BEFORE THE TAMIL NADU REAL ESTATE APPELATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Island)

(Under the Real Estate Regulation and Development Act 2016)

Dated : 26.08.2020

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No.76 of 2019

M/s. Casa Grande Civil Engineerig Pvt. Ltd.,
Rep. by its Director Mr.Sethupathy ... Appellant

1. Mr. P. Govindaraj, S/o. Perumal
2. Mrs. Deeparaj, W/o. Mr. P. Govindaraj
   Flat No. S-2, Crystal Nest Apartments,
   Door No.57, Rajajinagar Main Road,
   Thiruvanmiyur, Chennai-600 041 ... Respondents

This appeal has been filed on 07.11.2019 before this Tribunal and came up for final hearing on 05.08.2020 through video conferencing, in the presence of M/s.T.Gowthaman, U.Gokulakrishnan, and B.Pachaiyappan advocates for the appellant, the respondents appeared through counsels M/s. S.Muthuvenkatraman and S.Sathish Chandrasekarar. Having heard the arguments of both sides and having stood over for consideration of this Tribunal till this day and this Tribunal delivered the following:

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ORDER

Facts of the case in brief:

2. This appeal has been preferred by the appellant/Promoter against the order passed by the Adjudicating officer in CCP.No.78/2019 dated 31.07.2019. Both the appellant and respondents are herein-after referred as per their original ranking as promoter and home buyer for easy understanding.

3. The promoter had advertised in the newspaper with regard to the sale of residential flats in the Casa Grande Bellismo Project at Pazhavanthangal, Alandur, Chennai. Both the promoter and the home buyer mutually agreed for consideration of Rs.98,47,096/- for the residential flat sought to be booked by the homebuyer in the said project. The Homebuyer was also asked to pay an advance for the flat by the promoter. The homebuyer paid an advance of a sum of Rupees 3 Lakhs as a pre launch booking at the rate of Rupees 6,800/-per sq.ft, to that effect the developer had issued booking acknowledgment letter dated 17.08.2016 in which the terms and conditions were incorporated. Subsequently in July 2017, the developer sent the mail to the homebuyer with regard to registration of the construction agreement and also informed about the extent of the flats reduced from its originally contemplated extent of 1277 Sq.ft to 1229 Sq.ft and also the developer has reduced a sum of Rs. 3,20,000/- from the sale consideration. But, the alteration in terms of the agreement in regard to plinth and carpet areas of the apartment was not accepted by the home buyer. Hence, the agreement could not be signed. Even then, both the developer and the homebuyer were holding regular talks. Due to the difference in the area the homebuyers were not coming forward to sign the agreement. The homebuyers were sending communication seeking benefit of credit inputs with regard to tax benefits to be transferred to them. According to the developer, the construction will commence during 2017 and will be completed within 18 months from June 2017 with a grace period of 3 months and further assured that possession to the home buyers within 31.01.2019.

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4. Subsequently, as per the letter of the developer the homebuyers paid the balance 10% of the cost and subsequently in June 2017 the home buyers were directed to pay another 40% and it was also paid to the tune of 13,50,000/- Further on 10.06.2017 the home buyer also paid a sum of Rs.46,918/- towards tax. The developer has not complied the launching of project as mentioned in the booking letter dated 17.08.2016 and the stipulated period of 8 months ended on 16.04.2017. Even then they have not launched the project. The launching of project by way of Boomi pooja for this project even was performed on 28.06.2017. Since, the developer has not complied with the promise as advertised by him and also stated in the allotment letter and also reduction of size of flats and claiming of GST by the developer against his advertisement i.e Don't pay GST on your dream home. For the above said reasons the home buyers were not ready to sign in the construction agreement and came forward before the Adjudicating officer on the ground of violation of sections 12 and 13 of the RERA Act by the developer. After contest the learned Adjudicating officer found that the developer has violated sections 12 and 13 of the RERA Act and directed the developer for the refund of entire amount of Rs.48,22,468/-with interest at the rate of 10% per annum and also directed the developer to pay 9% interest and the above said amount interest towards compensation and also awarded a sum of Rs.25,000/- of litigation cost. Aggrieved upon that the developer has come forward with this appeal.

The respondent's case in brief:

The appellant has preferred the appeal mainly on four grounds namely:

(a) Having taken a self-serving stand whereby they sought to take advantage of their own – to sign a formal agreement, can the home buyer moved the RERA as if there is a violation on the part of the developer.

(b) The home buyers having not signed a formal agreement and not being ready to make further payments in accordance with the mutually agreed terms, whether home buyers could not be heard to contend that the developer had violated the RERA provisions.

(c) Whether Section 17 of RERA Act will not be applicable against the developer in the present case in as much as the developer had always shown the willingness to execute agreement for constructions and it was only the home buyers who had wantonly failed to sign.

(d) Without considering the above said grounds the complaint of the homebuyers was allowed erroneously.

5. During the course of the arguments through Video conferencing the learned counsel for the developer would contend that regarding alteration of the extent it was specifically mentioned in the 17.08.2016 letter itself. Selling of flats through advertisement is only a formal offer, that could be sealed at the instance of the both the parties through an agreement (i.e) signed and delivered. Further, any offer made by the developer has corresponding obligations on the sides of the homebuyers and the same is not binding on the developer till such time both the parties concurred with all the terms and conditions associated with any such offer. Furthermore the homebuyers also are liable for contributory negligence on their part to conclude the contract. Without entering into the contract the home buyers have no locus standi to invoke the provision of the RERA especially only on the basis of the formal offer through advertisement, since there is no concluded contract between the parties to fix a liability against the violations. Therefore, the appeal deserves to be allowed.

6. The learned counsel for the homebuyers could submit through video conference that the developer in his advertisement specifically mentioned as "Don't pay GST only your dream home" the above said wordings is used for the purpose of stimulating the homebuyers to purchase the flats from the developer at a reduced price. After the initial payment the developer has turned against the advertisement regarding GST price, stating that he has not received any credit input from the vendors and consequently could not pass on the same to the homebuyer.

7. According to the counsel the developer has not stated anything in the advertisement with regard to input credits to be passed on to him from vendors. The

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learned counsel has also stated that the developer has reduced the area against the premised area. He has collected advance amount against Section 13 of RERA. So the learned Adjudicating officer has rightly came to a conclusion regarding violation. Hence there is no merits in the appeal and it has been to be dismissed.

8. Points for consideration:

1) Whether without entering into agreement between the developer and homebuyer regarding construction, RERA cannot be invoked is correct or not?
2) Whether the order of the adjudicating officer is a erroneous one?
3) Whether the appeal deserves to be allowed or not?

Point No.1 :

9. According to the developer/Appellant they advertised for selling of flats and on the basis of advertisement the homebuyers accepted the offer made by the developer and paid the initial payment but failed to enter in to an agreement and failed to pay further. Without signing an agreement for construction the homebuyers have no locus standi to invoke the provisions of the RERA. Any offer made by the developer has corresponding obligation on the side of the homebuyer and the same is not binding till both the parties, concurred with all the terms and condition associated with any such offer. This is the specific contention on the side of the appellant/developer. Further, contention of the appellant/developer is that the project pre-launch offer made by the developer cannot be treated as a binding agreement as there is no proper contract between the developer and the home buyers. Hence, the findings of the Adjudicating officer is erroneous.

10. According to the homebuyers/respondent the developer advertised to launch the projects within 8 months from the date of receipt of advance amount. But he has not complied with the promise made by him. Hence, the developer has violated section 12 of RERA Act. Regarding GST also the developer gave a false advertisement, it also attracts section 12 of the RERA Act. Furthermore, before entering an agreement the developer shall not demand more than 10% of cost of the flat as an advance payment

from the homebuyers without entering into a written agreement for sale. In this case the promoter/Appellant has collected more than 10% of the contractual amount before entering the contracts. Therefore, it is a violation of section 13 of RERA.

11. On perusal of both sides contention the homebuyer had paid Rs. 3 lakhs on 17.08.2016 for which a flat booking letter was issued by the developer and also assured that they will launch project within 8 months from the date of booking. Further agreed to refund the advance amount with 15% interest in case of failure to launch in the same within the time specified. Boomipooja for the project was conducted only on 28.06.2017 it clearly proves that launching of project was not done as promised by the developer. The learned counsel for the developer would submit that mere letter issued by the promoter to the homebuyer on 17.08.2016 which is marked EX.A1 is only an acknowledgment for the payment of receipt of Rs.3 lakhs. It is not an agreement between the parties. So the letter alone is not sufficient to come to a conclusion that there is a violation of the RERA Act. Now let us discuss about the Exhibit A1 booking acknowledgment letter.

12. The above said letter addressed to the homebuyer sent by Authorized signatory of the developer company. In the above said letter itself, the terms and conditions were incorporated. There are 5 Terms and conditions contains. The 1st condition is regarding size of the extent, the 2nd condition is with regard to payment of balance of 10%, 3rd condition is with regard to promise of the developer to launch the project and also incorporated the developer default clause of payment of 15% interest and the 4th condition is with regard to the price of the flat and 5th condition with regard to refund of booking advance amount without interest.

13. The above said letter if really as stated is only an acknowledgment for the receipt of the cheque for a sum of Rupees 3 lakhs alone what is the need or necessity to incorporate the terms and conditions. Even before entering into a written agreement the developer has incorporated the terms and conditions in the letter on the basis of this terms and conditions in the letter alone the developer is claiming variation in measurements of the flat and pricing. This letter was also relied in regard to the

repayment of advance amount also. The developer claims as per the terms and conditions of this letter for the refund of amount. The developer having himself treated the said letter as a binding agreement. Now he cannot simply brushed aside exhibit A1 as a mere letter. Therefore the contention that without entering into a written contract, there is no binding agreement between the parties and hence the RERA cannot be Invoked is wrong.

14. Admittedly the developer made offer through advertisement for selling the flats that offer was accepted by the homebuyers by paying consideration it amounts to a concluded contract. A contract is concluded when an offer is made and accepted; In the booking acknowledgement Ex.A1 itself, the developer offer a price of Rs.6800 per sq.ft and is acknowledged with the receipt of Rs.3 lakhs towards booking advance and also where it is mentioned about 5 terms and conditions for the sale and purchase. It is a concluded contract. In furtherance of contract they have proposed to enter into a construction agreement etc. In the meantime the developer sent the mail regarding reduction of measurement and dispute arose with regard to GST. So the dispute arose between the developer and homebuyers. Now the developers took the defense as the offer made by the developer through advertisement is only a formal offer and no proper agreement was entered into, hence, it cannot be agitated under RERA Act. These are the problems between the developers and homebuyer which necessitated for the enactment of RERA Act. Before enactment the Real Estate (Regulation and Development) bill 2013 was introduced in Rajayasabha on 20th August 2013 which was referred to the standing committee on Urban Development on 09.sep.2013 for examination and report, by the speaker of Loksabha under Rule 331E of the Rules of procedure and conduct of business in Loksabha. The RERA Act 2016 bill was introduced and it was sent to the standing committee and the standing committee of Parliament filed a report on 12.02.2014 under the chairmanship of Mr.Sarathyadhav Chairman standing committee on Urban Development. In the above said report background of the Act is stated as follows.

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus absence of professionalism and standardization and lack of adequate consumer protection. Though the consumer protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums."

16. From the above said report it is very clear that the absence of professionalization and standardization and lack of adequate consumer protection was the need for regulating the real estate sector. In the case in hand also the developer had made an offer by advertisement having received the advance subsequently the developer has altered the measurement and further directed to pay the GST by the homebuyers against the advertisement. These are the cause of action for present disputes. To avoid such a kind of disputes and protecting the consumer as well as the developers the RERA Act 2016 was introduced. So the home buyers rightly approached the RERA Authority and the RERA Authority Adjudicating officer has found that the developer has violated section 12 and 13 of the RERA Act. Therefore, the arguments of the developer as on the basis of the formal offer the homebuyers cannot invoke the RERA provisions is not tenable and not acceptable.

17. The Learned Adjudicating officer gave a finding that section 12 and 13 are attracted. Admittedly the home buyers booked an apartment on 17.08.2016, the RERA Act came into force on 01.05.2017, and Boomipooja for this project was celebrated by the developer on 28.06.2017. So after the Act came into force particularly section 12 and 13 came in to force on 01/05/2017, the Boomipooja was celebrated The TAMILNADU REAL ESTATE (Regulation development) Rules 2017 had also came into

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force on 22.06.2017. Boomipooja was celebrated on 28/06/2017. So, on the date of commencement of the project as per the above said Rule the project of the developer is only an ongoing project and section 12 and 13 is certainly applicable.

18. As per the booking letter dated 17/08/2016 the developer has specifically informed the home buyers that within 8 months from the booking date, they will launch the project. But, they have celebrated boomi pooja only on 28-06-2017. Further, the developer themselves has advertised that "Don't pay GST on your dream Home". But now they claimed against the advertisement, both the promises were not kept by the developer. The above said attitude is against the section 12 and 13 of the RERA Act. Further, admittedly the developer has received Rs.3 laksh on 17/08/2016 without any agreement and further a sum of Rs.38 15,500/- totally it amounts to 40% of the value of the project without entering into an agreement. It is more than 10% as contemplated in section 13(i) of the RERA Act. Hence, Section 13(i) is also violated by the developer. Under the circumstances the learned Adjudication officer found that the developer violated the above said section 12 and 13 and directed the developer to refund of advance amount with interest and compensation. The developer has not stated how the Adjudication officer has erroneously allowed the complaint of the homebuyer. AS per section 12 and 13 RERA Act there is no infirmity in the finding of the learned Adjudicating officer. Point No. 1 is answered accordingly.

Point No.2 :

19. Regarding compensation the Learned Adjudicating officer has fixed at 9% on Rs.48,22,468/-, already for the repayment of advance amount interest rate is fixed at 10.60 % totally 18.60 % for the illegal enrichment of developer for the home buyers advance amount. The interest rate for refund amount as per the RERA Rules itself completed 8 plus 2%. Regarding compensation arrival of 9% is without any basis. Awarding of compensation must be 'Fair and Just'. It should not penalize and prejudice one party that will enrich another party. Mental agony and inconvenience caused to the Home buyers cannot be measured in terms of money. Hence compensation has to be

fixed as just and reasonable. If the Home buyers invest his money in his own firm certainly he can get atleast not less than 12% interest. On that basis awarding of compensation for the Home buyers is fixed as Rs.1,00,000/- for mental agony and inconvenience. Therefore this tribunal comes to a conclusion that the compensation awarded by the Learned Adjudicating Officer is modified as Rs.1,00,000/- instead of 9%. The point No.2 is answered accordingly.

Point No.3 :

20. Since point No.1 is answered against developer and point No.2 is answered as modified this appeal is liable to be allowed in part.

21. In the result this appeal is allowed in part. No costs. The order of the Adjudicating officer in CCP.No.78/2019 dated 21/07/2019 is modified regarding compensation and the same is fixed as Rs.1,00,000/- instead of 9%. Regarding other aspects the order of the Adjudicating Officer is confirmed.

This order was dictated to the Stenographer, transcribed and computer typed by the Stenographer and corrected and pronounced by us in the open court on the 26th day of August 2020.

Sd/- XXXXX
CHAIRPERSON

Sd/- XXXXX
ADMINISTRATIVE MEMBER

Sd/- XXXXX
JUDICIAL MEMBER

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