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: 24.04.2024

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

Appeal No.16 of 2024
and
M.A.Nos.31 & 32 of 2024

Mahindra Lifespace Developers Ltd.
rep. by its Authorized Signatory
Vijayakumar.T ... Appellant

Vs.

Nalam Home Owners Association
rep. by its Secretary
Gokul Thiruvengadam ... Respondent

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 11.01.2024 in C.No.106 of 2023 on the file of the TNRERA insofar as it orders the *suo motu* impleadment of Happinest Avadi Home Owners Association.

Verified RealEstate™

For Appellant : Ms.Arva Merchant

For Respondent : Mr.G.S.Gunaseelan

ORDER

The respondent Association filed a complaint in C.No.106 of 2023 on the file of the TNRERA for various reliefs including fixation of STP, WTP, food waste treatment plant, surveillance camera, vehicle drive-way by replacing the pavement with concrete floor, DG supply to ensure uninterrupted electricity supply in common areas, WTP water pressure in 3rd and 4th floors to ensure uninterrupted water supply, to clear non-C block vehicle allocation made by MLDL post RERA as C Block comes under the purview of RERA, to build concrete compound wall at the outer extent of the property as conveyed in the Construction Agreement.

2. In the said complaint, the appellant/promoter filed a counter, wherein, among other things, they have also stated that there is one another Association by name "Happinest Avadi Home Owners Association" (HAHOA) and that they have handed over all the operation and maintenance of the amenities to the said Association. The respondent Association filed their re-joinder before the TNRERA disputing the averments stated in the counter filed by the appellant/promoter. Taking into consideration the averments stated in the pleadings, the TNRERA, by order dated 11.01.2024, *suo motu* impleaded "Happinest Avadi Home

Verified © RegiEstate™

Owners Association" as a party to the complaint in C.No.106 of 2023. Challenging this order, the promoter has filed the above appeal.

3. Heard Ms.Arva Merchant, learned counsel for the appellant and Mr.G.S.Gunaseelan, learned counsel for the respondent.

4. Ms.Arva Merchant, learned counsel appearing for the appellant submitted that only the respondent Association has filed the complaint as against the appellant and that the members of the proposed Association, namely, Happinest Avadi Home Owners Association have no grievance, whatsoever, as against the appellant. Further, the learned counsel submitted that when the members of the said Association are not interested in filing any separate complaint as against the appellant before TNRERA, the order passed by the TNRERA impleading the said Association *suo motu* is liable to be set aside.

5. Countering the submissions made by the learned counsel for the appellant, Mr.G.S.Gunaseelan, learned counsel for the respondent submitted that the proposed Association, namely, Happinest Avadi Home Owners Association, is not at all in existence and therefore, the contention of the learned counsel for the appellant to the effect that the members of the said Association have no grievance as against the appellant/promoter, cannot stand. Further, the learned counsel submitted that since the Association is not in existence, the members of the said Association did not have any occasion to raise any grievance as against the appellant. In these circumstances, the learned counsel for the

Verified by RealEstate™

respondent submitted that the order passed by the TNRERA is liable to be set aside.

6. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that both, the learned counsel appearing on either side, agreed on one aspect that the order passed by the TNRERA impleading the proposed Association *suo motu* is liable to be set aside, however, on different grounds.

7. It is settled law that a person cannot be compelled to file a complaint or a suit as against the other party when they themselves have chosen not to approach the Court of law.

8. The contention of the appellant was that the members of the proposed Association have no grievance against the promoter, hence, they have not filed any separate complaint and therefore, the impleadment of the said Association *suo motu* is liable to be set aside. On the other hand, the learned counsel for the respondent submitted that the proposed Association itself is not in existence, therefore, the order is liable to be set aside.

9. As rightly contended by the learned counsel for the appellant, when the proposed Association has chosen to remain silent without filing a separate complaint, they cannot be compelled to prosecute the complaint filed by the respondent Association.

10. In these circumstances, the order dated 11.01.2024 impleading the proposed Association *suo motu* is liable to be set aside. Accordingly, the order dated 11.01.2024 passed by the TNRERA in C.No.106 of 2023 impleading the proposed Association is set aside. However, the appellant/promoter shall establish the contention raised in their counter with regard to the proposed Association, by adducing oral and documentary evidence in C.No.106 of 2023.

11. With these observations, the appeal is allowed. Consequently, the connected Miscellaneous Applications are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to

1. The TNRERA.

2. Nalam Home Owners Association
rep. by its Secretary Gokul Thiruvengadam
C433, Block C, Mahindra Happinest Avadi
Paruthipattu, Chennai - 600 071.

Verified RedEstate