**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 No.60 of 2023**
**and**
**M.A.No.189 of 2023**

M/s.Colorhome Developers Private Limited,
Represented by its Managing Director,
D. Ramesh, Presently,
rep. by its Authorized Signatory,
V.Durairaj ... Appellant

- Vs -

M/s.Kanchipattinam Villa Owners Association Karai,
rep. by its Secretary, D.Saravanan ... Respondent

**Prayer:** The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the impugned order dated 02.03.2023 passed in C.No.66 of 2022 by TNRERA and consequently to dismiss the complaint.

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For Appellant : Ms.Divya Bharthi.AB
for Mr.Ralph.V.Manohar

For Respondent : Mr.L.Senthil Kumar

**ORDER**

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

1. The Respondent Association filed a complaint before TNRERA seeking for a direction to register the project and to complete all the pending works, including all the amenities as per the Construction Agreement and as per the brochure.

2. On the other hand, the Appellant contended that the real estate project namely "KANCHIPATTINAM" situated in Karai Village, Kanchipuram Taluk, is a layout project and not a villa project. According to the learned counsel for the Appellant, the land for the roads and for Open Space Reservation (OSR) was handed over to the local body vide a registered Gift Deed dated 16.06.2014. Therefore, as per Rule 2(h)(i) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, the project is exempted from registration with TNRERA. It is the case of the Appellant that they were constructing the villas only in the capacity as a Builder and not as a Promoter.

3. The Appellant contended that the Allottees have no absolute right over the club house having facilities like gym, swimming pool, indoor games, badminton court and community hall, super market and play school as they were excluded in the Construction Agreement.

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According to the learned Counsel for the Appellant, these amenities can be enjoyed by the plot purchasers only on membership basis by paying membership fees as may be fixed by the Appellant or by their assignee.

4. It is the specific case of the Appellant that the club house, community hall, super market and play school could not be completed as no prospective purchasers have come forward to invest in constructing the buildings for the club house, community hall, super market and play school. Once prospective purchasers are identified to invest in the construction of buildings required for providing the said amenities, the allottees will be permitted to use the facilities, on payment of necessary charges. According to the learned counsel for the Appellant, all these aspects were clearly mentioned in Clause 6.3 of the Construction Agreement. Hence, the learned counsel for the Appellant prayed for allowing this appeal.

5. The TNRERA, after hearing both sides, issued various directions to the Appellant, vide its order dated 02.03.2023 made in C.No.66 of 2022. Aggrieved over the same, the Appellant has preferred the present appeal before this Tribunal.

6. Heard both sides.

7. The Appellant admitted that they have developed the layout project after getting necessary approval from the DTCP in the year 2010. Following the said approval, the land for laying the roads and for OSR was gifted to the local body vide a registered Gift Deed dated 16.06.2014. As per the DTCP approval, 263 plots were proposed to be developed. The Appellant also admitted that they have been

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constructing villas for those purchasers of plots, who, out of their own will and volition, came forward to construct residential villas in the project by engaging the services of the Appellant, by entering into Construction Agreement.

8. The Appellant entered into Agreements for Sale with the purchasers of plots. A copy of one such Agreement for Sale was enclosed along with the typed set of papers filed by the Appellant. On a perusal of the said Agreement for Sale, it could be seen that there is a Clause in the Agreement which restricts the rights of the purchaser of a plot from engaging any other builder, except the Appellant for a period of 3 years from the date of execution of the Sale Deed. The said Clause contained in the Agreement for Sale is extracted hereunder:

> "Whereas, the purchaser undertake to enter into a separate MOU/Construction Agreement with the developer or with the party recommended by the developer to construct a residential house in the Schedule B mentioned property. The purchaser also undertake to not to enter into any type of agreement/s with any other third parties to build residential house in the Schedule B mentioned property within 3 years from the date of execution of Sale Deed in favour of the purchaser."

In the Clause extracted above, the term 'Developer' denotes the Appellant herein. By including such a Clause in the Agreement for Sale, the Appellant prevents the purchaser of a plot for a period of 3 years, from engaging any other Builder, except them to build a residential

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house in the said plot. This clearly establishes the real intention of the Appellant to develop a villa project by themselves. In that case, the Appellant ought to have obtained DTCP approval for a villa project instead of a layout project. The Appellant cannot be allowed to develop a villa project by getting DTCP approval for a layout project.

9. Further, according to the learned counsel for the Appellant, they cease to be the Promoter of the layout project from 16.06.2014, the date on which the Gift Deed was executed in favour of the local body in respect of the roads and OSR area. Further according to the learned counsel for the Appellant, they have been constructing villas within the project land, not in the capacity as a "Promoter", but only as a "Builder".The term "Promoter" defined under Section 2(zk)(v) of the Real Estate (Regulation and Development) Act, 2016, is extracted hereunder:

> *"2(zk)(v): any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale;"*

As per the definition extracted above, any person who acts himself as a Builder is also a Promoter of a real estate project. Therefore, the contention of the learned counsel for the Appellant that the real estate project was a layout project and that the Appellant was only a Builder and not a Promoter, is liable to be rejected.

10. Secondly, as per Clause 17 of the Construction Agreement, the Appellant agreed to provide various amenities listed out therein. Even

in the brochure published by them, the Appellant had promised to construct a club house measuring 20,000 sq. ft. with all facilities like gym, swimming pool, indoor games, badminton court. The Appellant themselves have admitted in paragraph No.13 of their counter that the club house, community hall, school, super market and other amenities listed in Clause 17 (Serial Nos. 1 to 4) are not yet constructed as no prospective purchasers have come forward to invest in the construction of the necessary buildings so as to provide those amenities.There is no specific mention in the brochure that the allottees of plots can enjoy the club house facilities only on membership/payment basis.

11. Further, the project is a gated community project. As per the Construction Agreement, in Clause 17, the Appellant had agreed to provide outer compound wall with appropriate gates with 24 x 7 hi-tech security. Admittedly, these amenities were also not provided so far. Most of the amenities promised to be provided within the project land are not provided so far by the Appellant. Therefore, the villa project promoted as layout project by the Appellant by getting DTCP approval for a layout project, necessarily has to be registered with the TNRERA as the project is an ongoing project. The fact that the club house and community hall facilities are to be provided only on membership basis will not in any manner alter the nature of the project as an ongoing villa project. Since the Appellant admitted that the assured amenities are not provided so far, the project should be termed as an ongoing project and required to be registered with TNRERA.

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12. The Appellant has filed the Miscellaneous Application in M.A.No.189 of 2023 under Order 41 Rule 27 CPC to receive the photographs as additional documents.

13. The Respondent Association filed their counter and opposed the application stating that the photographs shall not be useful in any manner for the effective adjudication of the matter.

14. As rightly contended by the Respondent Association, mere production of the photographs shall not be helpful for deciding the appeal. That apart, the Appellant has not given any acceptable reason for not producing the document at the earliest point of time (i.e.) before the TNRERA. Without adducing corroborative evidence, the photographs cannot be accepted as Exhibits in the appeal. In such view of the matter, we are not inclined to receive the photographs as additional document and the application in M.A.No.189 of 2023 is liable to be dismissed.

15. In these circumstances, we find no ground to interfere with the order passed in C.No.66 of 2022 on the file of the TNRERA. Hence, the appeal is liable to be dismissed.

16. In the result, the appeal is dismissed. The application in M.A.No.189 of 2023 is also dismissed.

**Sd/- xxxx**
**CHAIRPERSON**

**Sd/- xxxx**
**JUDICIAL MEMBER**

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Copy to:

1. M/s.Kanchipattinam Villa Owners Association,
   rep. by its Secretary, D.Saravanan
   No.124B, Kanchipattinam,
   Color Homes, Karai Village,
   Kanchipuram, - 631 552.

2. The TNRERA
   Chennai.

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