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: 17.07.2023

Delivered on: 24.07.2023

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

Appeal No.38 of 2023

Victoria Flat Owners Welfare Association
rep by its President ... Appellant

- Vs -

K.Shankar Karikar
Proprietor of M/s. Corner Stone Builders ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act 2016, by the Complainant/Allottees' Association in respect of the disallowed reliefs vide order passed in Complaint No.6/1/PRERA/COMP/Pdy/2022/5 dated 13.03.2023 by the Puducherry Real Estate Regulatory Authority.

Counsel For Appellant : Ms. Niveda CP

ORDER

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

2. The residential project namely "Victoria Apartments" was developed in a land measuring 25,000 sq. ft. situated at Karuvadi Kuppam Revenue Village, Puducherry. One V.K.Prakash was the owner of the said land. The Respondent/Developer namely M/s. Corner Stone Builders represented by its sole proprietor K. Shankar Karikar and the said land owner V.K.Prakash entered into a registered Joint Venture Agreement dated 16.02.2012 to develop the land into a residential project. As per the Joint Venture Agreement, 36% of the built up area will be allotted to the land owner in lieu of the land value and the remaining 64% of the built up area will be allotted to the Respondent/Developer in lieu of the cost of construction. In all, 40 residential flats were proposed to be constructed.

3. Accordingly, necessary building plan approval was obtained from the Puducherry Planning Authority in the year 2014. Based on the Joint Venture Agreement, the Respondent/Developer entered into various agreement to sell the flats with the prospective flat buyers on various dates. It is the case of the Appellant that at the time of entering into the Agreement to sell, the Respondent/Developer promised various amenities such as swimming pool, etc. According to the Appellant, the swimming pool was ear marked in the original building plan approved by the Planning Authority in the year 2014.

4. In the meanwhile, the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as Act 2016) came

into force. Since the project was an ongoing project as on the date of Section 3 of the Act came into force i.e. on 1.5.2017, the Respondent/Developer said to have registered the project with the Puducherry Real Estate Regulatory Authority (hereinafter referred to as PRERA) by submitting a revised building plan approved by the Puducherry Planning Authority in reference No.PPA/2086/2442/Z(SB/K)/2017-18 dated 05.10.2018.

5. The Appellant contended that the building plan was revised without the consent of the allottees. It is the further contention of the Appellant that as per the revised building plan, the number of car parking was reduced from 40 to 36 and also no swimming pool was provided. According to the Appellant, the Respondent/Developer failed to provide certain other amenities also as promised by him in the brochure. The Appellant also sought for certain other directions against the developer, regarding production of loan discharge certificate and providing of sewage water outlet, gym, TV cable, community hall, generator, handing over of corpus fund to the Association and payment of maintenance charges for the unsold flats.

6. After hearing both sides, the PRERA by the impugned order dated 13.03.2023, issued certain directions against the Respondent/Developer with regard to providing of sewage water outlet within a period of 3 months and also directed the Respondent/Developer to pay the maintenance charges for the unsold flats. Further the PRERA cautioned the Respondent/Developer that, in case of failure to comply with the directions of the PRERA within the stipulated time, penalty will be imposed as per Section 38 of the Act,

2016. Aggrieved over the said order passed by the PRERA dated 13.03.2023, the Appellant preferred this appeal before this Tribunal.

7. Heard Ms. Niveda, the learned counsel for the Appellant.

8. The present appeal has been preferred on behalf of the allottees by the Complainant/Allottees' Association as against the disallowed reliefs prayed for in the complaint before the PRERA. In the impugned order, the PRERA observed that the Respondent/Developer has committed certain violations under Sections 14(2), 11(4)(a), 17 and 11(4)(b) of the Act, 2016, in paragraphs 10 (a) to 10(d). Though these observations of the PRERA are directly against the Respondent/Developer, he has not preferred any appeal as against those observations. Therefore, we feel that it is not necessary for us to go into the correctness of the observations regarding the violations allegedly committed by the Respondent/Developer in this appeal preferred by the Complainant/Allottees' Association.

9. During the course of submissions, the learned counsel for the Appellant had submitted that the PRERA, having come to a conclusion that the Respondent/Developer committed violations under Sections 14(2), 11(4)(a), 17 and 11(4)(b) of the Act, 2016, ought to have imposed penalty against the Respondent/Developer as mandated under Section 61 of the Act, 2016. According to the Counsel for the Appellant imposition of fine under section61 is mandatory. The counsel for the Appellant was of the view that this Tribunal can impose penalty against the Respondent/Developer in this appeal. This aspect was not raised in the grounds of appeal. The learned counsel for the Appellant

has not adverted to any of the grounds raised in the memorandum of appeal. Therefore, we are not inclined to go into the grounds raised in the memorandum of appeal.

10. We have carefully perused the impugned order. The PRERA at paragraph 11 of the impugned order, has directed the Respondent/Developer to comply with all the conditions including sewage facility as mentioned in the approved building plan within three months and also directed to submit the occupancy certificate before the Authority. The PRERA also issued some other directions with regard to pumping out of sewage water, providing the details of sold and unsold flats to the Association, paying maintenance charges for the unsold flats. The PRERA had granted three months time for complying with the above directions. The order of the PRERA clearly states that in case of failure to comply with the directions within the stipulated time penalty will be imposed as per Section 38 of the Act, 2016. Therefore, in the event of the Respondent/Developer failed to comply with the directions of the PRERA, the Appellant can very well file Execution Petition before the PRERA.

11. Moreover, as per section 38(1) of the Act, 2016 the Authority shall have powers to impose penalty or interest in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents under this Act or the Rules and the Regulations made thereunder. Whereas Section 61 of the Act speaks about the fixation of penalty and the liability to pay such penalty by the promoter who contravenes the provisions of the Act, 2016 other than Section 3 or Section 4 or the Rules or Regulations made

thereunder. Therefore, imposition of penalty by exercising the power to impose penalty under Section 38(1) of the Act, 2016 is purely at the discretion of the concerned Real Estate Regulatory Authority and not a mandatory one as argued by the learned counsel for the Appellant. Once the penalty is fixed under Section 61 of the Act, the promoter shall be liable to pay the penalty. Therefore, the appeal is liable to be dismissed as devoid of merits.

12. In the result, the appeal is dismissed at the admission stage itself. Connected Miscellaneous applications pending, if any, are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER