



**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]

I.A.No.57/2021 in C.No.265/2021 & C.No.265/2021

29th day of September, 2022

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson
Adv. V. Jeyakumar, Member
Thiru Sunil Kumar, I.P.S. (Retired), Member**

Tvl. M.V. Nishant and A.V.S. Sameeraja ... Complainants

Versus

M/s. Selene Estate Ltd. ... Respondent

The above Complaint and the Interim Application came up for final hearing before this Authority in the presence of M/s. Mothilal & Goda – Counsel for the Complainants and of M/s. Tatva Legal – Counsel for the Respondent and upon hearing both sides, this Authority passes the following orders:

FINAL ORDER

The Complainants have submitted in the Complaint that they had purchased apartment from the Respondent in the project in the name and style of Ozone Greens Township situated at S.No.68/1A, Perumbakkam – Jalladianpet Joint Road, Jalladianpet, Sholinganallur Taluk, Chennai-100 and more particularly in the E5 building Apartment No.903.

2. The Complainants have further submitted that the Respondent is the promoter of the said Project and that the project has been registered under Section 3 of the Real Estate (Regulation and Development) Act, 2016 bearing Registration No.TN/01/Building/0023/2017 dated 21.08.2017. The Complainants have also stated that even pursuant to having received two extensions, the Respondents have miserably failed to complete the project and continue to work at a slow pace.

3. The Complainants have further stated that as per Clause 6.1 of the Construction Agreement of the said project, the entire construction of the project has to be completed within a period of 30 months and a further grace period of 6 months from the date of execution of the Construction Agreement i.e. 36 months from 13.01.2016 and to be completed by 13.01.2019. However, pursuant to the passage of two and a half years (including grace period), the Respondent has not fulfilled its obligation by failing to complete the construction in respect of the project.

4. The Complainants have also submitted that they have paid an amount of Rs.54,72,523/- including the Service Tax/GST and car parking which is equivalent to 95% of the total consideration in respect of the subject property and have never missed a single payment till date. The only amount which remains to be paid is an amount of Rs.8,74,810/- which becomes due pursuant to the handover of the possession of the property.

5. The Complainants have sought for the following reliefs in the Complaint.

- a) To direct the Respondent to complete the construction of the said project and handover possession to the Complainants within a particular time as considered appropriate by this Authority.

- b) To restrain the Respondents from alienating any of their stake in the said Project, creating any interest, charge, encumbrance or mortgage over the said property either on their own or through their men, agents or anybody else in connection with them or the property pending disposal of this complaint
- c) For costs of the present complaint
- d) Any other relief that this Authority deems fit and proper in the circumstances of this case.

6. In the Counter Affidavit, the Respondent has submitted that the Tower in which the Complainants have booked the subject apartment is in Tower E5 which comes under the last phase of the Development and the said Tower comprises of 88 residential units. The Respondent has also submitted that it had completed and handed over upto Tower E2 in the Project Phase II (G, F2, D1, D2, D3, E1 and E2). Further the structures of Tower E5, PoP, Tile work, plastering work are completed and the 1st coat painting of the Tower is in progress. The Respondent has mobilized men and material to complete the internal finishing work and mechanical, electrical and plumbing (MEP) work in Tower E5. Additionally, the Respondent has already entered into Contracts with the various contractors identified for civil finishes and MEP work in Tower E5.

7. The Respondent has also stated that in spite of adverse market conditions, the Respondent has arranged for requisite funds and will ensure that the residential unit of the Complainant is ready and handed over in liveable condition by June, 2022.

8. In the I.A.No.57 of 2021 filed by the Complainants, the Complainants have stated that the representatives of the Respondents have informally advised the existing owners in the Project that the Respondents do not possess the requisite funds which are required in order to complete the Project and have even threatened the existing owners that they will file for insolvency, should any further pressure mount.

9. The Complainants have further stated that his personal apprehension and also the general apprehension among the existing owners is that the Respondents have misappropriated/diverted the funds which they have collected in respect of the project without properly utilizing the same for the construction of the said Project, thereby violating the conditions of grant of Registration and the provisions of the said Act as such.

10. The Complainants have also submitted in the IA that the said Project is an ongoing project as per the provisions of the Real Estate (Regulation and Development) Act, 2016 have registered the Project in terms of the same. The Complainants have also submitted that the Respondent is duty bound to furnish the statement of accounts duly certified and signed by a Chartered Accountant who shall verify during the audit that the amounts collected for the said Project have been utilized for the project and that the withdrawals have been made in compliance with the proportion to the percentage of completion of the project. The Complainants further stated that the such Statement of Accounts since such time the Project has been registered with this Authority, till date may be furnished by the Respondent in order to examine whether such withdrawals

have been made as per the provisions of the said Act failing which such necessary penal action may be taken.

11. Therefore, the Complainants have submitted that in view of the above, they prayed that the Respondent may be directed to furnish the Statement of Accounts since such time the project has been registered with this Authority, in order to examine whether such withdrawals have been made as per the provisions of the Said Act failing which the necessary penal action may be taken.

12. In the Counter Affidavit filed by the Respondent on the I.A.No.57/2021 the Respondent has submitted that prayer sought for in the Interim Application is not maintainable in law or in facts and is a gross abuse of judicial process which deserves to be dismissed in limine. Also the Respondent has submitted that the relief sought for in the present Interim Application calling for the Statement of Accounts of the Respondent in order to examine whether withdrawals have been made as per the provisions of the Real Estate (Regulation and Development) Act, 2016 is beyond the scope of the rights and duties conferred upon the Allottees under the said Act.

13. The Respondent has also submitted that upon a careful reading of the said Act, it can be noticed that the rights conferred on an Allottee does not entitle him/her to have access to the Statement of Accounts of the Promoter/Builder. The Respondent has also stated that it is not mandated to submit the Account Statements to any Allottee of the Project other than the information/documents mentioned in the related Sections of the said Act.

14. In the Affidavit filed by Mr.M.Premnath, the Authorised Signatory of the Respondent Promoter, it has been submitted that this Authority may be pleased to receive the additional documents more clearly set out in this Affidavit as evidence on the side of the Respondents in the subject Complaint and pass such further or other orders as this Authority deems fit in the facts and circumstances of the case and thus render justice.

15. This Authority has examined the Complaint, the I.A.No.57/2021 filed by the Complainant, the Counter Affidavit filed by the Respondent in respect of the Complaint as well as the I.A. carefully.

16. Regarding the prayer to direct the Respondent Promoter to complete the construction and handover possession of the apartment No.903 in E5 Building, it is seen in the Counter Affidavit that the Respondent Promoter has stated that it will ensure that the residential unit of the Complainant is ready and handover in liveable condition by June, 2022.

17. Therefore, this Authority presumes that the Respondent Promoter has completed the apartment allotted to the Complainant and handed over to the Complainant Allottee. If not, the Authority directs the Respondent Promoter to do so before 30.11.2022 without fail and file Compliance Affidavit before 15.12.2022.

18. Regarding the prayer in I.A.No.57 of 2021 to direct the Respondent Promoter to furnish the Statement of Accounts in order to examine whether the withdrawals have been made as per the provisions of the Act, this Authority notes that under Section 4(2)(l)(D), the Promoter shall get his accounts audited within six months after the end of every financial year by a Chartered Accountant in practice, and shall produce a statement of accounts duly certified and signed by a Chartered Accountant and it shall be

verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

19. It is ascertained from the Registration wing of this Authority that the Respondent Promoter has not furnished the audited and certified Statement of Accounts prescribed under Section 4(2)(l)(D) of the Act for the Financial Year 2017-2018, 2018-2019, 2019-2020 and 2020-2021 so far.

20. Therefore, this Authority under Section 60 of the Act imposes a penalty of Rupees Three lakhs on the Respondent Promoter for contravening the provisions of Section 4(2)(l)(D). This Penalty shall be paid before 30.11.2022.

21. This Authority also directs the Respondent Promoter to furnish the audited and certified Statement of Accounts for the financial years from 2017-2018 to 2021-2022 before 31.10.2022 without fail.

22. This Authority does not accept the contention of the Respondent Promoter that the Allottee does not have the right or entitlement to have access to the Statement of Accounts.

23. When a real estate project is not completed in time, the Allottee has justifiable reason to have apprehension about the utilization of amounts collected from the Allottees for the project. Therefore, in view of the inordinate delay in completing this project, which is already more than 3 years beyond the due date i.e. 13.01.2019, the Complainant Allottee has the right to pray this Authority to direct the Promoter to furnish the audited and

certified Statement of Accounts in order to examine whether the withdrawals have been made as per the provisions of the Act.

24. With the above findings and directions, this Complaint as well as the Interim Application No.57/2021 is disposed of.

Sd/-...29.09.2022

MEMBER (J), TNRERA

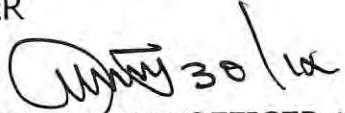
Sd/-...29.09.2022


MEMBER (S), TNRERA

Sd/-...29.09.2022

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

 30/10
ADMINISTRATIVE OFFICER v.e


29.9.22.