



**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.Nos.248, 249 & 250/2019

19th day of September 2019

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

**Ms.Sarojam Gopinathan & Col. Sanath
Gopinath, V.S. Srikumar and R. Chitra**

... Complainants

Versus

M/s. Green Avenue Homes & Gardens

Respondents

FINAL ORDER

In these 3 complaints, the complainants are owners of the Housing Board flats who had entered into an agreement with the developer M/s. Green Avenue Homes & Gardens a sole proprietorship concern represented by its Proprietor Thiru D. Dhinakaran for demolition of the existing flats and redevelopment.

2. In this property, there are 6 flats of which three complainants are owners of a flat each and the developer is also the owner of one flat. The

re-development envisages construction of 8 flats of which 6 flats will be delivered to the existing 6 flat owners having undivided share of the land and the remaining 2 flats (2/8th share) will be the share of the developer.

3. The Joint Development agreement has been executed on 16.04.2012. The General power of Attorney has been executed in favour of the Developer by the owners on 16.04.2012 and 04.09.2012.

4. The demolition was done during October, 2012 and CMDA approval obtained on 20.12.2013. The project was to be completed by 09.12.2014 and to be handed over to the owners by 08.01.2015.

5. The owners have received rent only upto April, 2014 and not thereafter.

6. The Builder has constructed only upto Stilt Floor and laid roof of the car parking area and no construction seems to have taken place since 2017. According to the Complainants, the Developer has also sold his share of undivided share in favour of one Mr.N.Subhash Chand Jain from whom the Developer had borrowed moneys.

7. The Complainants had prayed in the Complaint that the Developer should be directed to register the project with TNRERA, renew CMDA approval and complete the project and hand over the possession in accordance with the provisions of Joint Development Agreement. They had also prayed to direct the Respondent to pay the complainants the arrears of rental compensation. The Complainants have also prayed that in the event

of the Developer being unable to adhere to the above mentioned directions to be issued by TNRERA, the Respondent should forfeit all claims to the project including transactions he has entered into in the pretext of completing the project and not create any encumbrances or impediments to the complainants proceeding with the project.

8. In the Counter Affidavit, the Respondent has stated that the Authority has no jurisdiction to entertain the above complaint since number of apartments proposed to be developed does not exceed eight (8). He has stated that he had to pay fancy price of Rs.1.50 crores to one of the erstwhile flat owners who was not willing to enter into Joint Development Agreement for which he had to borrow from the financier at a high interest rates.

9. The Respondent has also stated that there was delay in getting NOC from TNHB and finally got CMDA approval on 20.12.2013. He has admitted that he could not do construction beyond Stilt Floor for parking of vehicles and raising columns for the first floor due to severe financial crisis he had faced. He has referred to entering into sale deed with the financier in respect of one flat which he had owned and 2 more flats which had accrued to him as his share of Joint Development Agreement. The Respondent has also referred to his difficulties of having to pay a huge amount of service tax and penalty in respect of some other project developed by him.

Finally he has proposed that under the new FSI, he would like to construct 10 flats instead of 8 flats and on the strength of the moneys which he may get on account of extra new flats he will be able to construct 10 flats on this property and undertake to obtain revised approval from the Competent Authorities for which he has sought a new Development Agreement with the owners and impleading the financier Thiru N.Subhash Chand Jain in the proceedings before the Authority. He had also prayed that the other 2 owners may also be made parties in this case. He has also stated that he is willing to register the project as soon as orders have been passed by the Authority for reviving the project.

10. In the Rejoinder filed by the Complainants, they have stated that the land area for which the Respondent has proposed to develop and had entered into Joint Development Agreement measures more than 500 sq.mtr. and according to the sanction plan the area of land to be developed is specifically mentioned as 517 sq.mtr. and the project has not been completed by the Respondent. Therefore, the complaint is well within the jurisdiction of the Authority under Section-3(2)(a) of the Real Estate (Regulation and Development) Act, 2016. The Complainants have also submitted that purchase of one of the flats by the Respondent Developer from the previous owner cannot be a justifiable cause for non completion of the project that too for more than six years.

They have also questioned the sale transaction by the Developer with his financier even before getting the sanction from the authorities concerned and have alleged that he has diverted the funds from sale of UDS from the project to his other projects and has not utilized the funds to pursue this project.

They have also submitted that his financial difficulties viz. Service Tax and Penalty levied with respect to some other project cannot be a cause for delay in completion of this project.

11. The Complainants have not agreed to the new proposal of the Developer presented in the Counter Affidavit to construct 10 flats , as the proposal is not fair and will prejudice the rights and interest of the land owners.

12. They have also added that the owners do not have any trust on the promoter and are not willing in continuing the project through this promoter. They have also submitted that impleading financier of the Respondent as party will further complicate the issue and as such, the said financier need not be made party to the complaint. They have also submitted that as the complainants have been put to severe hardship and have faced huge loss on account of inordinate delay caused they are not interested in reviving or continuing the project with the respondent. They have also stated that the sale of 2/8th share of UDS of this property even before getting CMDA approval is unlawful and the Respondent is duty bound

to annul the said sale deeds and to restore the property to its original position as on the date of Development Agreement dated 16.04.2012.

13. Summing up, the complainants have prayed that the Respondent to pay the rental arrears to the tune of Rs.14.08 lakhs each together with interest and the Respondent be directed to cancel/annul the sale deeds effected by him in favour of Thiru N.Subhash Chand Jain and to restore the property to its original position as on 16.04.2012 enabling the owners to pursue construction afresh in accordance with the statutory requirements

(OR)

to direct the Respondent to refund of Rs.3.00 crores being sale price for sale of 2/8th share by the promoter to third parties together with interest and to pay Rs.25.00 lakhs each to the Complainant owners towards compensation and to direct the Respondent to refrain from further pursuing the development agreement dated 16.04.2012 enabling them to pursue construction afresh in accordance with the statutory requirements and that other reliefs may be accorded under the Act.

14. After careful consideration of the pleadings and arguments by both the sides, the Authority pass the following orders:

- i. it is very clear that there has been inordinate delay on the part of the Developer for which the Complainants are not responsible. The Complainants have also lost faith and trust in the Developer on account of his conduct subsequent to his

- signing the Joint Development Agreement and the Complainants are not willing to revive the project through the Respondent who has submitted a revised proposal .
- ii. On the maintainability of the Complaint, it is very clear that the land to be developed in this project is more than 500 sq.mtr. as stated by the Complainants and hence this project will come under the jurisdiction of this Authority as per Section-3(2)(a) of the Act.
 - iii. As the Complainants are not willing to give their consent and they constitute three out of six flat owners and hence constitute 50% of land owners and therefore the Respondent cannot secure consent of the 2/3rd of the erstwhile land owners/deemed home buyers for any modification to the existing sanctioned plan (already expired).
 - iv. In these circumstances and in view of the non performance of the Joint Development Agreement within the stipulated time, the Respondent is restrained from proceeding further in this project on the basis of the existing Joint Development Agreement and General Power of Attorney.
 - v. The Complainants are at liberty to invoke article 25 of the Development Agreement which is reproduced as under:

" In case the DEVELOPER commits breach of any of the terms of this Agreement or in the event the DEVELOPER fails to complete the construction of the Building Complex in accordance with the terms of this Agreement and the sanctioned plans, on account of any reason attributable to the DEVELOPER including but not limited to his negligence, without prejudice to any legal rights or remedies available to the OWNERS, the OWNERS shall be entitled to forthwith terminate this agreement and complete the construction in accordance with the approved and sanctioned plans at the cost and expense of the DEVELOPER. Notwithstanding anything contained herein, to recover the said amounts from the DEVELOPER, the OWNERS are hereby granted an irrevocable right by the DEVELOPER to exert a charge and lien on the properties described in Schedule "D" and Schedule "F" and also collect the amounts due from the purchaser/s and/or allottee/s of the undivided share in the property described in Schedule "D" and Schedule "F" to meet the cost of construction. If any surplus amount is available, the same shall be paid to the DEVELOPER. On the other hand, if the amounts are insufficient to meet the remaining construction cost, the DEVELOPER shall be personally liable to pay the deficit amount to the OWNERS".

- vi. Invoking of Article No.25 of the Joint Development Agreement will enable the Complainants to complete the construction at the risk and cost of the Developer.
- vii. The Complainants are at liberty to seek appropriate remedy through appropriate Civil Court regarding annulment of the sale deed transaction entered into by the Developer in respect of 2/8th share of UDS as developer's share under the Joint Development Agreement in view of the non fulfillment of the performance obligation on the part of the Developer/Respondent
- viii. The Authority also directs the Respondent to pay the arrear of rental payable to the complainant as per Clause-7(b) of the Development Agreement dated 16.04.2012.

Sd/-...19.09.2019
MEMBER (M), TNRERA

Sd/-...19.09.2019
MEMBER (J), TNRERA

Sd/-...19.09.2019
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


19.9.19