BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 10-02-2020

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

Appeal No. 11 of 2020

T.Aananthi ... Appellant

-Vs-

1. G.K.S.Technology Park Ltd., Rep. by its Managing Director
2. Mr.Suresh Vaidyanathan
3. Mr.Paranthaman Shanmugam ... Respondents

This appeal has been filed on 02.01.2020 before this Tribunal and came up for final hearing on 27.01.2020 in the presence of Tmt.T.Aananthi, Appellant/Party in-person and the respondents 1 & 2 appeared through counsels M/s.Mr.S.Ramesh, Mr.R.Venkataraman,

Mr.P.Nagarajan and the 3rd respondent appeared through counsels M/s.Mr.Vijayakumar and Mr.C.Pandian. Having heard both side arguments and having stood over for consideration of this Tribunal till this date and deliver the following order:

ORDER

2. This appeal has been preferred by the appellant/complainant against the order passed by the Tamil Nadu Real Estate Regulatory Authority in C.No.411 of 2019 dated 07.11.2019.

3. The appellant/complainant is the homebuyer and the respondents 1 & 2 are developers and 3rd respondent is also one of the homebuyer with the respondents 1 & 2. The complainant and 1st respondent entered into an agreement for sale and construction on 11.11.2016 for construction of 1226.96 sq. ft. of built up area with one reserved car park. For the purchase of an apartment with a covered car park in the project 'VIHA' apartments in Annanagar. The apartment allotted to the complainant is D101, 1st floor, VIHA apartments, VOC New Colony, Chennai – 600 102. A tripartite agreement for loan was entered into between the complainant builder and State Bank of India in April 2017. The complainant had made payments upto Rs.70 lakhs till 12.09.2017. When a demand notice was issued with exorbitant interest at the rate of 18% the complainant requested to waive the interest. On 12.10.2017, the complainant received a demand notice for a sum of Rs.15,42,349/- with interest at the rate of 18%

but request not accepted hence the complainant made a request on 14.07.2017 over phone to cancel the booking and refund the money and also sent a email on 23.12.2017. No reply from the respondents 1 & 2. On receipt of further demand notice dated 13.02.2018 on 06.03.2018 the complainant has sent an email on 29.04.2018 reiterating her mail dated 15.12.2017 for which she received a reply on 30.04.2018 stating that the developer would revert shortly on the amount of refund. Then on 11.05.2018 the complainant has also received a cost sheet. When the complainant met Mr.Gopi, Son of 1st respondent on 19.12.2018 who gave two options. Either the complainant should forego Rs.5,86,161/- and get refund of Rs.64,13,836/- for cancelling the agreement or she should pay a further sum of Rs.90 lakhs towards sale consideration and other charges to purchase the flat when the complainant enquired about the car park earmarked for her apartment D101 being used by somebody else she was assured that it is kept reserved despite several demands from other flat owners. The complainant has accepted to pay the balance sum of Rs.90 lakhs including cash payment of Rs.10 lakhs. The complainant upto 18.06.2019 totally she had paid Rs.1,42,50,000/- including the cash payment. The complainant repeatedly requesting the promoter for registration. The promoter replied by mail dated 05.08.2019 to accept the car park as provided at site and they can register and hand over of possession of flat only on payment of amount in full. Though the complainant conceded to accept the same the respondents 1 & 2 have not shown any immediate reply. The 3rd respondent has purchased a flat D103 in March 2018 and occupied the flat by May 2018 and he was allotted the

car park meant for the complainant and the car park earmarked for the complainant is written as D103. The respondent 1 & 2 informed the complainant that the 3rd respondent has registered early hence the car park space was given as per his choice. Hence the complainant came forward with a complaint before the RERA for the following reliefs :-

i) To register the sale deed
ii) To grant interest for the delayed period till date of registration.
iii) To retrieve the car park space originally earmarked for D-101 and
iv) Restraining the 3rd Respondent from using the car park space in dispute.

4. The respondents 1 & 2 denied the allegations of the complainant and stated that as per the letter of allotment dated 12.09.2016 an agreement for sale for 588.03 sq. ft UDS of land was entered into with the cost of land of Rs.43,62,595/-. A construction agreement was entered into with the cost of construction fixed at Rs.1,01,94,140/. Clause (iii) of the construction agreement set out the payment schedule which has to be strictly adhered to by the complainant it was also specified that the respondent is entitled to charge at 18% p.a. at the outstanding amount. At the time of entering into a construction agreement as it was an ongoing project no definite car park was identified and demarked in favour of the complainant. Only after the construction reaches the final stage and depending on the stage of payment made by the allottees on first come first serve basis, the identification and allocation of respective car park is made. The complainant was regularly communicating with the staff of the respondents and requested several changes for customization. The

complainant had made payment only 40% as on 31.08.2017. The complainant was informed about the registration charges and balance due to the tune of Rs.57,21,144/-. On 31.08.2017, email was sent to the complainant by the respondents that if the complainant does not pay the due of Rs.79,09,484/- on or before 10.09.2017 the respondents would have to charge interest on the outstanding amount. The complainant sent an email dated 23.12.2017 stating that she can pay only the actual amount as agreed under the agreement without interest and if interest is charged she will have to cancel the booking and seek refund. On 29.04.2018, the complainant admitted that she could not mobilize the fund for the balance payment and sent another mail wherein she wanted the respondents to inform the formalities for cancellation. Out of 87 flats, 80 flats have been sold to third parties who have taken possession and also formed association. Hence the claim of the complainant is not tenable.

5. The 3rd respondent has stated that he has purchased flat no.D103 by a registered sale deed 27.03.2018 along with reserved car park allotted to him. The 3rd respondent has been enjoying the covered car park from the date of registration. Therefore, the complainant has no right whatsoever to claim any right over the reserved car park space D103 which is situated between the car parking slot C303 and C405. Hence 3rd respondent sought for the dismissal with regard to him.

6. Point for Consideration:-

1) Whether this appeal deserves to be allowed or not?

Point :

7. As against the said complaint, the Learned Authority directed the Respondents 1&2 to execute the sale deed but of course according to the complainant, without fixing a time-bound manner. The Learned Authority further directed taking into consideration that there was a delay in the payment schedule by the complainant and the corresponding non-delivery / delay in completion of project had reduced the interest of 10.2% payable to the complainant as per the Act, re-fixed at 5.5% as interest payable for the delay in the payment by the complainant. The Learned authority rejected the claim for the specified car park on the ground that there are no specific documents produced by the Appellant for earmarking the particular car park to the appellant and consequently the prayer for injunction has also been negatived. Aggrieved against this order, the appellant has come forward to the present appeal. In so far as to the relief of granting the relief of particular car park and to retrieve the same from the 3rd Respondent who is currently in occupation of the car park concerned. It is pertinent to point out that the builder has not filed any appeal as against the order passed directing to register the sale deed in favour of the Appellant. That order has become final. We have heard all the parties.

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8. The appellant would mainly contend that she entered into an agreement to purchase the property as early as on 12-09-2016 wherein a provisional allotment letter was issued in her favour. In fact according to her, at that point of time itself, the understanding was a covered car park of her choice would be given. Subsequently on 11-11-2016, Sale Agreement was executed. In this, the UDS portion was executed and in the Construction Agreement executed on the same date, in the 1st clause, it was specifically agreed between the parties and subscribed to as ;

> *" the said residential apartment and the car park space/s **allotted and to be constructed** for the allottee/s are **morefully described in Schedule-B** hereunder and hereinafter referred to as the said apartment".*
>
> *"Then in the Schedule-B at page no. 34 of the typed set, it is clearly stated that "Flat No.D-101" on the 1st floor **together with one (1) reserved covered car park spaces**, **on the ground level of the storied building** to be known as VIHA to be raised on the land described in Schedule – A supra".*

9. Therefore the 1st contention of the appellant is that even as early as in year 2016, she had been promised car park space below her flat namely D-101. That is why in the agreement it was clearly stated in the Schedule 'B', in the ground level of the storied building, after specifying the Flat No. D-101 on the 1st floor, the car park was stated to be on the ground level after storied building would indicate that the car park given to her is only exactly below her flat namely

D-101 and more fully in respect of the Block-D. According to her, this portion clearly indicates that the parties have understood and agreed between them the exact location of the car park as being a lady and a lawyer, she could be carrying many of her briefs and other materials so as to easily take it to her apartment, the conducive portion would be only beneath to her or very near to her flat. That is why the parties have agreed to purchase this flat, as according to her, even under the RERA Act, the car park is an integral part of a flat or a building and it cannot be deviated from the building or the flat. She would also contend that is why even in Paragraph No.1, car park space allotted and to be constructed and further specifying that it is described in Schedule–B would clearly indicate that the location has been specifically earmarked as early as in year 2016 on the date of agreement itself. Therefore the finding of the learned authority that there is no documentary proof to specify the exact location of the car-park area is legally not sustainable.

10. She would further contend that the present occupant of the car-park earmarked as D-103 by the 3rd Respondent is clearly an infringement on her right. It is a collusive act done by the builder and the 3rd Respondent. The 3rd Respondent came into picture much belatedly only in the year 2018. Even as per the admission of the 3rd respondent, he has purchased the property on 27-03-2018. According to him, it was allotted by the builder by then. This the Appellant would repudiate by bringing to the notice of the court that even in the

sale deed in favour of the 3rd Respondent, which is now produced in the court, certified copy has been produced into the court. In the registered sale deed in paragraph , it is stated as follows :-

> **"With one (1) reserved car-park in the stilt as highlighted in the car parking plan which is more fully described in the Schedule-C hereunder."**

When we take the Schedule 'C', we find the words as follows :

"in the first floor in the D-Block in the building named Viha, constructed over the land described in **Schedule-A hereabove together with one (1) reserved car park in the stilt**."

11. On a careful scrutiny of the entire registered sale deed, the alleged car-parking plan as stated in paragraph 'h' and highlighted does not find a place in the registered sale deed. No plan is appended to in the sale deed when that was referred to in the actual sale deed. Therefore it would clearly indicate that the disputed car park was never intended to be given to the 3rd Respondent. In fact she would also particularly point out that the difference in the wording in respect of the schedule as given in her construction agreement and the sale deed in favour of 3rd Respondent clearly indicates that no specific car park area has been specified in 3rd Respondent's sale deed, where as contra, in the Appellant's agreement it has been pointed out as under the Appellant's flat. Therefore 3rd Respondent cannot claim any specific relief over the disputed car park even though he is occupying it from 2018 after his purchase.

12. Then she would also point out that the approved plan which is produced in Page No. 211 of the typed set of papers, clearly indicates that for the 87 dwelling units, the required car park was 91 and adding 10% of the car park for the visitors, total number of car parking required was 100 Nos. whereas at that time, they offered 107 car parkings with two open car parking totaling to 109, apart from the 8 Nos. of two wheeler car parkings. Whereas in page no. 212, appellant has produced the car plan as given by the builder/respondent. There are 152 car parks, therefore there is excess 43 car parks which is created unauthorizedly and they have sold to other people for huge amount. That is the reason when there is a dispute between her and the builder regarding the demand for the interest for the delayed payment and when she opted to cancel the allotment, probably the builder has sold the different car parks to different people which have already been earmarked to certain people. In her case, the car park specified under her apartment could not be sold. First of all, without her consent as her allotment was never cancelled, secondly as it is an integral part of her flat, it cannot be separated and sold, thirdly the unauthorized extension of the car parks in violation of the building plan approval is legally not sustainable. Lastly she would also contend that even though during the period, when there was a talk to cancelling her flat, it was never stated by the builder that she will not get back the same car park. In fact according to her when she met the persons specifically, she was made to understand and promised that the same car park would continue and in the alternative she would be given the same car park after

taking it from the 3rd Respondent. Therefore the denial of the car park by the Learned Authority is not legally sustainable.

13. As far as the payments are concerned, she would contend that she has paid Rs.1,42,50,000/- which is agreed by both parties including a cash transaction of Rs.10 Lakhs and according to her, there remains only a balance of Rs.5,59,000/- after deducting the cost for the shortage of the area which is inclusive of the registration charge of around Rs.5 Lakhs. After her revival in accepting to resume the payment for buying the flat, the builder has now increased the rates and also sought registration charges very high. The appellant submitted that a claim of Rs.5,83,168/- for registration is high and she would take the liability of registration concerned, if the said amount in the cost is reduced. If the registration charge is reduced, hardly she needs to pay Rs.15000 for the registration which she is ready and willing to pay. As she has been waiting since 2016, she only prays that a time-bound registration may be directed by this Hon'ble Tribunal.

14. On a careful consideration of all the arguments of all the parties, one thing is very clear, that the petitioner / complainant has been driven from pillar to post. But she has also committed mistake in not paying the payments properly. She had also initially thought of cancelling the allotment and later on she has paid. In the interregnum, she has been put to severe mental pressure, which we could understand from the emails being sent by her late in the night at 2 A.M. and 1A.M. and so on and so

forth. The crux of the case is that the appellant was particular in getting the flat, as a covered car park was promised under her flat as per her agreement. As rightly pointed out, even in the construction agreement in the year 2016, the wording is very clear. It says that the car park space allotted and more fully described in Schedule 'B' and it also states that hereinafter refers to as the said apartment which clearly points out that a car park space has been allotted as mentioned in Schedule-B even at the time of entering into the construction agreement and in the Schedule 'B' it is further fortified that one reserved covered car park space on the ground level of the building which will clearly indicate that what was intended was the car park space below the flat of the complainant. According to the complainant, it was earmarked as D-101, later on when she did not pay for some time and during the alleged cancellation period, the D-101 was altered to D-10 and when the 3rd Respondent bought a flat, it was re-marked as D-103 which has been objected by her in her e-mails. We also find force in the argument that the car park is an integral part of the building and especially in this case, where the builder has charged Rs.3 Lakhs for the covered car park though as per the Act, covered car park means a fully covered one on three sides and the gate on one side. Where as in the present car park, it is only below the stilt for which normally he could not have charged. In this connection, it is worthwhile to refer to the Act and the Rule ;

Section 2(y)

"garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does

not include an unenclosed or uncovered parking space such as open parking area;

Rule 2(j)

"Parking" means the parking space(s) as shown in the plans approved by the planning authority ;

Rule 2(k)

" *Reserved Car Park" means an enclosed or unenclosed, covered or open area which is sufficient in size to park vehicles and which may be provided in basements and/or stilt and/or podium and/or independent structure built for providing parking spaces and/or parking provided by mechanized parking arrangements and which is not a garage; and...*

But as the agreement was prior to RERA era, the builder has charged and the complainant has also paid. Therefore the intention of the party is very clear that the space below the flat was intended to be given as a car park or atleast the space below the Block-D would be the appropriate area would be normally given to the concerned flat owners. In this case, even in the year 2016, parties have agreed and earmarked the space. This is also clearly indicated by the fact that even in the approved plan, this is a corner car park area shown which is also a bigger one. This specific car park is behind the meter room. This is the only car park which is shown in an angular fashion. Therefore this is an indication that this particular car park easily could have been earmarked even in the year 2016 which was specifically allotted to the Complainant. Further the builder taking advantage of the fact under definition Rule

2(j)(k) pointing out that cove red car park could also be granted in the stilt area as earmarked all the car parks in the stilt area. This is totally in contravention of the Act definition of a 'garage' which would only mean totally covered car park. Be it as it may, the fact remains that the car park now allotted by the builder is totally in excess of what was granted or approved by the concerned authority. In fact we have also pointed out earlier the huge difference in number of car parks now sold without adhering to any norms. Say for instance, there is no rhyme or reason how the parking lots are allotted to different people in respect of the D-Block, now the applicant is allotted in the A-Block. Normally it is expected that the car parks could be allotted in their concerned blocks only, where as we find zigzag allotment in this case for different allottees without specifying the reason for the same. Hence it is not transparent at all. Similarly two car parks have been allotted to the same flat owners though if at all taking to consideration of the argument that larger area flat owners are entitled to 2 car parks, how such a large number of 52 flats have been granted 2 car parks where as at the time of seeking approval, such numbers have not been specified. What was approved was only for 91 car parks for 87 flat, i.e., only 4 flats will only have extra car park and it is not the case of the promoter/builder that the flat area is less than 800 sq.ft., which does not called for a car park at all. Therefore even at the time of grant of permission, when the builder was aware that 52 flats will have 2 car parks, would it not be mandatory for him to specify the car parks as he numbered the flats then and there. If such a thing has been done, no controversy could

have arisen. We feel that it was deliberately not done only to circumvent the law and to capitalize and extract more money from the buyers, that is why, in the later part of judgment, we are referring this anomaly to CMDA to verify, check and take necessary action under the law as against the builder for any violation.

15. Now regarding the argument of the respondent builder that the complainant has not paid the money properly and thereafter she opted out of the project, by itself would not make it a right on the part of the builder to change the car-park especially even according to the builder at no point of time, the complainant's booking was cancelled at all. In fact from the emails, we clearly see the complainant was all along asking even during the course of their dispute regarding payment, period regarding the cancellation and further accepting to pay the amounts, she was insisting on the car park being given as originally allotted below D-101. But from all the emails produced before the court, the builder respondent specifically denied that such an arrangement was not done / was not given to her whereas from the emails of the petitioner, we could see that even she met Mr.Suresh, CEO in December 2018, which was accepted also by the builder, she was made to understand and promised that she would be given back the same car park on her full payment. That is why we are not able to understand how the argument now made by the builder that there is no document at all for the purpose of fixing the car park. Further in the email dated 03-08-2019 from the builder, he has accepted about

meeting with Mr.Gopi, they have not denied that the same car park would not be given which is also pointed out by the complainant in her further emails. Ultimately in the email 05-08-2019, the builder would say that accept the car park as provided at site which would clearly indicate that earlier there was a car park given to her and now it is changed. That is why the builder is asking her to accept the car park as provided at the site. Now when we see in the plan given to the court as per the direction of this tribunal, the enlarged version, the present car park which is allotted is much farther away than the one which was originally allotted below her flat D-101. Further it is a smaller one and not a corner one . The wording in the email dated 05-08-2019 would also clearly substantiate the case of the complainant. Coupled with the fact that it is not the case of the builder that a consent was obtained from the complainant before changing the car park. At this juncture, it is also pertinent to point out that the 3rd Respondent who is the subsequent buyer is very well aware of this. In fact according to the complainant, even another car park was given when dispute arose he had shifted the same to the present car park which is below the complainant's flat. In fact he can only be construed as a colluding party with the builder and hence he cannot claim any special right merely because of the fact that he has been in possession from 2018. Further as rightly pointed out, in his sale deed in year 2018, this has not been specifically mentioned. He cannot claim any exclusive right in the complainant's car park. At best, he can be entitled to seek a better car

park, a larger car park or any compensation from the builder for any inconvenience caused to him.

16. At this juncture, we would also like to point out the objects and reasons for the enactment of the Real Estate Act 2016 are as follows:

i. ***Regulation and promotion of the real estate sector***
ii. ***To ensure sale of Plot, Apartment or building or sale of real estate project, in an efficient and transparent manner***
iii. ***To protect the interest of consumers in the real estate sector***
iv. ***To establish an adjudicating mechanism for speedy dispute redressal***
v. ***To establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating Officer.***

17. The most and important object with regard to promotion of real estate sector and to protect the consumer, Real Estate Act ensure sale of real estate project in transparent manner. In this case the promoter even though obtained CMDA approval for 91 car parking area for 87 dwelling units, and 9 for visitors, totaling 100 car parking units, the promoter has not earmarked by numbering the above said car parking units while entering into sale-cum-construction agreement. While entering into sale and construction agreement the promoter has specifically earmarked the flat number and purposely avoided to earmark the car parking units. Why the promoter failed to earmark by numbering the car park, the promoter alone knows the fact. The purpose of non numbering of car park leads to increasing the number of car parking according to will and pleasure of the

promoter against the CMDA approval. To avoid, eradicate and to regulate such a kind of high handedness of the promoter the RERA Act ensure the transparency in the sale of flats. If the promoter had earmarked the car park by numbering transparently during the date of agreement as flat no. there is no need or necessity for the dispute of this nature between the promoter and the home buyer. In the case in hand, the promoter has absolutely suppressed the allotment of car parking method and acted against the very purpose of the objects and reasons of the RERA Act. For the entire dispute of this case the promoter alone is solely responsible. The promoter has acted against the objects and reasons for the enactment of the RERA and also the promoter has violated the principle of transparency in the sale of real estate project. For the fault of the promoter, the complainant cannot be penalised. The 3rd respondent who is the subsequent purchaser is not a bona fide purchaser, as in his sale deed, there is no proof of allotment of the disputed car park to him. The 3rd respondent himself has colluded with the promoter and made the complainant to approach the RERA. Therefore the 3rd respondent also cannot be pleaded as a bona fide purchaser without the knowledge of the dispute between the promoter and the complainant regarding the car park.

18. From the plan given to us, we clearly understand that the builder has enhanced the car park from 107 to 152 deliberately with a view to sell it at high rates later on. It is a clear violation from the building plan approval. It is not the case of the builder that any necessary subsequent approval or modification is being done in the plan. Further as rightly pointed out that even as early as on the date of construction agreement/

sale agreements even in the year 2016, when they were earmarking the blocks, flat numbers, they conveniently do not earmark the car park number, where as in the approved plan, they only give numerical number. This is only done so that at later point of time, they could change the car-parks, enhance the car-parks and sell them at exorbitant rates. Even thought it does not come under purview of car parks under the RERA Act. In this connection, it is pertinent to point out that the Tribunal has directed the builder to produce the list showing the number of the flats, the concerned car park allotted to them, whether it is two or one to the flat, number wise in a tabular form. Such tabulation was produced in court.

19. On a careful analysis of this tabulation, we are alarmed to see that out of the 87 flats, they have not sold 2 flats and the single car parks given to the allottees is only 29 whereas the 2 car parks are given to 58 flats. And the square foot as mentioned in the tabulation is where ever the flats are more than 1580 sq. ft. they have allotted 2 car parks and even for the 4 flats which have an extent of 2282 sq. ft., they have allotted 2 car parks only. The total car parks as allotted by him come to 145 and for the two flats not sold, they have ear-marked 4 car parks. That's totaling, they have either sold or reserved 149 car parks. But the actual car parks which was approved in the plan is only 109 including 2 open car parks. This is what is very very intriguing as to ponder over how the builder can manipulate, alter or amend an approved plan to suit to his convenience. As we find there is a total violation of the allotment of car parks in tune with the approved plan, we feel it very necessary that the matter has to be completely look into, investigated and a report submitted before this

tribunal, how first of all they showed only a lesser car parks for a larger area of flats and whether they could sell these non-covered car parks which is in the stilt area exceeding the actual car-parks allotted to the allottees in violation of the Act and Rules.

20. Hence the argument of the builder that in respect of large extent of flat area, two car-parks were given, one behind the other also could not be accepted. As pointed out earlier in the approved plan, in every bay when there was only 5 or 6 car parks allotted, they have increased to 8 car parks, thereby the extra car parks have been created, by doing so, we necessarily feel that the manoeuvring of the car park area would have been reduced and thereby they have violated the approved plan, due to non transparency in allotment of car parking space.

21. In so far as the claim of the payment due by the builder, we find that in the written arguments, the complainant has admitted that she is liable to pay Rs.7 Lakhs. Out of the Rs.7 Lakhs, she has also deducted Rs.1,41,000/- towards the proportionate cost of 13 sq. ft., as there is a shortage in respect of the saleable area, as the available area is only 1213 sq. ft. and not 1226 sq. ft., reducing for the 13 sq. ft., at the rate of Rs.10850/-, she has calculated as Rs.1,41,000/-. Thus finally in the arguments, she said that she is prepared to release Rs.5,59,000/- in favour of the builder from the bank as per the tri-partite agreement. At the same time, she also pointed out that she is ready to take up the responsibility and the cost of registration on her own. If she is taking the responsibility, then as per the original worksheet/cost-sheet given by the builder, they are charging Rs.5,83,168/- which would be deducted from her payable amount.

Therefore according to her, if the appellant is taking the responsibility of registering the flat on her own, then there would be no amount payable by her. When the registration is done by the builder, then the appellant is liable to pay Rs. 5,59,000/- as per her own admission. The advocate for the builder also stated that as the C.C.P No. 212 of 2019 is pending before the Adjudicating Officer, the claim of the complainant regarding the interest cannot be decided here and they also have the right to claim interest for the delay in payment. As the claimant has filed the complaint before the adjudicating officer pending adjudication, we refrain from making any comments on this subject. In fact we feel at this juncture that before the Learned Authority, the claimant has only claimed the compensation for delay in the handing over the flat, the question of fixing the interest for the delayed payment of the complainant did not arise. In that view of the matter, we set aside that portion of the Order of the Learned Authority in fixing the quantum to pay for the delay in payment by the Complainant. Whereas this matter of payment of interest in the delayed payment also could be agitated by the builder in the C.C.P. No. 212 of 2019 pending before the Adjudicating Officer.

22. Hence it is sufficient to say that the builder/ 1st Respondent is directed to execute the sale deed within a period of two weeks after completing all the unfinished works either on receipt of Rs.5,59,000/- from the Complainant/banker of the Complainant and register the sale or in the alternative when the registration expenses is borne by the Complainant, without receiving any funds from the Complainant as the registration charges as mentioned in Page No. 79 of typed set in builder cost sheet, is

not liable to be paid by the appellant. In that case the builder shall register the sale within two weeks. Therefore this Tribunal comes to a conclusion that this appeal deserves to be allowed.

23. In the result, this Appeal No. 11 of 2020 is allowed with cost of Rs.7,000/- payable by the 1st Respondent and further directs that:

a) the Order of the Learned Authority in C. No. 411 of 2019 dated 07-11-2019 is set aside and the Complaint is partly allowed only in respect of registration of sale deed, grant of the car-park, restoring it from the 3rd Respondent and prohibiting the 3rd Respondent from using the car park allotted to the complainant. Regarding the claim of interest by the Claimant, it will be adjudicated in the pending adjudication itself in C.C.P. NO. 212 of 2019 by the Adjudicating Officer.

b) We also direct the builder to register the sale deed in favour of the Appellant within two weeks from today after completing the unfinished works and shifting the car park of the 3rd Respondent. At the same time, the appellant is directed to pay Rs.5,59,000/- being the amount payable as admitted by her in the written argument or in the alternative take the responsibility of registering by herself at her cost by reducing the charges as in the builder's cost sheet shown in Page No. 79 of the typed set.

c) In view of the same, we direct the builder/1st Respondent to re-allot the car park immediately just below the complainant's flat D-101, which is now occupied by the 3rd Respondent. We also direct that the 3rd Respondent be given any other car park and also permit him to claim any relief against the builder in so far as to the shifting of his car park.

d) We find that it is a fit case where the builder has violated the approved plan, created extra car parks and sold the same at exorbitant rates, why necessary action should not taken by CMDA for violation of their approved plan. In this connection, we direct the CMDA to take necessary action under relevant provisions of law for all the violations done including exceeding the number of car parks as per the approved plan and selling the same to the parties. CMDA is directed to file a report of the action taken within 4 months. A copy of the Judgment to be sent to the Member-Secretary, CMDA for necessary action.

This Order is dictated to the Stenographer, transcribed and typed in the computer by her, corrected and pronounced by us in the open court on 10.02.2020.

Sd/-xxxxxx
CHAIRPERSON

Sd/-xxxxxx
ADMINISTRATIVE MEMBER

Sd/-xxxxxx
JUDICIAL MEMBER

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