



BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Egmore, Chennai – 600 008

[Under the Real Estate (Regulation and Development) Act, 2016]

C.No.290/2019

4th day of September 2019

Coram : Thiru K. Gnanadesikan, I.A.S.(Retired), Chairperson
Er. S. Manohar, Member
Adv. V. Jeyakumar, Member

1) P.S. Sudarshan Sharma]	
2) Kavitha]	Complainants
3) N.M. Mahesh]	
4) N. Jegannathan]	

Versus

1) M/s. Marg Properties Ltd.	R1]	
2) Managing Director]	Respondents
M/s. Marg Properties Ltd.	R2]	

In this complaint made under Section-31 of the Act, the Complainants have sought the following reliefs.

- (a) To direct the promoter / respondent M/s. Marg Properties Pvt. Ltd., to register the each and every block in Phase-I i.e. A, B &

C in the project "Savithanjali" comprised in S.Nos.192/1, 194/2, 194/3, 195/1, 195/3, 194/1, 159/2 and 196 measuring a total extent of 7 acres and 11 cents, No.6, Kalavakkam Village, Tiruporur Panchayat, Chengalpattu Taluk, Kancheepuram District, Under Sec.3 (1) of the Real Estate (Regulation and Development) Act, 2016 within a stipulated time as directed by this Hon'ble Appellate Authority by its order dated 23.05.2018.

- (b) To punish the promoter / respondent M/s. Marg Properties Pvt. Ltd. represented by its Managing Director for failing to register the project within the stipulated time, by imposing the penalty as provided under Section 59 (2) of the Act.

2. In support of their reliefs sought, the Complainants have stated that this residential project was to be executed in a phased manner wherein Phase-I would consist of Block-A, B and C with 353 residential apartments and Phase-II would consist of Blocks D and E with 325 residential apartments. The Hon'ble Appellate Tribunal in its order in Appeal No.1/2018, filed by Y. Ravishankar against the order of dismissal by the Authority dated 12.12.2017, had directed the Respondents to register the project with the Authority. But the Respondents in complete violation of

the orders passed by the Hon'ble Appellate Tribunal has registered only Block-B & C and Block-A was not registered with the Authority and hence deliberately violated the orders passed by the Hon'ble Appellate Tribunal.

3. The complainants have further submitted that even as per the Respondents, Phase-I of the project would be only Block-A, B & C and while the Appellate Tribunal had passed in its order that the entire project would be registered under Section-3 of the Act.

The Respondents cannot go against the spirit of the order and refuse to register Block-A alone in the project. While the respondent himself has conceived to put up construction in phased manner, then each phase has to be registered separately under the Act. The Respondent cannot further break down each phase and register each block separately. The Act or the Rules do not provide for or give such liberty to the respondent which is arbitrary and unlawful.

4. In the Counter Affidavit the Respondent have stated that the Complainant is in the form of execution of the Judgement passed by the Tamil Nadu Real Estate Appellate Tribunal on the appeal in which the complainants are not parties. The complainants are not parties to the judgement which they sought to execute vide their prayer in Form-M filed

by the complainants. The Respondents submit that when the complainants are not parties to judgement of the Appellate Tribunal dated 23.05.2018 in Appeal No.1/2018 they do not have any right to make any claim as per the prayer sought for by them under para 5(a) of Form-M. Therefore, it is submitted that the complaint is to be dismissed in limini as the complainants have no locus standi to execute the judgement passed by the Appellate Tribunal wherein the complainants are not parties.

5. The Respondent has also submitted that as per Rules 2(h) (iii) in order to be excluded from the definition of ongoing project intimation of the structural completion of the project within 15 days of notification of TNRERA Rules and publication in the Website of the Real Estate Regulatory Authority is necessary. The present Phase-1 of the Savithanjali project was published in the Website of TNRERA as structurally completed and therefore the Phase-1 of the project Savithanjali is to be excluded from the definition of the ongoing project as per Rules 2(h)(iii) of TNRERA Rules.

6. For the sake of convenience, the details regarding the project Savithanjali stated in the Website of RERA is given - Item 87 of the DTCP – Status of the Applications (188 Nos.) filed with DTCP under Rule 2(h) (iii)

of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 states as follows:

"Block A completed interior work process Block B & C 14 floor Structural work completed as per approved plan Block D & E Foundation work under process and Block F not yet started"

In view of the above Block "A" of Savithanjali project has been excluded from the definition of "Ongoing Project" defined under Rule 2(h) (iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules 2017 and is not liable to be registered with the Authority.

The Act does not define "Ongoing Project". Therefore, the definition of "Ongoing Project" in the Rules will have to be taken into consideration for the Registration of Project under RERA.

7. In the Rejoinder filed by the Complainant, certifying that the beams and slabs in respect of Block A have been completed is frivolous and vexatious. The said certificate issued by the architect had already been dealt with by the Hon'ble Appellate Tribunal in Appeal No.1 of 2018 and irrespective of the said certificate, the Appellate Tribunal had passed a categorical order directing the respondent to register the entire project

under the Act. The said contention was already taken by the Respondent in the appeal and the Appellate Authority was pleased to direct the respondent to register the entire project namely "Savithanjali" under the Act.

8. The Appellate Tribunal in Appeal No.1 of 2018 has not exempted Block "A" of the Savithanjali Project from registration under the Act.

9. In the Additional Counter Affidavit filed by the Respondent, it has been stated that Block A of Savithanjali Project is in advanced stage of handing over and the project Savithanjali is situated at Kalavakkam village, Thiruporur Town Panchayat, Kancheepuram District which is outside the planning area. Building is structurally completed as certified by Architect dated 06.07.2017, the same was also duly communicated to the local authority by letter dated 06.07.2017 and D.T.C.P. and the same also has been published in RERA Website and hence their project will fall under the exempted category of registration.

10. Block A of Savithanjali project consist of 123 dwelling units and all the 123 units have been sold i.e. Undivided share of land has been conveyed to the respective customers, i.e. there is no unsold unit in Block A of Savithanjali project.

FINAL ORDER

The Authority has considered the complaint and the response of the Respondent carefully. It is very clear that the Hon'ble Appellate Tribunal has directed the Respondent to register the project with the Authority whereas the Respondent has applied and got registration for Blocks B and C only. Therefore, the Respondent ought to register Block A in Phase-I in the project "Savithanjali" also immediately as prayed by the complainant and in compliance with the orders of the Hon'ble Appellate Tribunal.

Sd/-...04.09.2019
MEMBER (M), TNRERA

Sd/-...04.09.2019
MEMBER (J), TNRERA

Sd/-...04.09.2019
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

P
04/09/2019

N. Prasad
ADMINISTRATIVE OFFICER