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 : 06.10.2023

Delivered on : 13.10.2023

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

Appeal No.68 of 2023
and
M.A.No.205 of 2023

M/s.Padmavathi Realty and Promoters Pvt. Ltd.,
Now, rep. by T.T.Mageshraj, Manager ... Appellant

- Vs -

M.Gokulnath ... Respondent

Prayer: The appeal has been filed under Section 44(1) of the Real Estate (Regulation and Development) Act, 2016 to set aside the order passed by Tamil Nadu Real Estate Regulatory Authority in C.No.153/2022 dated 20.07.2023 and to dismiss the complaint filed by the Respondent.

For Appellant : Mr. U. Gowrishankar

ORDER

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

1. The Appellant was the Promoter of the Real Estate Project by name "Jagannath Orchid" that was developed by him 12 years ago. The Respondent is the subsequent purchaser of an apartment bearing No.42 in Block-C from the original allottee, viz., P.S.Rajeswar, vide Sale Deed dated 25.10.2021. The Appellant/Promoter had already fulfilled their obligations and handed over the apartment along with the promised amenities, including the car park to the fullest satisfaction of the original allottee, viz., P.S.Rajeswar. Now, the Respondent/Complainant, after his purchase of the said apartment, preferred a complaint against the Appellant/Promoter as if the Respondent was denied the access to the car parking at the instance of the Appellant/Promoter.

2. According to the Appellant/Promoter, they had already handed over the maintenance of the entire apartment, including the car parking areas to the Apartment Welfare Association, immediately after the completion of the project in the year 2012 itself. The Appellant has nothing to do with the apartment as on date. According to the Appellant, the Respondent/Complainant was not properly represented as per Section 56 of the Act and that the Complaint was barred by limitation.

3. It is the case of the Respondent/Complainant, as found from the Complaint and the Rejoinder filed by him, that the Appellant/

Promoter had violated car parking Rules and Norms. The Appellant/ Promoter did not hand over the car parking to the Apartment Welfare Association and no documentary evidence was produced for such handing over of the car parking to the Welfare Association. According to the Respondent/Complainant, one B.Sampath Kumar, who represented him before TNRERA, was his close relative and that he was properly represented.

4. According to the Respondent/Complainant, as per the letter dated 21.06.2012 issued by the Appellant/Promoter and as per the allotment sheet, the original Allottee, viz., P.S.Rajeswar was allotted a covered car park bearing No.E-25.

5. After hearing both sides, the TNRERA, vide order dated 20.07.2023, directed the Appellant/Promoter to hand over the possession of the car park bearing No.E-25 in the real estate project "Jagannath Orchid" to the Respondent/Complainant. Aggrieved over the same, the Appellant has preferred the present appeal before this Tribunal.

6. Heard the learned counsel for the Appellant. Perused the entire case records.

7. There is no dispute with regard to the fact that the Appellant was the Promoter of the real estate project "Jagannath Orchid". Admittedly, the said real estate project was promoted in the year 2012 and that one P.S.Rajeswar was the original Allottee of the Flat Bearing No.42 in Block-C of the said real estate project. It is also an admitted

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fact that the Respondent/Complainant had purchased the said apartment from the original Allottee, viz., P.S.Rajeswar along with the car park, vide Sale Deed dated 25.10.2021.

8. The allotment letter dated 21.06.2012 issued by the Appellant/Promoter in favour of the original Allottee P.S.Rajeswar along with the allotment sheet clearly shows that the car parking No.E-25 was allotted to the original Allottee P.S.Rajeswar in lieu of his purchase of an apartment bearing No.42 in Block-C of the said real estate project. The Appellant/Promoter in his Appeal Memorandum had admitted that the Respondent/Allottee purchased the said apartment bearing No.C-42 along with one car park as per Sale Deed dated 25.10.2021 from the original Allottee P.S.Rajeswar. Therefore, the Respondent/Allottee, who stepped into the shoes of the original Allottee, is entitled to the car park No.E-25 in real estate project namely "Jagannath Orchid".

9. The learned Counsel for the Appellant/Promoter contended that the Respondent/Complainant was not properly represented before the TNRERA as per Section 56 of the Real Estate (Regulation and Development) Act, 2016 and that the Complaint itself is not maintainable as there was no proper representation for the Respondent/ Complainant. According to the Respondent/Complainant, one B.Sampath Kumar, who represented him before the TNRERA, is his close relative. Admittedly, the said B.Sampath Kumar was neither a Chartered Accountant nor a Legal Practitioner. No Power of Attorney Deed was also filed in this regard.

10. As per Section 56 of the Real Estate (Regulation and Development) Act, 2016, it is not mandatory on the part of the Respondent/Complainant that he should engage either a Chartered Accountant or a Legal Practitioner to represent him before the Regulatory Authority or the Adjudicating Officer as the case may be. It was only directory in nature. The TNRERA permitting B.Sampath Kumar to represent the Respondent/Complainant without a valid Power of Attorney Deed cannot be termed as illegal. As per Section 30(c) of the Real Estate (Regulation and Development) Act, 2016, no act or proceeding of the Authority shall be invalid merely by reason of any irregularity in the procedure not affecting the merits of the case. The irregularity does not affect the merits of the case in any manner. As such, the impugned order passed by the TNRERA cannot be as held invalid on this ground.

11. In the above circumstances, we do not find any ground to interfere with the order passed by TNRERA. Hence, the appeal is liable to be dismissed. Accordingly, the appeal is dismissed at the admission stage itself. Consequently, the connected Miscellaneous Application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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