



**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.212/2019

15th day of December, 2023

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

Sare Squires ... Complainant

Versus

1) Sare Shelter Projects Pvt. Ltd.]	
2) Dewy Terraces (Phase I) Flat]	Respondents
Owners' Welfare Association]	

The above Complaint came up for final hearing before this Authority in the presence of M/s. R. Manimuthu - Counsel for Complainant and of M/s. G. Vivekanand - Counsel for Respondent-1 and of M/s. Rohini Ravikumar - Counsel for Respondent-2. This Authority passes the following order:

FINAL ORDER

This Authority has passed orders on 12.06.2019 in this Complaint holding that in view of completion and handing over of the apartments to the members of the Complainant Association much before the coming into effect of the RERA Act the question of registration of project Phase 1 to 4 does not arise.

2. The Appeal filed by the Complainant Association was allowed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in its order dated 09.09.2020 in Appeal No.58 of 2019 and the order of this Authority dated 12.06.2019 was set aside and held that this Complaint is maintainable. This Complaint was remanded back to this Authority for disposal.

3. On the above orders of the Hon'ble Tamil Nadu Real Estate Appellate Tribunal, the Respondent Promoter has filed 2nd Appeal in CMSA No.27/2020 before the Hon'ble High Court of Madras on which orders were passed by the Hon'ble High Court of Madras vide its order dated 16.02.2021 wherein the orders passed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal was confirmed and the CMSA No.27/2020 was dismissed. This Authority was directed to adjudicate the issues on merits and in accordance with law by affording opportunity to all the parties concerned.

4. As the Dewy Terraces (Phase I) Flat Owners' Welfare Association was also the 2nd Respondent both in the 1st and 2nd Appeal, this Association was also impleaded as 2nd Respondent in this remanded Complaint.

5. The main relief prayed for by the Complainant Association is to issue direction to the Respondent Promoter to register Phase-1 to 4 of this real estate project with this Authority.

6. The Complainant has also prayed for an interim direction to the Respondent Promoter to obtain revised approval from DTCP for the approved Layout No.30/2006.

7. According to the Complainant, the one and only Layout approach road connecting the entire layout to the outside world cuts-across and traverses S.No.181/1A2B, 239/1 and 240/1.

8. The RDO, Kancheepuram passed an order that 1.01.5 hectares of land in respect of Survey No.239/1 shall revert and re-vest with the Arulmigu Valliammal Devasthanam belonging to the Arulmigu Kandasamy Temple, Tiruporur. Accordingly, the Layout does not have the basic requirement of Layout approach road.

9. In addition, the construction of the common amenities and facilities such as community hall, shops, etc. has not been commenced. The construction of club house had come to a stand still for the past several years. The upper floor of the club house is only partially structurally completed and it is unfit for use.

10. In view of these reasons, this real estate project Phase-1 to 4 is on ongoing project.

11. In the Counter Affidavit filed on 09.08.2021, the Respondent Promoter has submitted that the Layout was originally promoted by M/s. Jubilee Plot and Housing Private Limited and marketed by M/s.Sowbhagya Co-operative Housing Society Limited and as such the

Respondent Promoter Company has no role in this Layout approval and hence no relief can be claimed for any defect and non compliance of Layout approval conditions.

12. The Respondent has further stated that they purchased 783 housing plots in this Layout vide Sale Deed executed on 28.12.2007 registered as document No.11625/2007 in the office of the Sub Registrar, Tiruporur. The Respondent Promoter has obtained the approval for group housing development scheme in respect of plot Nos.580 to 601 on 19.03.2010 from DTCP and on 24.05.2010 by MLPA. The Respondent Promoter has also prepared a detailed plan for group housing in respect of plot Nos.514 to 535 and got approval from DTCP on 30.12.2010.

13. The Respondent Promoter has further submitted that the DTCP approval dated 21.02.2006 granted to the land promoter was challenged in W.P.No.20476/2014 wherein the Hon'ble High Court of Madras was pleased to dispose of the said W.P. with a direction to DTCP and MLPA to direct the 5th & the 8th Respondents in this W.P. to submit a revised plan by its order dated 28.01.2020.

14. Also it is stated that this Respondent Promoter is given to understand that the Layout promoter has submitted a revised Layout plan to the DTCP authorities on 14.09.2020 covering a major issues involved in the present litigation. The existing approach road at southern side covering S.No.181/1A2B, 240/1 & 239/1 is proposed to be discarded and new approach roads are proposed on the bypass road side.

15. The Respondent Promoter has further submitted that the Layout approval granted with respect to lands in S.No.239/1 and 240/1 are

withdrawn in the proposed revised layout for approval hence major allegation with respect to approach road and the disputes in respect to S.No.181/1A2B, 239/1 & 240/1 may be solved permanently.

16. The Respondent has also submitted that the title issue relating to S.No.239/1 is subjudice before DRO, Chengalpattu.

17. As far as the club facilities are concerned the same is provided commensurate to the development activities in the project. The Respondent Promoter has also stated that this Respondent has planned to develop the club house facilities to the tune of about 37,000 sq.ft. for the entire project development of about 24,11,302 sq.ft., however, one third of the Respondent's plan has been achieved so far and proportionately the club house facilities were provided in about 12,000 sq.ft.

18. The prayer for registration in respect of Phase-1 to 4 is liable to be dismissed for the reason that the members of the Complainant Association have taken over their respective dwelling units admittedly in the year 2014-2015 which is prior to the commencement of the RERA Act and the Respondent Promoter has already registered with this Authority the Phase-5 Villa project which was ongoing project on the date of commencement of the Act. Therefore, the Respondent Promoter has prayed that this Complaint be dismissed.

19. The 2nd Respondent Dewy Terraces (Phase I) Flat Owners' Welfare Association has adopted the complaint preferred by the Complainant herein.

20. In the Rejoinder filed by the Complainant Association, it has also been submitted that the Completion Certificate issued by the Town Panchayat cannot be considered, as it is not a competent authority to do so.

21. This Authority had also passed orders dated 05.01.2023 in respect of IA No.41, 42 & 43 of 2021 in this Complaint.

22. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter and the Rejoinder filed by the Complainant Association and the arguments of all sides carefully.

23. The main issue is lack of an approach road with proper title in the name of the Respondent Promoter/original Layout promoter with proper approval by way of revised approved Layout plan by DTCP, as an approach road to a real estate project is a basic pre-requisite and hence this real estate project cannot be treated as a completed project till the revised Layout plan is approved by the competent authority and the approach road is laid and put into use.

24. The Respondent Promoter has failed to furnish documentary evidence for completion of the approach road after getting approval for the revised Layout plan except merely stating that the application for the revised Layout plan has been submitted by the original Layout promoter.

25. Therefore, this Authority has no hesitation in concluding that this real estate project Phase-1 to 4 is an ongoing project as on 01.05.2017 the date of commencement of Section 3 of the Act. Accordingly, this Authority directs the Respondent Promoter to register Phase-1 to 4 of this real estate project with this Authority before 31.01.2024 without fail.

26. In the Interim Application No.29/2020, the Complainant Association has prayed for an interim order to direct the Respondent Promoter to obtain the revised approval of the Layout No.30/2006 from DTCP in view of lack of an approach road to this real estate project.

27. The Respondent Promoter in the Counter Affidavit filed on the IA No.29/2020 has submitted that the original Layout promoter has applied for revision/modification of the approved plan providing an alternative access.

28. The Authority notes that the Hon'ble High Court of Madras has passed orders in W.P.No.20476/2014 dated 28.01.2020 with a direction to DTCP and MLPA to direct the 5th & the 8th Respondents in the above W.P. to submit a revised plan. The Respondent Promoter has also stated that the original Layout promoter has filed an application for revised Layout plan including provision of an alternative access to this real estate project. Therefore, this prayer has become infructuous.

29. However, this Authority directs the Respondent Promoter to ensure that the approval for the revised Layout is obtained from DTCP expeditiously.

30. With the above findings and directions, this Complaint is disposed of.

Sd/-...15.12.2023
MEMBER (M), TNRERA

Sd/-...15.12.2023
MEMBER (J), TNRERA

Sd/-...15.12.2023
CHAIRPERSON, TNRERA

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LAW OFFICER, TNRERA

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