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: 29.01.2024

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

Appeal No.2 of 2024

Elis Francis ... Appellant

- Vs -

M/s.Adityaram Properties Private Limited
rep. by its Chairman and Managing Director ... Respondent

Prayer:

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, to set aside the order dated 23.08.2023 in R.C.P.No.39 of 2022 on the file of the learned Single Member, TNRERA and to refund the advance amount of Rs.5,00,000/- with interest at 18%, compensation of Rs.5,00,000/- and legal expenses Rs.50,000/-.

For Appellant : Ms. C. Sriranjini

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ORDER

Challenging the order passed in R.C.P.No.39/2022 dated 23.08.2023 on the file of the learned Single Member, TNRERA, the complainant has filed the above appeal.

2. The complainant filed the complaint seeking for refund of the amount paid to the respondent towards purchase of a plot with interests and costs.

3. The case of the appellant was that she is the wife of Late Gunaseelan Saravanan, who had booked a residential plot No.295 in the respondent's project. According to the complainant, she is the citizen of Singapore. Further, it is the case of the complainant that her husband, Mr.Gunaseelan Saravanan, had visited India in the month of March 2021, where he got infected with Corona and died on 24.05.2021. Further, according to the complainant, her husband had booked a plot with the respondent and had paid a sum of Rs.5,00,000/- from his account in two installments of Rs.4,90,000/- through NEFT transaction and the balance of Rs.10,000/- on 26.04.2021. After the death of her husband, she had approached the respondent for refund of the sum of Rs.5,00,000/- and sent a legal notice on 03.08.2021.

4. The respondent, in their counter, had stated that the Sale Agreement was executed by them in favour of 1) Mr.Saravanan, S/o.Gunaseelan and 2) Mrs.Shylaja.S.M., W/o.Mr.Saravanan and after the death of the said Saravanan, they refunded the amount

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paid by the allottees to Mrs.Shylaja on 10.12.2021 and 06.05.2022. According to the respondent, the total Sale Consideration for the residential plot was fixed at Rs.96,50,000/- and that Mrs.Shylaja had visited their office on 17.04.2021 and paid advance of Rs.1,00,000/- to them. Further, according to the respondent, when the Agreement of Sale was entered on 26.04.2021 in the name of Mr.Saravanan and Mrs.Shylaja, they paid a further sum of Rs.5,00,000/- in two installments, making the overall payment of Rs.6,00,000/- on the same day. Since the respondent refunded the sum of Rs.2,00,000/- on 10.12.2021 and the balance of Rs.4,00,000/- on 06.05.2022 to Mrs.Shylaja, the respondent prayed for dismissal of the complaint.

5. The learned Single Member, taking into consideration the case of both parties, dismissed the complaint finding that the Sale Agreement dated 26.04.2021 was jointly entered by Mr.Saravanan and Mrs.Shylaja with the respondent. Further, a sum of Rs.1,00,000/- paid by Mrs.Shyalaja was also established by the cheque issued by her. Challenging this order, the complainant has filed the above appeal.

6. Ms. C. Sriranjini, learned counsel appearing for the appellant submitted that the complainant is the wife of Late Mr.Saravanan, and therefore, she is entitled to get refund of the amount paid by him.

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7. On a perusal of the Agreement of Sale dated 26.04.2021, it is clear that the respondent/developer had executed a Sale Agreement in favour of Mr.Saravanan and Mrs.Shylaja. The complainant was not a party to the said Agreement. Further, the cheque for a sum of Rs.1,00,000/- was also issued by Mrs.Shylaja.

8. The learned counsel appearing for the appellant submitted that Mr.Saravanan had made her a nominee in the bank account and therefore, she is entitled to get refund of the amount paid by him to the respondent/developer.

9. Even assuming the contention of the learned counsel for the appellant is correct, mentioning the name of the complainant as nominee in the bank account shall not give any right to get refund of the amount paid by Late Mr.Saravanan and Mrs.Shylaja to the respondent/developer. When Mrs.Shylaja, who is also a party to the Agreement, is very much available, the respondent had rightly refunded the advance amount of Rs.6,00,000/- to her.

10. The contention of the learned counsel for the appellant is that the said Mrs.Shylaja is not the wife of the Late Mr.Saravanan and that the complainant is his wife is concerned, we are not deciding the marital relationship of the parties, since this is not a forum to decide the said issue. When Mrs.Shyalaja was a party to the Agreement and that she was very much alive and available, the respondent had rightly refunded the amount to her.

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11. We do not find any ground to interfere with the order passed by the learned Single Member. The appeal is devoid of merits and is liable to be dismissed. Accordingly, the appeal is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to:

1. M/s.Adityaram Properties Private Limited
   rep. by its Chairman and Managing Director
   No.50, Adityaram Nagar,
   Panaiyur Nagar ECR
   Chennai - 600 119.

2. The Single Member, TNRERA.

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