

BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Friday the 24th day of February 2023

CORAM : Hon'ble Mr. Justice M. Duraiswamy, Chairperson
Ms. Leena Nair, Administrative Member
Mr. R. Padmanabhan, Judicial Member

Appeal No. 6 of 2023

R. Radhakrishnan

.... Appellant

Vs

1. Malathi Badri W/o. P.N. Badri
2. P.N. Badri S/o Govindarajan.

... Respondents

This appeal has been filed U/s 44(1) of the Real Estate (Regulation and Development) Act 2016, and taken on file on 08.02.2023. Today the matter came up for admission in the presence M/s. K. Ganesan, Ganesh V Aranala, P.E.R. Mangala Suvigaran and M. Abinu Monisha, Counsels for the appellant. Having heard the arguments on the side of the appellant, this Tribunal delivered the following,

ORDER

The promoter who suffered an order to pay compensation, at the hands of the learned Adjudicating Officer, attached with TNRERA, passed in CCP No. 336 of 2021 dated 22.8.2022, have preferred this appeal.

1. According to the learned Counsel for the appellant, the appellant is the owner of the land comprised in Old T.S.No.16/1 and New T.S.No.16/7 in block 38, Puliyur Village, Egmore Taluk, Chennai District measuring to an extent of 3706 sq. ft. The appellant had, with a view to develop the land by constructing two storied building consisting of total 6 residential flats along with six covered car parking and six two-wheeler parking at the ground floor, applied for and got necessary building permission in the year 2016. Immediately, the appellant started construction and completed the same during the year 2018.

2. The learned counsel for the appellant fairly admitted that the appellant, by deviating from the approved building plan, had constructed a residential flat at the ground floor and a studio flat at the open terrace (herein after will be referred to as unauthorized constructions). According to the counsel for the appellant the above said unauthorized constructions were put up by the appellant during the year 2018 itself even at the time of constructing the building. The learned Counsel for the appellant contended that the respondents had, during February 2019, physically inspected the entire building and also verified the approved building plan. After being satisfied, the

respondents came forward to purchase a flat bearing No.S2 at the second floor and they did not raise any objections at that time with regard to the above said unauthorized constructions. Therefore the respondents cannot raise any objections now the learned Counsel argued.

3. The learned Counsel for the appellant further admits that subsequent to the purchase of the apartment by the respondents, the appellant had executed a settlement deed dated 23.10.2020 in favour of his wife R.Vasantha and son Rajaram in respect of undivided share of land measuring 183 sq. ft.

4. On the other hand, it is the specific case of the respondents as found from their complaint, that in fact the appellant obtained building permission for constructing a two storied building consisting of $3+3 = 6$ apartments along with six covered car parking and six covered two wheeler parking at the ground floor. But to the contrary the appellant had constructed 8 apartments with 8 separate kitchen facilities. Out of the two unauthorized flats constructed by the appellant one is a full-fledged residential flat constructed at the ground floor having separate kitchen facilities. It measures about 787 square feet. The other unauthorized flat is a studio flat constructed at the open terrace of the building with separate kitchen facilities.

5. Because of the unauthorized construction of the residential flat measuring 787 sq. feet at the ground floor over the space reserved for covered car parking, the actual car parking area got compressed and the space reserved for two wheeler parking totally vanished. As a result, the allottees are unable to park their car and two wheelers conveniently. According to respondents the

appellant agreed to rectify the above deviations and also agreed to provide covered car parking and two wheeler parking as per the approved building plan. Instead the appellant had executed a settlement deed in favour of his wife and son during October 2020 i.e. subsequent to the purchase of the flats by the respondents during February 2019. By executing such settlement deed the appellant had conveyed 183 sq. ft. of undivided share along with the flat measuring 787 square feet constructed in violation of the approved building plan. According to the case of the respondents the said settlement deed is not valid and binding on them.

6. Following the execution of such settlement deed the appellant, his wife and son in connivance with each other had leased out, the residential flat illegally constructed at the ground floor for a monthly rent of Rs.20,000/- per month. Likewise, they have also leased out the studio flat illegally constructed at the open terrace of the building for a monthly rent of Rs.10,000/- per month. By filing the complaint the respondents ultimately claimed opportunity costs of Rs.4,80,000/- by way of compensation with interest, compensation for mental agony and for costs.

7. Considering all the facts and circumstances of the case the learned Adjudicating officer awarded compensation of Rs.4,80,000/- towards opportunity costs in favour of the respondents / allottees besides awarding Rs.1,00,000/- as compensation towards mental agony and Rs.25,000/- towards legal expenses. The award so passed by the learned Adjudicating officer U/s 14 of the Real Estate (Regulation and Development) Act 2016 is now being challenged by filing this appeal.

8. Point :- Whether the appellant had made out any valid grounds in their appeal memorandum for consideration by this Tribunal ? is the only point to be decided at this admission stage.

9. Heard the counsel for the appellant. Entire case records were perused carefully. In the counter affidavit filed by the appellant before the Learned Adjudicating Officer, the appellant had specifically admitted that the building was completed in the year 2018 itself. He had further stated that not even a single brick was added or removed since the construction of the flats. By saying so the appellant impliedly admits the violation. Above all the appellant remained silent till the respondent / allottee raised objections and preferred the complaint before the Adjudicating Officer in the 2021. The appellant has belatedly applied for revised plan approval only in the year 31.01.2022 i.e., one year after the respondents preferred the complaint before the Adjudicating Officer. Till date the said application alleged to be pending with the CMDA.

10. The contention of the learned Counsel for the appellant that the respondents came forward to purchase their flat in the project after physically inspecting the building and after noticing the unauthorized constructions and therefore the respondents cannot turn around and raise any objections now, with regard to the said unauthorized constructions cannot be accepted. Because, it is a well settled proposition of law that there cannot be any estoppel against law. On the other hand it was only the appellant, being the violator, is estopped from claiming any right over the unauthorized constructions.

11. Earlier the appellant had put up the unauthorized construction and later, that too after the respondent / allottee of the project raised objections,

had clandestinely executed a settlement deed in order to mess up the issue and to protect the unauthorized construction from any possible demolition by the CMDA. On any account the appellant cannot be allowed to rely upon the settlement deed executed by him in favour of his wife and son. Equally the appellant cannot be allowed to take any shelter by saying that the admitted violation was committed before the date of purchase of the flats by the allottees. The question whether there is any serious violation of building rules or not is more relevant than the date of violation.

12. Further the specific allegations of the complainant that the appellant and his family members had leased out the unauthorized constructed portions to third parties and are earning Rs 30,000/- per month as rent, were not specifically denied by the appellant in their counter affidavit filed before the Adjudicating officer. The appellant and his family members cannot enrich themselves by flouting all Building Rules and Regulations and by causing great prejudice to the enjoyment rights of the respondents over the undivided share.

13. Because of the additional constructions put up by the appellant the car parking area at the ground floor got compressed and the space for two wheelerparking got vanished. A mere comparison of the original approved plan dated 09.11.2016 and the unapproved revised building plan (which is allegedly pending for approval) will speak for itself, the difficulties faced by the allottees day in and day out. Considering all the facts and circumstances of the case the learned Adjudicating officer awarded compensation towards opportunity costs in favour of the respondents / allottees. The awarding of compensation towards opportunity costsU/s 14 of the Real Estate (Regulation and Development) Act,

2016 by the Adjudicating Officer is perfectly in order. The appellant has failed to make out any valid ground to appeal against the said order. The point is answered accordingly. Therefore, the appeal is liable to be dismissed at the admission stage itself.

14. In the result the appeal is dismissed at the admission stage itself as devoid of merits. No costs. Before parting with the case it is hereby ordered that **after the expiry of appeal time** the entire amount of Rs. 6,65,539/- deposited by the appellant before this Tribunal as pre conditional deposit under Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, shall be paid to the respondent / Complainant along with the interest accrued thereon as the same is due and payable to the respondents. Connected Miscellaneous applications pending if any are hereby closed.

Dictated to the Stenographer directly and typed by her in the computer, corrected and pronounced by us in the open court on the 24th day of February 2023.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER