, the total cost of construction was fixed at Rs.58,29,825/- inclusive of three phase connection. But in the legal notice issued by the appellant/promoter and in the counter filed by the appellant/promoter before the TNRERA, the appellant/promoter had stated that the total cost of construction was fixed at Rs. 68,05,733/- without any details for the difference in the amount stated. Further, in the same legal notice the appellant/promoter admitted that the respondent/allottee paid a sum of Rs.60,75,000/-. As per the construction agreement dated 15.06.2017, the respondent/allottee have to pay only a sum of Rs.58,29,825/- towards cost of construction. If calculated, the respondent/allottee have paid a sum of Rs.2,45,175/- over and above the amount mentioned in the construction agreement. In these circumstances, the demand of Rs.17,07,899/- by the appellant/promoter, without furnishing any details cannot be accepted. Hence, the appellant/promoter is bound to hand over possession of the two apartments without demanding any further amount from the respondent/allottee within a period of one month from the date of this order.

10. Further, the learned counsel for the appellant/promoter contended that in view of section 3(2)(a) of the Real Estate (Regulation and Development) Act, 2016, the real estate project was exempted from registration, as there are only 8 apartments constructed within 442.78 sq.m. The learned counsel for the appellant/promoter also contended that once the project is exempted from registration, the TNRERA does not have jurisdiction to decide any

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complaint. The registration of real estate project is different from filing of complaint under Section 31 of the Act. An allottee of a real estate project, which is exempted from registration under Section 3(2)(a) of the Real Estate (Regulation and Development) Act, 2016, can very well prefer a complaint under Section 31 of the said Act for other reliefs. There is no bar for preferring such complaints. Therefore, the contention raised by the learned counsel for the appellant/promoter in this regard is rejected.

11. In the result, the appeal is dismissed at the admission stage itself. The appellant/promoter is directed to hand over the possession of the two apartments within a period of one month from the date of this order. Connected Miscellaneous Applications pending, if any, are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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