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: 29.01.2024

Delivered on: 02.02.2024

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

Appeal No.4 of 2024

1. KM.Kodaiarasu
2. P.Malarvizhi

... Appellants

- Vs -

1. A.C.Raju
2. C.Prakash Kumar

... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 30.10.2023 in C.No.147 of 2022 passed by TNRERA.

For Appellants : Mr. Anil Relwani

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ORDER

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

1. The appellants are the owners of 2161 sq.ft. of land situated at Secretariat Colony, Kilpauk, Chennai. Likewise, the respondents are the owners of the adjacent land measuring 4318 sq. ft. The respondents are builders by profession, engaged in the construction of buildings. Both the appellants and the respondents wanted to develop their land jointly. Accordingly, both of them entered into a Joint Venture Agreement on 29.03.2013. As per the Joint Venture Agreement, the respondents agreed to construct 8 flats over the combined extent of land measuring 6479 sq.ft. The respondents also agreed to hand over 3 apartments, each measuring 1100 sq. ft. of carpet area, along with the proportionate undivided common area.

2. Further, the respondents agreed to complete the construction and hand over the 3 apartments within 18 months from the date of planning permission, which was subsequently obtained on 20.12.2013. However, the construction was completed only during November 2019 (i.e.) after a lapse of 6 years. The project was named as "Aravindam". Even after the construction was completed, the respondents did not come forward to hand over the 3 apartments as per the Joint Venture Agreement as the Completion Certificate was not yet issued.

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3. By invoking the provisions of The Right to information Act, the appellants came to know that the Completion Certificate was issued in the year 2018 itself. When the appellants insisted to hand over the apartments, the respondents revealed that they have proposed to construct one additional floor, violating the planning permission and requested to give consent. As the appellants refused to give their consent for the same, the respondents declined to hand over the 3 apartments as per the Joint Venture Agreement.

4. Hence, the appellants preferred a complaint before the TNRERA in C.No.147 of 2022 with a prayer (i) to direct the respondents to register the project, (ii) to direct the respondents to hand over the 3 apartments as per the Joint Venture Agreement and also (iii) to direct the respondents to pay damages. Only the 1st respondent contested the case and the 2nd respondent remained exparte before the TNRERA.

5. After perusal of the complaint and the counter filed by the 1st respondent, the TNRERA, by order dated 30.10.2023, dismissed the complaint by relying upon the judgment of the Hon'ble High Court of Madras dated 20.09.2023 made in C.M.S.A.No.23 and 24 of 2020 [M/s.Devinarayan Housing and Property Developments Private Limited and 2 others Vs. Manu Karan and 2 others], wherein the Hon'ble High Court held that under Section 3(2)(a) of the Real Estate (Regulation and Development) Act, 2016, if the extent of the land is less than 500 sq.m or if the number of apartments is less than 8, the real estate project need

not be registered under Section 3 of the Act. Further, the Hon'ble High Court held that if the project is not registered under the Act, the TNRERA and TNREAT have no jurisdiction to deal with any complaint and that only the competent Civil Court or the Consumer Forum shall have jurisdiction to deal with the grievances of the allottees. Aggrieved over the dismissal of their complaint, the appellants have preferred the present appeal.

6. Heard the learned counsel for the appellants.

7. On a careful consideration of the materials available on record and the submissions made by the learned counsel for the appellants, it could be seen that the extent of the land proposed to be developed was 6479 sq.ft., which is about 600 sq.m. In the said extent of 6479 sq.ft., the respondents constructed 8 apartments. The appellants filed the complaint in C.No.147 of 2022 seeking for directions to (i) the respondents to register the residential apartment at New Door No.107, Old Door No.57, Berracha Road, Secretariat Colony, Kilpauk, Chennai - 600 010 with TNRERA; (ii) the respondents to immediately hand over the mutually agreed 3 flats inclusive of premium extents and together with proportionate area of covered parks to the complainant in terms of the Joint Venture Agreement dated 29.03.2013 sent by the respondents to the complainants on 30.03.2013; and (iii) the respondents to pay damages to the complainants for refusing to hand over the 3 agreed flats with the proportionate covered car park areas to the complainants in terms of the Joint Venture Agreement dated 29.03.2013 sent by the respondents to

the complainants on 30.03.2013. The 1st respondent filed his counter disputing the averments stated in the complaint and also took a defense that the project cannot be deemed as real estate project for the reason that the project was developed with a view to hold all the apartments for the complainants and the respondents and not for selling it to 3rd parties. Further, the 1st respondent contended that the complaint is not maintainable for the reason that there is an Arbitration Clause in the Joint Venture Agreement dated 29.03.2013 entered into between the parties. However, the said Joint Venture Agreement was not signed by the parties, hence, it was rightly not taken into consideration by the TNRERA.

8. Earlier, the TNRERA, by order dated 02.06.2023 taking into consideration the counter filed by the 1st respondent, came to the conclusion that the project is an ongoing project as on 01.05.2017, hence, the complaint is maintainable and that the TNRERA will proceed with the adjudication of the complaint. Further, in the said order, the TNRERA observed that the date and time of next hearing of the complaint will be intimated separately to the parties.

9. On a perusal of the order dated 02.06.2023, it is clear that the TNRERA had not adjudicated the matter, instead, only held that the complaint is maintainable for the reason that it was an ongoing project. Subsequent to the said order, the TNRERA took up the complaint for hearing and after hearing the learned counsel for the complainants, by

order dated 30.10.2023, dismissed the complaint finding that there are only 8 apartments in the said project and in view of Section 3(2)(a) of the Act, there is no necessity for registering the project. Further, the TNRERA, following the ratio laid down by the Hon'ble High Court in the judgment dated 20.09.2023 made in C.M.S.A.Nos.23 and 24 of 2020 [M/s.Devinarayan Housing and Property Developments Private Limited and 2 others Vs. Manu Karan and 2 others] wherein the Hon'ble High Court held that if the project does not require registration under Section 3(2), neither the TNRERA nor TNREAT have jurisdiction to entertain the complaint made by the allottees, held that the TNRERA has no jurisdiction to entertain the complaint in respect of the said real estate project.

10. It is pertinent to extract the relevant portion of the judgment of the Hon'ble High Court, which reads as follows:

> "... 10.9. Thus, on perusal of Report of the Standing Committee, it is clear that the word 'or' used in Section 3(2)(a) of the RERA has to be read disjunctively. Further, this Court would like to point out herein, though the word 'OR' is a conjunction, and if it is read conjunctively, it would make legitimate intention to become redundant, which is not possible in law. Hence, in the present case, the appellants constructed Apartment consisting of eight flats, in an area, measuring 5935 square metres and out of the two criteria mentioned in Section 3(2)(a) of the RERA for grant of exemption, the appellants have fulfilled one of the criterias and therefore, they are not liable to get their project register

under the said Act. Hence, this Court holds that the Real Estate project of the appellants is not required to be registered under the RERA as the same does not fall within the purview of the Act. Accordingly, the **Additional Substantial Question of Law d) is answered in favour of the appellants and as against the respondents.**

Additional Substantial Question of Law (e)

e) Whether the allottee of an unregistered real estate project under Section 3(2) of the RERA, 2016, will have any protection under the provisions of RERA, to address their grievances before the Regulatory Authority or the adjudicating officer or Tamil Nadu Real Estate Appellate TNREAT under RERA?

11. Insofar as the Additional Substantial Question of Law (e) is concerned, though it is the contention of the learned counsel for the respondents that, even if the project is not required to be registered under the RERA, as per Sections 31 and 71 of RERA, the home buyers can still address their grievances before the Authority or Adjudicating Officer and in support of his contention, the learned counsel also referred to the definition of the terms, 'Allottee', 'Real Estate Agent','Real Estate Project promoter' etc., as defined in Section 2 of the Act and submitted that these definitions do not restrict only to the registered project and would extend even in respect of unregistered project under RERA as the same would fall within the purview of the Act, the said contention of the respondents has to be held to unsustainable, for the reason that, generally, the definitions and provisions of an Act are meant only for the use of the same with reference to the Act and cannot be used the beyond the scope of the Act.

11.1 Section 31 of the Act empowers that any aggrieved person may file a complaint with the Authority or the Adjudicating Officer, as the case may be, for any violation or

contravention of the provisions of the Act or the rules and regulations made thereunder against any promoter, allottee or real estate agent, as the case may be. Therefore, the home buyers/consumers can make a complaint under Section 31 of the Act, only, in the event of any violation or contravention of the provisions of this Act or the rules and regulation made thereunder. The definition and the provisions of the Act as stated above only to meant for the use of the same with reference to the Act and not to use the same beyond the scope of the Act. The authority or adjudicating officer or RERA are to be referred with reference to the provisions of the Act, which means, only with reference to the registered projects. They will not have any control over the unregistered project, so as to empower them deal with the grievances of the allottees of the unregistered projects. Thus, for the promoters of the unregistered projects, the provisions of RERA will have no application, hence, there is no requirement to comply with any provisions of the Act. Accordingly, the question of non-compliance of the provisions of the Act for the unregistered project does not arise. Therefore, I do not find any substance in the submission of the learned counsel for the respondents to the extent that any aggrieved person mentioned under Section 31 of the Act would apply to the unregistered real estate project as well."

11. It is also pertinent to extract Section 3(2) of the Real Estate (Regulation and Development) Act, 2016, which reads as follows:

"3.

(2) Notwithstanding anything contained in sub-section *(1)*, no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the

number of apartments proposed to be developed does not exceed eight inclusive of all phases:
Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act."

12. On a perusal of Section 3(2) of the Act, it could be seen that if the extent of the land proposed to be developed is not more than 500 sq.m. or if the number of apartments proposed to be developed is not more than 8, the said real estate project need not be registered. In the case on hand, though the extent of the land proposed to be developed was more than 500 sq.m., as per the second limb of Section 3(2)(a), since the number of apartments proposed to be developed was only 8, the registration of the project was not required. Therefore, the project was rightly not registered with the TNRERA. As per Section 3(2) of the Act, registration is not required if any one of the condition is fulfilled, namely, either the land proposed to be developed should not be more than 500 sq.m. or the number of apartments proposed to be developed should not be more than 8. In the case on hand, as per Section 3(2) of the Act, the project does not require registration.

13. The issue with regard to the jurisdiction of the TNRERA is concerned, the Hon'ble High Court in the judgment, cited supra, categorically held that once a project is exempted from registration, under Section 3(2), neither the TNRERA nor TNREAT have jurisdiction to

try the complaint in respect of the said project. Further, the Hon'ble High Court held that the complaints in respect of unregistered project can only be dealt with by a competent Civil Court or Consumer Forum. Following the ratio laid down by the Hon'ble High Court in the judgment, cited supra, the TNRERA has rightly dismissed the complaint finding that the complaint is not maintainable for the reason that the project comes within the purview of the exemption granted under Section 3(2).

14. The learned counsel for the appellants submitted that this Tribunal in the order made in A.No.47 of 2023 [M/s.Prathiksha Properties, a Partnership Firm represented by its Partner, K.S.Ramakrishnan Vs. Kotteeswari] dated 20.09.2023 held that the exemption granted under Section 3(2) for registering a project is different from preferring a complaint before the TNRERA, therefore, prayed this Tribunal to follow the said order.

15. However, it is pertinent to note that this Tribunal had no occasion to consider the judgment rendered by the Hon'ble High Court in C.M.S.A.Nos.23 and 24 of 2020, which was also delivered on the very same day (i.e.) 20.09.2023, therefore, this Tribunal had observed so in the said order. The judgment rendered by the Hon'ble High Court in C.M.S.A.Nos.23 and 24 of 2020 dated 20.09.2023 is binding on this Tribunal.

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16. We do not find any irregularity or illegality in the order passed by the TNRERA. Following the ratio laid down by the Hon'ble High Court in C.M.S.A.Nos.23 and 24 of 2020 dated 20.09.2023 and as per the provisions of Section 3(2) of the Act, we do not find any ground to interfere with the order passed by the TNRERA. 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. A.C.Raju
   S/o.A.Dorairajulu Naidu

2. C.Prakash Kumar
   S/o.A.C.Raju
   Both residing at
   No.24, Landons Road, Kilpauk, Chennai - 600 060.

3. The TNRERA.

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