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 02.02.2022

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member

Appeal No. 33 of 2020

1. Sylvanus Builders and Developers Limited
Rep. by its Director, Sanjil Ramesh Chandhani

2. Pacifica (Chennai Project) Infrastructure Co. Pvt. Ltd.
Rep. by its Managing Director, Rocky Israni ... Appellants / Promoters

-Vs-

K.Srikar Reddy .... Respondent / Home Buyer

ORDER

This appeal was taken on file on 10.01.2020 and came up for final hearing on 28.01.2022 in the presence of M/s.Sarvabhauman Associates, K.Venkatasubban and K.S.Srinivasan for the appellants and the counsel for respondent Mr.T.Raghavan, M.Rajarajan and T.R.Sudarsanan. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

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ORDER

1. This appeal has been preferred by the promoter against the order of the Adjudicating Officer in C.C.P.No.125 of 2019 dated 12.11.2019. Hereinafter in this Appeal the appellants are called as promoters and the respondent is called as home buyer as per their original rankings. The Appellant/Promoter has preferred this appeal on the following main grounds:

- The home buyer has not taken any steps to terminate the contract.
- The project of the appellant is a completed project before the implementation of RERA Act and Rules.
- Awarding of 9% of the total amount paid as compensation, even though given finding that the amount of loss to the complainant are not quantifiable.
- The Adjudicating Officer has no right in going into the question of registerability of the project.

2. The learned counsel for the appellants would submit that the awarding of compensation of 9% on the total amount paid is highly excessive and against the Section 72 of the Act. The learned Adjudicating Officer failed to consider that the home buyer willfully not taken the possession of villa and claimed additional customization works and fixtures which was not covered in villa specifications. Therefore this appeal has to be allowed.

3. The learned counsel for the respondent/home buyer would submit that learned Adjudicating Officer has come to a correct conclusion on the basis

of the available records and there is no infirmity in that findings. Therefore, the appeal has to be dismissed.

4. Point for consideration:

1. Whether the appeal deserves to be allowed or not?

Point :

5. The home buyer booked a villa in the project of the promoters, namely Pacifica Arum Villas on 03.08.2012 at Padur village, Thiruporur taluk, Kancheepuram district and paid advance amount. The promoters and the home buyer entered into construction agreement on 11.03.2014 and the promoter agreed to hand over possession of villa by 30.06.2015. But the promoter failed to handover possession of the villa within the stipulated time and the promoter informed the home buyer on 27.03.2019 that the villa was ready and requested to clear the outstanding amount due. The home buyer paid a sum of Rs.1,41,98,470/- from the period of 03.08.2012 to 28.02.2015 and the total cost of the villa was fixed as Rs.1,47,51,658/-. According to the home buyer he has to pay the balance only Rs.5,53,188/- as per the agreement. The promoter has not denied the payments. The only contention on the side of the promoter is that the compensation awarded by the court below is highly excessive and more over on the delay on the part of the home buyer with regard to change of specification. Regarding delay in construction and proposal for delivery of villa to the home buyer is indirectly admitted by the promoter.

6. Admittedly the due date for delivery of constructed villa is 30.06.2015 and the promoter offered to deliver only in March 2019. The home buyer invested money for the villa by way of bank loan and due to delay in delivery the home buyer suffered a lot by way of paying EMI, interest and rent for his accommodation. So the home buyer was constrained to withdraw from the project and sought for refund with interest and compensation. The learned Adjudicating Officer has ordered refund along with interest at the rate of 10.15% per annum as per Rule 18 of the TNRERA Rules. Hence there is no infirmity in the findings and they are according to law.

7. The learned Adjudicating Officer awarded compensation for mental agony and inconvenience at the rate of 9% per annum on the total amount paid. The learned counsel for the promoter has vehemently put forth his arguments with regard to quantum of compensation at 9%. How far the arguments of the learned counsel for the appellant are sustainable has to be analyzed. Before going to discuss the merits of the case we have to see the meaning of the word just compensation as explained by the Hon'ble Supreme Court in the following verdict and what are the factors to be taken into account while adjudging compensation under Section 72 of the Real Estate (Regulation and Development) Act, 2016 are as follows:

(2003) 7 SCC 197

Divisional Controller, KSRTC vs Mahadeva Shetty and another

It has to be borne in mind that the compensation is not expected to be a wind fall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a

pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a side discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.

Section 72: ***Factors to be taken into account by the adjudicating officer.***

While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused as a result of the default;
(c) the repetitive nature of the default;
(d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

8. As per the verdict of the Hon'ble Supreme Court just compensation is:

not expected to be a wind fall for the victim and the expression "just" denotes equitability, fairness and reasonableness, and non- arbitrary. If it is not so it cannot be just.

These are the principles while awarding compensation to be followed. In this Act also in Section 72 what are the factors have to be taken in account while awarding compensation is explained. By applying these principles we have to analyze the award passed by the learned Adjudicating Officer.

9. Admittedly already 10.15% interest was awarded for the total amount paid by the home buyer it comes to Rs.14,38,099.71. By way of compensation for

mental agony awarding of 9% per annum on total amount paid comes to Rs.12,77,862.30. The learned Adjudicating Officer totally awarded 19.15% towards interest as compensation. Even in any commercial transaction awarding of interest more than 12% is highly excessive. If the home buyer invested his money in any security or business certainly he could not have received more than 12%. At this juncture already the promoter was penalized for the delay in completion of project at the rate of 10.15% and again penalizing the promoter by awarding 9% interest is amounts to double jeopardy. Hence it is unfair as per the above verdict of the Supreme Court. As per Section 72 of the Act the amount of loss caused as a result of the default can be proved by way of evidence. In this case the home buyer admitted that he obtained home loan and paid the amount to the promoter. But the home buyer has not stated that how much amount he has paid towards interest to prove as loss caused as a result of the default. But there is no doubt that if housing loan in obtained certainly the borrower has to pay interest for the bank. When there is no specific amount has been shown as interest or loss etc., it has to be compensated with reasonable amount. But it need not be parallel to the amount already awarded by way of interest at the rate of 10.15%. Admittedly the home buyer paid Rs.1,41,98,470/- to the promoter in February 2015. Till date the home buyer has not get back the return. So certainly it would cause mental agony and it cannot be measured in terms of money. Therefore this Tribunal comes to a conclusion that a reasonable compensation will heal the wound of mental agony. Hence this Tribunal fix the lump sum

compensation of Rs.5,00,000/-, instead of 9% on total amount, for the ends of justice.

10. From the above discussion this Tribunal fixes the compensation for mental agony and inconvenience as Rs.5,00,000/- instead of 9% of the total amount paid. Regarding delay compensation and awarding of litigation expenses of Rs.25,000/- there is no infirmity in that findings. Therefore this Tribunal comes to a conclusion that this Appeal deserves to be allowed in part. The point is answered accordingly.

11. In the result, this Appeal is allowed in part without cost. The order of the Adjudicating Officer in CCP No.125 of 2019 dated 12.11.2019 is set aside in part and modified as follows:

a) Awarding of compensation Rs.5,00,000/- towards mental agony and inconvenience instead of 9% of the total amount paid.

b) With regard to delay compensation and litigation expenses are concerned the order of the Adjudicating Officer is confirmed.

Connected Miscellaneous Applications are closed.

This Order is directly dictated to the Stenographer, typed in the computer by her, corrected and pronounced by us in the open court on 02nd Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDL. MEMBER