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: 13.10.2023

Delivered on: 03.11.2023

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

Appeal No.54 of 2023

Vrikshaa Vassees Welfare Association
represented by its President, K.A. Thangavelu ... Appellant

- Vs -

Dhanaas Property Developers
rep. by its Proprietrix, V.Manimuthu ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016

i. To set aside the impugned order dated 08.12.2022 passed by the Tamil Nadu Real Estate Regulatory Authority in E.P.No.15/2021 to the extent that it contravenes the final order dated 09.01.2020 passed in C.No.326/2019;

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ii. To order and direct the Respondent to get the revised layout approval from the Coimbatore Local Planning Authority/DTCP clearly specifying the sites for Swimming Pool, Shuttle court, Jogging Track, Children Play Area, Private Garden, Gym and Multipurpose Hall and to apply for a separate registration of the Project with TNRERA as a residential villa project with various common amenities;

iii. To order and direct the Singanallur SRO, Coimbatore to cancel the Sale Deed No.1/399/2021 dated 12.01.2021 and any subsequent Sale Deed(s) executed pursuant to the said Sale Deed, through which the Respondent has illegally sold/disposed of the Schedule-A plots earmarked for Swimming Pool and shuttle court in the project;

iv. To order and direct the Singanallur SRO, Coimbatore to cancel the Sale Deed No.1/2021/2021 dated 12.02.2021 and any subsequent Sale Deed(s) executed pursuant to the said Sale Deed, through which the Respondent has disposed of the Schedule-B plots without obtaining revised plan approvals from the Coimbatore Local Planning Authority/DTCP and without re-registering the Project with the Authority.

v. To order and direct the Singanallur SRO, Coimbatore to cancel the Sale Deed No.1/2231/2021 dated 16.02.2021 and any subsequent Sale Deed(s) executed pursuant to the aforesaid Sale Deeds, through which the Respondent has disposed of the Schedule-C plots without obtaining revised plan approvals from the Coimbatore Local Planning Authority/DTCP and without re-registering the Project with the Authority.

vi. To grant an order of permanent injunction restraining the Singanallur SRO, Coimbatore from registering any land in the Project by the Respondent to any third party without obtaining the revised layout approval from the Coimbatore Local Planning

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Authority/DTCP after clearly specifying the sites for common amenities and without re-registering the project with the Authority.

vii. To order and direct the Respondent to transfer the Schedule-A land, which land has been earmarked for construction of Swimming Pool and shuttle court to the Execution Petitioner in terms of Section 11(4)(f) of the Real Estate (Regulation and Development) Act, 2016.

For Appellant : Mr.Pavan Kumar Gandhi

For Respondent : Mr.T.Sai Krishnan

ORDER

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

1. The Respondent/Promoter promoted a layout project and registered the project with TNRERA vide Registration No.TN/11/Layout/0212/2019 dated 11.12.2019. The Appellant is the Association of Allottees of the said real estate project. The Appellant/Association of Allottees preferred a complaint against the Respondent/Promoter before TNRERA in C.No.326/2019. The said complaint was filed seeking directions to provide certain amenities such as Swimming Pool, Gym, Multipurpose Hall, Jogging Track, Children Play Area. After enquiry, the TNRERA, by its order dated 09.01.2020, directed the Respondent/Promoter to provide the above said amenities on or before 30.06.2020.

2. The TNRERA, based on the oral and documentary evidences produced during the course of enquiry, ultimately found that the said project was a residential villa project and not a mere layout project as claimed by the Respondent/Promoter. As such, the TNRERA also directed the Respondent/Promoter to apply for separate registration of the project as a residential villa project after obtaining a revised approval from the competent planning authority for the common amenities to be provided in the project.

3. It is the case of the Appellant/Association that since the Respondent/Promoter failed to comply with the directions issued by TNRERA, vide order in C.No.326/2019 dated 09.01.2020, they had preferred an Execution Petition in E.P.No.15/2021 in C.No.326/2019. In the said execution petition, the Appellant/Association, in addition to the prayer seeking to impose penalties under Sections 59(1), 61, 63 and 64 of the Real Estate (Regulation and Development) Act, 2016, had also sought for directions to the Singanallur SRO, Coimbatore to set aside the three sale transactions of the year 2021, by which the Respondent/Promoter allegedly sold certain plots to third parties without complying with the directions of the TNRERA.

4. It is the case of the Respondent/Promoter that the Jogging Track, Children Play Area and Private Garden were already provided and that a status report was also filed before the TNRERA during the course of enquiry in the Execution Proceedings. According to the Respondent/

Promoter, though the Appellant/Association seek for a direction to provide a Swimming Pool, most of the Allottees do not support provision of Swimming Pool in view of water scarcity in that area. Instead, they seek provision of Gym and Multipurpose Hall. According to the Respondent/Promoter, the Allottees, who do not want the Swimming Pool, have given consent letters in this regard. As no consensus could be arrived in this regard, providing Gym and Multipurpose Hall is getting delayed.

5. After hearing both sides in the said Execution Petition, the TNRERA had reiterated its earlier directions made in C.No.326/2019 dated 09.01.2020 with regard to Swimming Pool, Gym and Multipurpose Hall and granted time till 31.03.2023 for providing the same, after obtaining necessary approval for the Swimming Pool. In respect of non-compliance of other directions, the TNRERA had imposed a penalty of Rs.2000/- per day, till the compliance of the order, which shall not, cumulatively, exceed Rs.5,00,000/-. With regard to the prayer seeking for directions to the Singanallur SRO, Coimbatore to set aside the 3 sale transactions, the TNRERA declined to issue any direction finding that no illegal sale had taken place and that by those Sale Deeds, only some plots in the approved layout have been sold away. Not satisfied with the order passed by the TNRERA in the Execution Petition, the Appellant/ Association have preferred the above Appeal before this Tribunal.

6. Heard both sides.

7. In the Appeal Memorandum, the Appellant/Association sought for a direction against the Respondent/Promoter to get a revised layout approval by earmarking the sites for Swimming Pool, Shuttle Court, Jogging Track, Children Play Area, Private Garden, Gym and Multipurpose Hall and to direct the Respondent/Promoter to apply for separate registration of the project as a residential villa project. In this regard, the TNRERA had already issued necessary directions, vide it's order in C.No.326/2019 dated 09.01.2020 and the same was affirmed by this Tribunal in A.No.44/2020 dated 09.11.2020. Now, in the execution proceedings the TNRERA, had imposed a cumulative penalty of Rs.5,00,000/- under Section 59(1) of the Act in view of the non-compliance of it's directions. In these circumstances, it will be unnecessary to issue the same directions once again. It is pertinent to note that the Respondent/Promoter against whom cumulative penalty of Rs.5,00,000/- had been imposed did not prefer any appeal before this Tribunal.

8. Further, in the execution proceedings, the Appellant/ Association approached the TNRERA to issue new directions to the Singanallur SRO, Coimbatore, to set aside the 3 Sale Deeds dated 12.01.2021, 12.02.2021 and 16.02.2021. In this regard, the TNRERA had refused to issue such directions. By execution of those Sale Deeds, only some plots in the approved layout have been sold and no illegal sale transaction had taken place. No such new directions can be issued now in

this appeal, as the present appeal has been preferred against the order passed by the TNRERA in the execution proceedings. That apart, no such directions can be issued by this Tribunal as the same is beyond the scope and purview of the Real Estate (Regulation and Development) Act, 2016.

9. In such circumstances, the prayer of the Appellant/ Association of Allottees is rejected. So also, the new prayer with regard to granting of Permanent Injunction restraining the Singanallur SRO, Coimbatore from registering any Sale Deeds arising from the said real estate project is also beyond the scope of the Real Estate (Regulation and Development) Act, 2016 and the same is also rejected.

10. The prayer sought for by the Appellant/Association with regard to transfer of Schedule-A land, which was earmarked for construction of Swimming Pool and Shuttle Court, for the Execution Petitioner in terms of Section 11(4)(f) of the Real Estate (Regulation and Development) Act, 2016 is concerned, no such directions can be issued unless and until a revised plan approval from the competent planning Authority is obtained by clearly earmarking the locations for providing Swimming Pool and Shuttle Court in the layout, as directed by the TNRERA in it's order in C.No. 326 of 2019 dated 09.01.2020 and as confirmed by this Tribunal in the order passed in A.No.44/2020 dated 09.11.2020.

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11. In these circumstances, this Tribunal finds no ground to interfere with the order passed by the TNRERA in E.P.No.15/2021 dated 08.12.2022 and the appeal is liable to be dismissed.

12. Accordingly, the appeal is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to:

1. Dhanaas Property Developers
   rep. by its Proprietrix, V.Manimuthu
   200/1, Dhanalaya, KPR Layout,
   Singanallur, Coimbatore - 641 005.

2. The TNRERA.

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