BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

Under the Real Estate (Regulation And Development) Act, 2016

Dated : 20.09.2023

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

Appeal No.66 of 2023
and
M.A.No.192 of 2023

1.Kasinathan

2.Jayamala Kasinathan ... Appellants

- Vs -

P.Shanmugam ... 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 23.03.2023 in I.A.No.31 of 2022 in C.No.76 of 2022 passed by the TNRERA.

For Appellant : Mr.M.Ganesan

For Respondents : Mr.A.P.Pasupathy, Senior Counsel
for Mr.K.Raju
Mr.S.Sathish Kumar

ORDER

Challenging the order passed in I.A.No.31 of 2022 in C.No.76 of 2022 on the file of the TNRERA, the Promoters have filed the above appeal.

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2. The respondent/complainant filed the complaint in C.No.76 of 2022 seeking for the following reliefs:

(i) to declare that the Settlement Deed executed on 02.07.2018 by the respondents, Kasinathan and Jayamala Kasinathan in favour of their son Lakshmikanth and registered as Document No.1142/2018 in the file of Kodaikanal Sub Registrar Office is null and void and will not bind this complainant, P.Shanmugam and other seven apartment owners, namely, Govindarajan, Suryanarayanan, Rajasekaran, Rajesh Khanna, Raja, Annadurai and Ramesh;

(ii) to declare that this complainant P.Shanmugam and other seven flat owners, namely, Govindarajan, Suryanarayanan, Rajasekaran, Rajesh Khanna, Raja, Annadurai and Ramesh are entitled to an additional land area of UDS 940 sq.ft. (632 sq.ft. for the apartment building and 308 sq.ft. for the underground water sump) comprised in R.S.No.1468/2A in Vilpatty Village in Kodaikanal Taluk, Dindigul District;

(iii) to direct the respondents, Kasinathan and Jayamala Kasinathan to cancel the above said Settlement Deed executed on 02.07.2018 in favour of their son Lakshmikanth and registered as Document No.1142/2018 in the file of the Kodaikanal Sub Registrar Office;

(iv) to direct the respondents, Kasinathan and Jayamala Kasinathan to execute and register a Conveyance Deed for a UDS of 940 square feet land (632 sq.ft. for the apartment building and 308 sq.ft. for the underground water sump) comprised in R.S.No.1468/2A in Vilpatty Village in Kodaikanal Taluk, Dindigul District in favour of this complainant P.Shanmugam and other seven apartment owners, namely, Govindarajan, Suryanarayanan, Rajasekaran, Rajesh Khanna,

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Raja, Annadurai and Ramesh or else in favour of the Flat Owners Welfare Association to be formed soon or else in favour of the Competent Authority as provided in Section 17(1) of "The Real Estate (Regulation and Development) Act, 2016";

(v) to direct the respondents, Kasinathan and Jayamala Kasinathan, their men, legal heirs, agents, servants, etc, in the nature of a permanent injunction not to interfere with or disturb the peaceful possession and enjoyment of the basement area of the apartment building and the underground water sump area by this complainant P.Shanmugam and other seven apartment owners, namely, Govindarajan, Suryanarayanan, Rajasekaran, Rajesh Khanna, Raja, Annadurai and Ramesh;

(vi) to direct the respondents, Kasinathan and Jayamala Kasinathan to demolish and remove the small stair (steps) constructed by them over the underground water sump and used by them as an approach to the adjacent building subsequently constructed by them after the construction and handing over of our apartment building;

(vii) to direct the respondents, Kasinathan and Jayamala Kasinathan to re-erect the fencing with PVC coated chain link and steel angle posts, which were erected by this complainant and seven other apartment owners, to protect the apartment building from trespassers and which were demolished and stolen by the respondents illegally;

(viii) to file a criminal complaint in the Kodaikanal Police Station by the officers of the Authority against the respondents, Kasinathan and Jayamala Kasinathan under Sections 418 and 420 of Indian Penal Code and under Section 82 of the Registration Act.

3. In the said complaint, the appellants/Promoters filed an application in I.A.No.31 of 2022 seeking to decide the issue of

applicability of RERA Act with retrospective effect and applicability of RERA Act to civil dispute in connection with C.No.76 of 2022.

4. The main contention of the appellants was that the project was completed as early as in the year 2015 (i.e.) much prior to the RERA Act coming into force and that the Authority has no jurisdiction either to declare a registered Settlement Deed as null and void or to cancel the said document. The respondent/allottee filed his counter and contested the application taking shelter under Section 79 of the RERA Act which bars the jurisdiction of the Civil Court.

5. After taking into consideration the case of both sides, the TNRERA dismissed the application. Aggrieved over the same, the Promoters have filed the above appeal.

6. It is not in dispute that the project was completed in the year 2015 and that the respondent has also taken possession of the flat in 2015 itself. The Real Estate (Regulation and Development) Act, 2016 came into force on 25.03.2016.

7.Mr.M.Ganesan, learned counsel for the appellants submitted that since the project was completed as early as in the year 2015 and the possession was also given to the respondent in the year 2015, the project cannot be termed as an on-going project. Further, the learned counsel submitted that the appellants have completed the entire work in the project and no work is kept pending.

8. So far as the prayer sought for by the respondent to declare the Settlement Deed, executed on 02.07.2018, as null and void is concerned, the said prayer can be granted only by a Competent Civil Court in accordance with law and not under the RERA Act. The RERA Act does not provide for cancellation of a registered document.

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9. Further, as per Section 79 of the RERA Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Adjudicating Officer or the Appellate Tribunal is empowered by or under the Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act.

10. Therefore, Section 79 itself is very clear that if the Authority or the Appellate Tribunal is not empowered under the Act to determine an issue, a Civil Court can entertain any suit or proceeding in respect of the said issue. As already stated, there is no specific provision under the RERA Act empowering the Authority or the Appellate Tribunal to declare a registered document as null and void.

11. Similarly, Sections 88 and 89 of the Act are also not in support of the respondent/complainant's case.

12. That apart, with regard to the prayer sought for by the respondent to cancel the Settlement Deed dated 02.07.2018 executed by the appellants, viz., Kasinathan and Jayamala Kasinathan in favour of their son Lakshmikanth and registered as Document No.1142/2018 on the file of the Sub Registrar Office, Kodaikanal as null and void and will not bind on him is concerned, the respondent has filed the complaint against the appellants even without making the beneficiary under the Settlement Deed viz., Lakshmikanth, the son of the appellants - Kasinathan and Jayamala Kasinathan, as a party to the complaint.

13. It is pertinent to note that no application to implead the son of the appellants has been numbered and listed before this Tribunal so far. Though the learned counsel for the respondent submitted that the

respondent has filed an impleading application in the Registry of this Tribunal, it has not been numbered and listed before us. It is pertinent to note that the very complaint was filed by the respondent against the appellants before the TNRERA without impleading the beneficiary under the Settlement Deed.

14. When there is no dispute that the project was completed in the year 2015 and that the respondent is in possession and enjoyment of the property since 2015, the project cannot be termed as an on-going project. When the Act came into force on 25.03.2016, the provisions of the Act can be applied only prospectively and it shall not have retrospective effect. Unless the Act says that the provisions of the Act shall be applicable retrospectively, the provisions should be construed only as prospective.

15. As per Section 14(3) of the Act, in the case of structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the Promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the Promoter to rectify such defects without further charge, within thirty days, and in the event of Promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner provided under the Act.

16. In the case on hand, the main prayer of the respondent is to declare the Settlement Deed executed by the appellants as null and void and not binding on him. It is not the case of the respondent that there was structural defect or any other defect in workmanship, quality or provision of services in the project. Therefore, the said

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provisions cannot be applied to the case of the respondent/allottee. The respondent having taken possession of the flat in the year 2015, chose to file the complaint before the TNRERA only in the year 2022 (i.e) after a lapse of 7 years. It is also brought to the notice of this Tribunal that the appellants have filed a Civil Suit in O.S.No.57 of 2018 on the file of the District Munsif Court, Kodaikanal against the respondent for permanent injunction in the year 2018 and the same is pending. It is pertinent to note that the respondent, though, filed an application under Order 7 Rule 11 CPC in the said suit to reject the plaint, he did not file any separate suit to declare the Settlement Deed dated 02.07.2018 as null and void inspite of having knowledge about the same in the year 2018 itself. Having not filed the suit to declare the Settlement Deed dated 02.07.2018 as null and void within the period of limitation, the respondent/complainant ventured into filing the present complaint before the TNRERA in the year 2022.

17. When the project is not an on-going project, we are of the considered view that the complaint filed by the respondent before the TNRERA is not maintainable. In such circumstances, the order of this Tribunal dated 09.11.2020 made in A.No.75 of 2019 is not applicable to the facts and circumstances of the present case.

18. So far as the prayer sought for by the respondent to declare the Settlement Deed as null and void and the consequential prayers are concerned, the said prayers can be sought for by the respondent only before a competent Civil Court and not before the TNRERA under the RERA Act. In the absence of any specific provision under the RERA Act, giving jurisdiction to the TNRERA to declare a registered document as null and void, the complaint filed by the respondent is not maintainable.

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19. In such view of the matter, we are of the considered view that the order passed by the TNRERA in I.A.No.31 of 2022 in C.No.76 of 2022 dated 23.03.2023 is liable to be set aside and accordingly, the same is set aside. The appeal is allowed. Consequently, the connected miscellaneous application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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