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: 21.02.2024

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

Appeal No.10 of 2024
and
M.A.No.9 of 2024

M/s. Serene Kshetra Owner's Association (SKOA),
rep. by its Secretary
S.S.Raghavan ... Appellant

- Vs -

M/s.Adinath Srinivasa Foundations LLP
rep. by its Designated Partner ... 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 20.04.2023 in E.P.No.12 of 2022 in C.No.125 of 2020 by the TNRERA.

For Appellant : Mr. Ralph V. Manohar
For Respondent : Mr. M.Sathiadev

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ORDER

Challenging the order passed in E.P.No.12 of 2022 in C.No.125 of 2020 dated 20.04.2023 on the file of the TNRERA, the Owner's Association has filed the above appeal.

2. The appellant filed a complaint in C.No.125 of 2020 on the file of the TNRERA seeking for a direction to complete all the unfinished works on the project. The TNRERA, by order dated 19.07.2021, directed the respondent/promoter to complete all the pending amenities on or before 31.03.2022. Since the respondent failed to comply with the orders of the TNRERA in C.No.125 of 2020, the Owner's Association filed an Execution Petition in E.P.No.12 of 2022 to execute the order passed in C.No.125 of 2020. In the said Execution Petition, the appellant has stated that the respondent/promoter failed to comply with the order passed in C.No.125 of 2020 by not completing the amenities, namely, 1) Compound Wall, 2) Development of garden, 3) Solar Water heater systems in individual units, 4) Pharmacy, 5) Amphi theatre, 6) ATM and 7) Shuttle Drop Service.

3. After the Execution Petition was reserved for orders on 07.12.2022, the respondent/promoter filed a compliance report dated 13.12.2022 stating that they have complied with the orders of the TNRERA passed in C.No.125 of 2020 in entirety and they have also taken a stand that they have not promised to provide Solar Water Heater systems in individual units, Amphi theatre and ATM in the premises and the same is concocted and imaginary.

4. The TNRERA, taking into consideration the averments stated in the compliance report of the respondent/promoter, disposed of the Execution Petition, finding that the respondent/promoter had complied with the orders passed in C.No.125 of 2020 in entirety.

5. Mr. Ralph V. Manohar, learned counsel for the appellant submitted that when the Execution Petition was taken up for hearing on 25.08.2022, there was no representation for the respondent/promoter, which compelled the Authority to pass the following order:

> "The counsel for the Execution Petitioner present.
> Neither the Respondent nor their Counsel present.
> The Authority directed the Respondent Promoter to file Compliance Affidavit in terms of orders passed by this Authority before 08.09.2022 with copy served on the Execution Petitioner and posted next hearing at 4.00 p.m. on 28.09.2022."

The learned counsel further submitted that on 28.09.2022 also, there was no representation for the respondent/promoter, hence, the Authority expressed displeasure on the conduct of the respondent/promoter in not filing the compliance affidavit as directed on 08.09.2022. However, as a last chance, the Authority directed the respondent/promoter to file the compliance affidavit before 12.10.2022 with copy served on the Execution Petitioner and posted the next hearing at 4.00 p.m. on 26.10.2022. Subsequently, on 07.12.2022 also, neither the respondent nor its counsel were present and the Authority conveyed its severe

displeasure on the conduct of the respondent/promoter in not filing the compliance affidavit inspite of specific direction to file before 09.11.2022 after lapse of two chances given to them. Therefore, the Authority reserved the Execution Petition for orders on 07.12.2022.

6. The learned counsel for the appellant submitted that after the matter was reserved for orders on 07.12.2022, the respondent/promoter, on 13.12.2022, filed the compliance report wherein they have stated as mentioned above. The learned counsel further submitted that when the matter was reserved for orders on 07.12.2022, without any order being passed in the re-open application, the respondent/promoter has filed the compliance report. Further, the learned counsel for the appellant submitted that no notice was served on them prior to the filing of the compliance report. The learned counsel also submitted that without giving an opportunity of hearing to the appellant, the TNRERA had disposed of the Execution Petition recording the stand taken in the compliance report dated 13.12.2022 of the respondent/promoter.

7. Mr.M.Sathiadev, learned counsel for the respondent submitted that the respondent/promoter had complied with the order passed in C.No.125 of 2020 in entirety and therefore, the order passed by the TNRERA in the Execution Petition in E.P.No.12 of 2022 is just and proper.

8. On a perusal of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that the order passed in C.No.125 of 2020 dated 19.07.2021 has become

final. Therefore, the respondent/promoter is bound to comply with the directions given by the TNRERA in C.No.125 of 2020 in entirety. Since the respondent/promoter failed to comply with the directions given to them in C.No.125 of 2020, the Owner's Association filed an Execution Petition in E.P.No.12 of 2022. Inspite of the fact that the respondent/promoter was directed to file the compliance report on various dates as mentioned by the learned counsel for the appellant, they failed to file the compliance report till the Execution Petition was reserved for orders on 07.12.2022. Ultimately, they filed the compliance report on 13.12.2022. The TNRERA, though reserved the matter for orders on 07.12.2022, without passing any order in the re-open application, received the compliance report dated 13.12.2022 and disposed of the Execution Petition on 20.04.2023. There is nothing on record to establish that the matter was re-opened after 07.12.2022 for the purpose of receiving the compliance report. The TNRERA should have given an opportunity of hearing to the appellant - Owner's Association at least after the filing of the compliance report.

9. The learned counsel for the appellant vehemently contended that no notice was served on them prior to the filing of the compliance report dated 13.12.2022.

10. Since the Owner's Association was not given an opportunity of hearing before receiving the compliance report, more so after the Execution Petition was reserved for orders, it violates the principles of

natural justice. In these circumstances, we are of the considered view that the order passed in E.P.No.12 of 2022 in C.No.125 of 2020 dated 20.04.2023 is liable to be set aside and the matter be remitted back to the TNRERA for fresh consideration. Accordingly, the order passed in E.P.No.12 of 2022 in C.No.125 of 2020 dated 20.04.2023 is set aside and the matter is remitted back to the TNRERA for fresh consideration. The parties are at liberty to produce all the supportive documents in support of their contention before the TNRERA. After taking into consideration the documents to be filed by the parties, the TNRERA shall decide the Execution Petition, on merits and in accordance with law, as expeditiously as possible.

11. Since the parties are given liberty to produce all the relevant documents before the TNRERA, the application in M.A.No.9 of 2024, seeking to file additional documents, stands closed.

12. With these observations, the appeal is allowed. Consequently, the connected Miscellaneous Application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to

1. The TNRERA.

2. M/s. Adinath Srinivasa Foundations LLP
   rep. by its Designated Partner
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