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: 03.11.2023

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

Appeal No.71 of 2023
and
M.A.No.210 of 2023

1. M/s.Vetri Nagar Real Estate India P. Ltd.,
   rep. by it Director, G.Srinivasan

2. G.Srinivasan, Director,
   M/s. Vetri Nagar Real Estate India P. Ltd. ... Appellants

- Vs -

Vetri Nagar Rich Land (Sulur) Members Welfare Association - Salem East, Rep. by its Secretary, N.Raja ... Respondent

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Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 20.7.2023 in C.No.17 of 2023 passed by the Tamil Nadu Real Estate Regulatory Authority and to dismiss the Complaint.

For Appellants : Mr. R.N.Amarnath

ORDER

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

1. The Appellants are the Promoters of a layout project by name "Vetri Nagar Rich Land" situated at Kalangal Village, Sulur, Coimbatore District. During 2015 and 2016, the Appellants/Promoters advertised in newspapers and distributed pamphlets inviting the public to purchase vacant plot measuring 1200 sq. ft. at a cost of Rs.2,49,000/- by paying the amount in 72 monthly installments. The Appellants/Promoters entered into various Sale Agreements with the intended purchasers on various dates.

2. It is the case of the Appellants/Promoters that no specific area was fixed, allotted or promised to be allotted to the intended purchasers. The Allottees have committed default in paying the monthly installments. According to the Appellants/Promoters, the Agreements were executed by the 2nd Appellant/2nd Promoter in his individual capacity and not as the Director of the 1st Appellant/1st Promoter

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Company and that the provisions of the Real Estate (Regulation and Development) Act, 2016 are not applicable to this case. The Appellants/ Promoters are ready and willing to deposit the money paid by the Members of the Respondent/Association.

3. It is the case of the Respondent/Association, as found from their complaint filed before TNRERA, that more than 3000 individuals have joined in the monthly scheme and became allottees. Out of them, 62 allottees became the members of the Respondent Association and paid nearly 61 monthly installments out of 72. The Members of the Respondent Association are ready to pay the balance installments, but the Appellants/Promoters are delaying the matter and are not willing to refund the amount with interest to the subscribers.

4. It is the case of the Respondent Association that the Appellants/Promoters have not obtained the necessary DTCP approval for the layout project till date. Further, the real estate project was not registered with TNRERA as required under Section 3 of the Real Estate (Regulation and Development) Act, 2016. The Respondent/Association preferred the Complaint for necessary reliefs, including direction to register the project with TNRERA and to execute Sale Deeds as per the Agreement and to hand over the plots with the promised amenities and approach roads.

5. After hearing both sides, the TNRERA, while granting all the reliefs prayed for by the Respondent/Association, imposed a comprehensive penalty of Rs.5,00,000/- under Sections 59(1) and 61 of the Real Estate (Regulation and Development) Act, 2016 against the Appellants/Promoters. Aggrieved over the same, the Appellants/ Promoters have preferred the above Appeal before this Tribunal.

6. Heard the learned counsel for the Appellants. Perused the materials available on record.

7. There is no dispute between the parties with regard to the formation of the real estate project under the name and style of "Vetri Nagar Rich Land". It is also an admitted fact that the cost of each plot measuring 1200 sq. ft. is fixed at Rs.2,49,000/-, payable in 72 monthly installments. The only point pleaded by the Appellants/Promoters before the TNRERA was that the Members of the Respondent/Association did not pay the monthly installments regularly. All the Agreements for Sale executed in favour of the subscribers/Allottees contain the schedule of property proposed to be developed as a layout project and the extent of the plot proposed to be sold. As per the recitals contained in the said agreements, the total sale consideration was fixed at Rs.2,49,000/- per plot measuring an extent of 1200 sq. ft. and an advance amount of Rs.40,000/- was paid by the prospective buyers to the Appellants/ Promoters.

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8. It is needless to say that the Appellants/Promoters should have prepared the layout and got it approved by the DTCP before entering into agreements and collecting advance amounts from the prospective buyers. The Appellants/Promoters cannot take advantage of their own defaults. Therefore, the contention raised by the learned counsel for the Appellants/Promoters that no specific area was fixed, allotted or promised to be allotted to the intended purchasers and therefore the Agreements cannot be enforced, is rejected. The other contention of the learned Counsel for the Appellants/Promoters that since the 2nd Appellant/2nd Promoter executed the Agreement in his individual capacity and not as the Director of the 1st Appellant/1st Promoter Company, the Real Estate (Regulation and Development) Act, 2016 is not applicable, is also rejected. For the applicability of the Act, it is immaterial, whether the Real Estate project is promoted by a Company or by any individual person.

9. The 2nd Appellant/2nd Promoter expressed his readiness and willingness to repay the amounts to the Members of the Respondent/ Association. This itself is sufficient to hold that the 2nd Appellant/2nd Promoter is also a Promoter of the real estate project.

10. Admittedly, no DTCP approval was obtained for the proposed layout project. The TNRERA had rightly concluded that the real estate project, though launched during 2015 and 2016, is an ongoing project as

no DTCP approval was obtained till date. Thus, the Appellants/Promoters have clearly violated Section 14(1) and Section 3(1) of the Real Estate (Regulation and Development) Act, 2016. The imposition of comprehensive penalty of Rs.5,00,000/- under Section 59(1) and 61 of the Real Estate (Regulation and Development) Act, 2016 by TNRERA is just and proper. The other directions of TNRERA, viz.,

(i) to register the layout project on or before 30.10.2023;

(ii) directing the Appellants/Promoters to execute the Sale Deeds in favour of the Allottees after receiving the balance sale consideration strictly as per Agreement for Sale and to hand over possession of the plot to the Allottees; and

(iii) to provide approach roads and other basic amenities as per the relevant Regulations of the Local Planning Authority and the Local body

are also perfectly valid. We do not find any ground to interfere with the order passed by the TNRERA. The appeal is liable to be dismissed.

11. In the result, the Appeal is dismissed at the admission stage. The Appellants/Promoters are directed to remit the entire penalty amount of Rs.5,00,000/- with the TNRERA forthwith, if not paid earlier. Upon production of valid proof for remittance of the entire penalty amount of Rs.5,00,000/- before the TNRERA, the Appellants/Promoters

are entitled to withdraw the amount of Rs.1,50,000/- deposited by them before this Tribunal under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016. Connected Miscellaneous Application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to:

1. Vetri Nagar Rich Land (Sulur) Members
   Welfare Association - Salem East,
   rep. by its Secretary, N.Raja,
   No.2/101, Vidhya Motors Trichy By-pass Road,
   Kondalampatty, Salem - 636 010.

2. The TNRERA.

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