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 : 16.10.2023

Delivered on : 08.11.2023

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

Appeal No.61 of 2023
and
M.A.Nos.183, 184 & 204 of 2023

Shankar Karikar
Proprietor of M/s.Cornerstone Builders
represented by his Power Agent, A.Rajkumar ... Appellant

- Vs -

Victoria Flat Owners' Welfare Association,
represented by its President. ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside Impugned Order dated 13.03.2023 passed in Complaint No. 6/1/PRERA/COMP/Pdy/2022/5 on the file of Puducherry Real Estate Regulatory Authority, Puducherry.

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For Appellant : Mr.Arun Karthik Mohan

For Respondent : Ms.Niveda.C.P.

ORDER

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

1. The Appellant is the Promoter and the Respondent is the Allottees' Association in respect of the real estate project by name "Victoria Court" situated at Karuvadikuppam, Revenue Village, Puducherry. The Appellant/Promoter and the land owner V.K.Prakash entered into a Joint Venture Agreement in respect of the real estate project. The Appellant, as the Builder and the said V.K.Prakash, as the land owner, are the joint Promoters of the said real estate project. The Respondent Association filed a complaint before Puducherry RERA seeking directions against the Appellant/Promoter with a prayer to provide certain amenities such as Swimming Pool, Gym, Municipal water as stated in the brochure, to pay monthly maintenance for the unsold flats and to hand over all the original documents, etc.

2. The Appellant/Promoter contested the complaint by filing his counter. It is the case of the Appellant/Promoter that the project was completed as per the plan approved by the Puducherry Planning Authority without any deviation. In the approved plan, no Swimming Pool was

earmarked. Therefore, the Appellant/Promoter cannot provide a Swimming Pool violating the approved plan.

3. It is the further case of the Appellant/Promoter that the sewage water tank has been built as per the specifications provided and approved by the Puducherry Planning Authority and there is no municipal sewer for that location. The Appellant/Promoter contended that they have been paying the monthly maintenance for the unsold flats to the Respondent Association as fixed by the Respondent Association from time to time. Contrary to the findings of the Puducherry RERA, it is the specific case of the Appellant/Promoter that they have obtained Occupancy Certificate from Puducherry Planning Authority on 14.05.2019. As there is no dispute between the parties with regard to the Occupancy Certificate, the Appellant/Promoter had no occasion to plead or mention about the Occupancy Certificate dated 14.05.2019 in the counter statement filed before the Puducherry RERA.

4. It is the case of the Appellant/Promoter that no opportunity of hearing was given to the parties, except to submit their pleadings at the office of the Puducherry RERA. The learned Counsel for the Appellant/ Promoter contended that the Puducherry RERA, without giving any audience to the Appellant/Promoter, had passed the order directing the Appellant/Promoter to obtain Occupancy Certificate from the Puducherry

Planning Authority, under the mistaken impression that the Appellant/ Promoter had not obtained the Occupancy Certificate.

5. The learned counsel for the Appellant/Promoter contended that the direction to submit an application for extension of Certificate of Registration of the project till the Occupancy Certificate was obtained, itself is not sustainable as the project was already completed, Occupancy Certificate was issued on 14.05.2019 by the competent authority and possession of flats were handed over to the allottees and Association of allottees was also formed. There is absolutely no necessity for extension of registration. The learned counsel for the Appellant/Promoter prayed to set aside the impugned order passed by the Puducherry RERA.

6. Heard both sides.

7. The learned Counsel for the Appellant/Promoter contended that the present appeal has been preferred as the Puducherry RERA had made some adverse findings against the Appellant/Promoter in paragraphs 10(a), 10(b), 10(c) and 10(d) of it's order and also issued certain directions based on misconception of facts.

8. Firstly, according to the learned counsel for the Appellant/ Promoter, the Appellant/Promoter had obtained building plan approval on 08.10.2014. In the meanwhile, the Real Estate (Regulation and Development) Act, 2016 came into force. As per Section 3 of the Act, the project was required to be registered. While registering the project with

the Puducherry RERA, the Appellant/Promoter made some alterations in the building plan and got a revised building plan approval on 05.10.2018. The learned counsel for the Appellant/Promoter contended that all the additions/alterations in the building plan were made on the basis of directions/instructions of the Puducherry Planning Authority and the Puducherry RERA. However, there is no documentary proof to substantiate that the additions/alterations in the building plan were made on the basis of directions/instructions of the Puducherry Planning Authority and the Puducherry RERA.

9. Admittedly, consent of the allottees was not obtained before making the alterations in the approved plan dated 08.10.2014. Such being the case, the findings of the Puducherry RERA, in paragraph 10(a) of it's order, that such alterations in the approved building plan without getting the prior consent of the allottees is a clear violation of Section 14(2) of the Real Estate (Regulation and Development) Act, 2016, requires no interference by this Tribunal.

10. Secondly, the learned Counsel for the Appellant/Promoter contended that the finding of the Puducherry RERA in paragraph 10(b) of it's order that the Appellant/Promoter had violated Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 is to be set aside.

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11. In this regard, the Appellant/Promoter and the land owner, by name V.K.Prakash, have entered into a Joint Venture Agreement on 16.02.2012 for developing the real estate project by name "Victoria Court". Initially, the Appellant/Promoter obtained building plan approval from the Puducherry Planning Authority on 08.10.2014. As per the said approved plan, no space has been earmarked for the Swimming Pool. The Real Estate (Regulation and Development) Act, 2016 came into force before the completion of the project. As the project was an ongoing project, the same was registered with the Puducherry RERA with Registration Certificate No.13/22/PRERA/REP(A)/Pdy/2018 dated 29.05.2019.

12. Admittedly, the Appellant/Promoter had made some alterations in the building plan and got a revised building plan approved by the Puducherry Planning Authority on 05.10.2018. However, no provision for Swimming Pool has been made even in the revised building plan.

13. Brochures containing the details of the amenities to be provided within the project were distributed by the Appellant/Promoter to attract home buyers. In the brochure specifications, the Appellant/Promoter had mentioned about providing Swimming Pool purely on membership basis. As per Clause 5 of the Agreement for Sale, the Builder (Appellant/ Promoter) agreed to hand over the completed apartment by December

2014 as per the specifications in the brochure. However, contrary to the brochure specifications, no area was earmarked for the Swimming Pool in both the building plans submitted to the Puducherry Planning Authority. Therefore, the findings of the Puducherry RERA in paragraph No.10(b) of it's order that the Appellant/Promoter committed violation of Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016, requires no interference by this Tribunal.

14. Thirdly, the learned Counsel for the Appellant/Promoter contended that the finding of the Puducherry RERA in paragraph 10(c) of it's order that the Appellant/Promoter had violated Section 17 of the Real Estate (Regulation and Development) Act, 2016 is to be set aside.

15. In this regard, the learned counsel for the Appellant/Promoter contended that the execution of Rectification Deeds in respect of differential UDS can be done only by the land owner V.K.Prakash and the Appellant/Promoter has no role to play. The learned counsel for the Appellant/Promoter submitted that the land owner V.K.Prakash died and his legal heirs were not co-operating for the execution of the Rectification Deeds in respect of differential UDS, for which the Appellant/Promoter cannot be found fault with.

16. Though the Appellant/Promoter is not the land owner, he is also a Promoter within the definition of the term "Promoter" as defined under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016.

Section 2(zk) is extracted hereunder for ready reference:

> Section 2 (zk) "promoter" means,—
>
> (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
>
> (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or
>
> (iii) any development authority or any other public body in respect of allottees of—
>
> (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
>
> (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
>
> (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
>
> (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; or

> (vi) such other person who constructs any building or apartment for sale to the general public.
> Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

Therefore, as per Section 2(zk), the findings of the Puducherry RERA in paragraph 10(c) of it's order that the Appellant/Promoter violated Section 17 of the Real Estate (Regulation and Development) Act, 2016, is proper.

17. Lastly, the learned counsel for the Appellant/Promoter contended that the findings of Puducherry RERA in paragraph 10(d) of it's order that the Appellant/Promoter had violated Section 11(4)(b) and the directions contained in paragraph 11(v) and (vi) of it's order are liable to be set aside. According to the learned Counsel, the said findings and the directions have been given under the impression that the Occupancy Certificate was not obtained by the Appellant/Promoter. The learned Counsel for the Appellant/Promoter submitted that the Occupancy Certificate was issued by the Puducherry Planning Authority long back (i.e.) on 14.05.2019 itself, after verification of all the conditions, including sewage facility. The learned counsel also produced the

Occupancy Certificate dated 14.05.2019 in M.A.No.184/2023 as an additional document along with the other documents.

18. It is proved by the Appellant/Promoter that the competent authority had issued Occupancy Certificate on 14.05.2019 itself. In such a case, the findings of Puducherry RERA in paragraph 10(d) of it's order that the Appellant/Promoter had violated Section 11(4)(b) is liable to be set aside. In view of the Occupancy Certificate having been issued by the appropriate authority stating that the Appellant/Promoter had complied with all the basic necessities, including the sewage facility, the direction given by the Puducherry RERA with regard to the pumping of the sewage water is un-necessary. The direction in paragraph 11(v) of it's order to submit application for extension of registration is liable to be set aside as it serves no purpose. The other consequential direction contained in paragraph No.11(vi) that the Builder shall sell the unsold flats only after completion of all the civic amenities as per the plan and after obtaining Occupancy Certificate from Puducherry Planning Authority are also liable to be set aside for the simple reason that the Occupancy Certificate was already issued by the competent authority on 14.05.2019.

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19. The Appellant/Promoter has filed Miscellaneous Applications in M.A.Nos.184 & 204 of 2023 under Order 41 Rule 27 CPC to receive additional documents.

20. The documents filed along with M.A.No.204 of 2023 also form part of the additional documents sought to be received in M.A.No.184 of 2023. However, in the application in M.A.No.204 of 2023, the Appellant/ Promoter has included annexures to the documents.

21. The Respondent Association has not filed any counter in the applications and the learned counsel for the respondent has no serious objection for allowing the same.

22. Therefore, it would be appropriate to allow both the applications. Accordingly, the applications in M.A.Nos.184 & 204 of 2023 are allowed and the documents produced in both the applications are received as additional documents and marked as Exs.B1 to B6.

23. In the result, the findings of Puducherry RERA in paragraph 10(d) of it's order that the Appellant/Promoter had violated Section 11(4)(b) and the directions of the Puducherry RERA in paragraph Nos.11(v) and (vi) are set aside. In other respects, the order of the Puducherry RERA remains unaltered.

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24. Accordingly, the appeal is partly allowed. Consequently, the Connected Miscellaneous Application in M.A.No.183/2023 is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to:

1. Victoria Flat Owners' Welfare Association,
   Represented by its President, Victoria Apartments
   Karuvadikuppam,
   Krishna Nagar (North),
   Puducherry - 605 008.

2. The Puducherry Real Estate Regulatory Authority. Puducherry.

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