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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

C.M.S.A.No.35 of 2023
and
CMP.No.15720 of 2023

1. M.S.Builders,
   Represented by its Director,
   No.407-A, Trunk Road, Karaiyanchavadi,
   Poonamallee, Chennai - 600 102.

2. MS Foundations Pvt. Ltd.,
   (Formerly known as MS Land Promoters
   Private Limited)
   Represented by its Directors,
   554, Kundrathur Main Road,
   Kumananchavadi, Poonamallee,
   Chennai - 600 056. .. Appellants

Versus

G.K.Vijay .. Respondent

This Civil Miscelleneous Second Appeal filed under Section 58 of the Tamil Nadu Real Estate (Regulation and Development) Act read with Section 100 of C.P.C, praying to set aside the order dated 26.04.2023 passed in Appeal No. 166 of 2023 by the Tamil Nadu Real Estate Appellate Tribunal, Chennai confirming the order dated 03.01.2023 passed in C.C.P.No.140 of 2021 by the Tamil Nadu Real Estate Regulatory Authority, Chennai.

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For Appellants : M/s. Rajeni Ramadass
For Respondent : M/s. Kavitha Nithyanandan

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The appellants herein are the builders / land promoters and the respondent herein is the purchaser / complainant.

2. The undisputed facts are that the appellants are engaged in the business of land development and sales. Since the respondent evinced interest in purchasing a plot in the Kamatchi Nagar Layout at Vayalanallur, Poonamallee Taluk, Tiruvallur District, which was promoted and sold by the appellants herein, the respondent was given the option to choose the plot and accordingly, he had chosen Plot No.10. It was in the year 2014. There was no proposal or assurance of getting CMDA approval for the plots at that point of time. After change in law, necessary approval from CMDA was obtained. The respondent paid a sum of Rs.10 lakhs towards advance booking of the said plot. It is the case of the appellants that after paying the said sum, the respondent had not turned up for a long time. At one point of time, the respondent approached the appellants and asked for refund of the advance amount and accordingly, the respondent managed to get a security cheque from the appellants. During the process of approval, the said Plot No.10 was earmarked for the park area.

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While so, the respondent misused the security cheque and issued a notice to the appellants under Section 138 of the Negotiable Instruments Act, alleging dishonour of cheque, followed by a complaint against the appellants before the Tamil Nadu Real Estate Regulatory Authority, Chennai. In the complaint, it was alleged that since the project was not making much headway and the appellants did not respond properly, the respondent stopped making payments; and that after approval by CMDA, the respondent came to know that the said plot was earmarked as park area and the project was not registered under Section 3 of the RERA Act; and the prayer made by the respondent herein was to get refund of the amount paid by him to the tune of Rs.10,00,000/- with compensation and litigation costs.

3. The appellants stated that they have been genuine in their transactions and were ready to sell the plot to the respondent, as and when the respondent booked the plot. Since there was inordinate delay on the part of the complainant in paying the balance sale consideration, the sale could not materialise. A counter affidavit has been filed on behalf of the appellants before the Tamil Nadu Real Estate Regulatory Authority stating that it was not their fault that Plot No.10 was earmarked as Park Area; and that the respondent has misused their cheque and issued a frivolous notice under Section 138 of the Negotiable Instruments Act.

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4. Since there was no communication to prove that the appellants had continued to pressurise the respondent to pay the balance sale consideration and that after receiving the money from the respondent, no alternate plot was allotted to him due to conversion of Plot No.10 into Park Area, the Tamil Nadu Real Estate Authority, Chennai, passed an order on 03.01.2023 observing that these facts would exhibit the intention of the appellants of not taking any steps to address the requirement of the respondent. Holding so, the authority directed the appellants to refund Rs.10 lakhs to the respondent along with payment of Rs.25,000/- towards litigation expenses and Rs.1,00,000/- as penalty for non-registration of the project.

5. Challenging the aforesaid order of the authority, the appellants approached the Tamil Nadu Real Estate Appellate Tribunal by way of filing an appeal in Appeal No.16 of 2023, which ended in dismissal at the admission stage itself. Hence, this appeal by the appellants.

6. The learned counsel for the appellants submitted that the authorities below have erroneously awarded penalty of Rs.1,00,000/- for non-registration of the project, without confirming whether the project was registered as per Section 3 of the RERA Act. Further, there is no fault on the side of the appellants in not obtaining CMDA approval for sale of the plot in the year 2014, since it was not mandatory at that point of time and the plot was proposed to be sold only as an unapproved plot. It

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is also submitted that the respondent paid a sum of Rs.10 lakhs towards advance booking of the said plot and thereafter, not turned up for a long time; and when he approached the appellants for refund of advance amount, the appellants genuinely gave a security cheque, but the same was misused by the respondent by depositing the same into bank and thereafter, issuing a frivolous notice under section 138 of the Negotiable Instruments Act. Without considering all these factors, the Regulatory Authority erroneously entertained the complaint filed by the respondent and directed the appellants to refund Rs.10 lakhs and Rs.25,000/- towards litigation expenses, besides penalty of Rs.1,00,000/- for non-registration of the project, as per the RERA Act; and the said order was also affirmed by the Tamil Nadu Real Estate Appellate Authority. Stating so, the learned counsel prayed for allowing this appeal by setting aside the orders passed by the authorities below.

7. Per contra, the learned counsel for the respondent submitted that both the authorities below have properly analysed the facts and circumstances of the case and have passed orders, which do not require any interference by this Court. To elaborate her case, it was submitted that since the plot for which the complainant had paid advance, cannot now be allotted as it has been earmarked for 'park' in the approved layout and hence, the complainant is entitled to a refund of the advance paid. The learned counsel further submitted that the cheque issued to the complainant by the appellants, has nothing to do with the present transaction and

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in-fact, it was not issued by either of the appellants, but by one of the Directors in his personal capacity in respect of a different transaction between the parties.

8. Heard the learned counsel on either side and perused the records.

9. In this writ appeal, the appellants / promoters challenged the concurrent findings of the authorities below.

10. It is clear from the documents on record that the appellants had received advance money from the respondent / complainant, but dishonoured their commitment for registering a plot to him. The Tamil Nadu Real Estate Regulatory Authority, Chennai, in its order dated 03.01.2023, had taken note of the case of the complainant that despite obtaining approval from CMDA for the project on 04.11.2019, the appellants had failed to register the project with TNRERA and held that the appellants have violated Section 3 of the RERA Act and therefore, appropriate penalty as per Section 59 of the Act has to be imposed. In respect of failure to register the project, the Authority has observed that the appellants have neither countered the allegations nor submitted any evidence to show otherwise. These findings were confirmed by the Appellate Tribunal. However, it is the stand of the appellants that the authorities below have erroneously awarded penalty of Rs.1,00,000/- for non-registration of the project, without confirming whether the

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project was registered as per Section 3 of the Act. It is also their stand that there was no fault on the side of the appellants in not obtaining CMDA approval for sale of the plot in the year 2014 since it was not mandatory at that point of time and the plot was proposed to be sold only as an unapproved plot.

11. Taking note of the facts and circumstances of the case and having regard to the submissions so made by the learned counsel for the appellants, this Court is of the considered view that to meet the ends of justice, the penalty amount imposed on the appellants to the tune of Rs.1,00,000/- has to be set aside and the same shall be directed to be refunded to the appellants. Except the same, the orders passed by the authorities below shall stand confirmed, in respect of all other aspects. In the impugned order dated 26.04.2023, it has been observed by the Appellate Tribunal that the appellants have already deposited a total sum of Rs.19,32,661/-, out of which, the penalty amount of Rs.1,00,000/- has been remitted to the Government on 13.04.2023. Therefore, the respondent is entitled to withdraw the balance amount of Rs.18,32,661/- with accrued interest from the bank investment; and the appellants are directed to make an application with all particulars to the concerned authority along with a copy of this judgment for refund of Rs.1,00,000/- within a period of two weeks from the date of receipt of a copy of this judgment. On making such application, the amount of Rs.1,00,000/- shall be refunded to the appellants within a period of two weeks thereafter. It is open to the parties to agitate their respective

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cases in the pending proceedings under section 138 of the Negotiable Instruments Act; and this order shall have no bearing on the same and the court below shall proceed with the cases purely, on merits.

12. Accordingly, the orders passed by the authorities below stand modified and this appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] **[M.S.Q., J.]**

03.10.2023

Index : Yes / No
Internet : Yes / No

To
1.The Tamil Nadu Real Estate Regulatory Authority, Chennai.

2.The Tamil Nadu Real Estate Appellate Tribunal, Chennai.

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