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: 09.02.2024

Delivered on: 21.02.2024

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

Appeal No.8 of 2024
and
M.A.No.8 of 2024

1. M/s. S dot G Housing,
   rep. by its Chairman, Sivashanmugam
2. M/s. S dot G Housing,
   rep. by its Vice Chairman, I.S.Santhosh
3. M/s. S dot G Housing,
   rep. by its Partner, Gowri

... Appellants

- Vs -

S.Ashokkumar

... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 23.03.2023 in C.No.94 of 2022 passed by the Tamil Nadu Real Estate Regulatory Authority and to dismiss the complaint.

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For Appellants : Mr.N.Umapathi

For Respondent : Mr.R.Thomas

ORDER

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

1. The respondent/allottee preferred a complaint before the TNRERA seeking necessary action against the appellants/promoters for not registering the real estate project by name "S dot G Flora" situated at Veppampalayam, Erode District. It is the case of the respondent/allottee that the appellants published a brochure and also advertised about the real estate project in their website as well as in various social media like Facebook and Instagram. As found from the brochure, 21 villas were proposed to be constructed by the appellants/ promoters in the said real estate project.

2. On the other hand, it is the case of the appellants that the land proposed to be developed as a real estate project jointly belonged to one K.Ravindran, S/o.M.Karupannasamy and K.R.Varun, S/o.K.Ravindran of Erode. According to the appellants, they have developed their land into a layout project by getting necessary approval from the concerned authorities and sold the plots to various persons on various dates. According to the appellants, the respondent/allottee purchased the Plot No.20 and a portion of Plot No.21 from the above said land owners vide

Sale Deed dated 03.03.2021 and handed over the same to them for constructing a villa on his behalf.

3. The learned counsel appearing for the appellants contended that they are not promoters as defined under The Real Estate (Regulation and Development) Act, 2016. The learned counsel also contended that the land owners have already registered the project as a layout project with the TNRERA vide Registration Certificate in reference No.TN/10/Layout/2437/2023 dated 10.07.2023 and the same cannot be registered once again.

4. After hearing both sides, the TNRERA, by its order dated 23.03.2023, directed the appellants to register the real estate project on or before 30.06.2023. Aggrieved over the same, the appellants have preferred the above appeal before this Tribunal.

5. Heard both sides.

6. It is an admitted fact that one K.Ravindran, S/o.M.Karupannasamy and K.R.Varun, S/o.K.Ravindran of Erode are the owners of the land in which the real estate project, namely, "S dot G Flora" was developed. Admittedly, they have developed their land into a layout project by getting necessary approval, vide DTCP Approval No.51 of 2020, from the concerned DTCP authorities and sold the plots to various persons on various dates. The respondent/allottee purchased the Plot No.20 and a portion of Plot No.21 from the above said land owners vide Sale Deed dated 03.03.2021. Even in the Sale Deed dated

03.03.2021, the name of the real estate project has been mentioned as "S dot G Flora".

7. The appellants also published a brochure in respect of the said "S dot G Flora" real estate project by incorporating the DTCP Approval Number as 51 of 2020, in the year 2020 itself. The said brochure includes other real estate projects promoted by the appellants. The brochure in respect of "S dot G Flora" project consists of the layout and other details. It also contains the specifications of the building proposed to be constructed and also the various amenities proposed to be provided in the real estate project "S dot G Flora".

8. As found from the brochure, the amenities assured to be provided are large Swimming Pool with Singapore lion, Open Air Theater with wide screen, Landscaped Garden, Children's Play Area with play materials, Shuttle Court, Walking Path, Common Septic Tank, Underground Drainage System and Intercom phone for each house with LED monitor with CCTV camera for security purpose. The brochure also consists of the computerized pictures of the above said amenities proposed to be provided in the said real estate project. The appellants have also advertised about this project in their Facebook page, both in English and Hindi.

9. If really, the appellants are only builders of a standalone project and they are constructing the villa at the request of the respondent/ allottee, there was no necessity for the appellants to publish any

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brochure by detailing about the amenities proposed in the real estate project and to advertise about the project in social media.

10. There is no dispute that the real state project "S dot G Flora" was being promoted by the appellants. Moreover, in the Sale Deed dated 03.03.2021 executed by the land owners in favour of the respondent/ allottee, there is a clear mention about the name of the real estate project as "S dot G Flora". There was no necessity for the land owners to mention the name of the real estate project developed by the appellants in the Sale Deed executed by them in favour of various purchasers of villa plots. Based on the Sale Deed, the respondent/allottee applied for building permission clearly mentioning the project name as "S dot G Flora" and permission was also granted mentioning the project name as "S dot G Flora".

11. The above facts would clearly establish that the real estate project "S dot G Flora" was a Joint Venture project between the appellants and the land owners. This fact has been suppressed by the appellants for the reasons best known to them. The TNRERA, by order dated 23.03.2023, had directed the appellants to register the project by granting time till 30.06.2023.

12. Subsequent to the above order, the land owners, in collusion with the appellants, have very cleverly applied for registration of the project as a layout project and the same was registered on 10.07.2023

vide reference No.TN/10/Layout/2437/2023 as a layout project and not as a villa project.

13. As per Section 2(zk)(v) of the Real Estate (Regulation and Development) Act, 2016 any person who acts himself as a builder is also a promoter. The said Section 2(zk)(v) is extracted hereunder for ready reference :

> "2(zk)(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; "

14. It is pertinent to extract Section 3(1) of The Real Estate (Regulation and Development) Act, 2016, which reads as follows:

> "3. Prior registration of real estate project with Real Estate Regulatory Authority.
> (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:
> Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:
> Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration."

15. By publishing a brochure and advertising in various social media about the project and the amenities to be provided, the appellants have invited persons to purchase villas in the real estate project "S dot G Flora". Section 3(1) of The Real Estate (Regulation and Development) Act, 2016 clearly prohibits such kind of advertisements without registering the real estate project with the Real Estate Regulatory Authority established under the Act. As per the second proviso to Section 3(1), if the Real Estate Regulatory Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area, it may by order, direct the promoter of such project to register with the Authority.

16. In these circumstances, we find no illegality in the order passed by the TNRERA directing the appellants to register the project and the appeal is liable to be dismissed. Accordingly, the appeal is dismissed. Connected Miscellaneous Application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to

1. The TNRERA.

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