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 04.11.2020

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

Appeal No. 47 of 2020

1) SP Arulappaa
2) G.Premalatha ...Appellants

..vs..

M/s.A.N.Builders
Rep by its Proprietor
Mr.N.Narayanan ... Respondent

This appeal was taken on file on 24.7.2020 and came up for final hearing on 30.09.2020 in the presence of M/s. P.K.Sreenivasan, A.Karthikeyan, Counsel for the Appellant and Mr.C.M.Mohanasundaram, Counsel for the Respondent. Having heard the arguments of both sides through video conferencing and having stood over for consideration till this day and this Tribunal delivered the following:

ORDER

1. The appellants who are the owners of the flats are the complainants in CCP No.123/2019 before the Adjudicating Officer and the respondent herein, who is the

Verified RealEstate™

builder, is the respondent in the above said complaint. The appellant/complainants preferred a complaint for compensation and for litigation costs. After contest the complaint was partly allowed. Aggrieved upon that the complainants preferred this appeal.

2. The appellants filed the above petition in CCP No.123/2019 claiming compensation for rectification of defects in construction of the flat consisting of 2 Bedrooms, Hall, Kitchen, with covered car park, damages for mental agony, return of the extra amount, shortage of plinth area of flat. Totally the appellants sought for Rs.37,25,893/- but the Adjudicating Officer granted compensation for a sum of Rs.6,53,483/- and also allowed the counter claim of the developer for a sum of Rs.4,99,900/-. Aggrieved upon that the complainant preferred this appeal.

3. The Learned Counsel for the appellant would submit that the actual plinth area of 963 sq. ft. is exclusive of common area but the available plinth area is only 899 square feet. So the difference is 64 square feet. But the Learned Adjudicating Officer wrongly calculated the difference as 61 square feet. Further for awarding compensation for the shortage of plinth area the Adjudicating Officer granted the rate of Rs.5000/- per square foot in spite of Rs.14,800/- is the actual amount the builder charged the purchaser for each square feet. According to the Appellant so far they have paid Rs.1,88,00,000/-. It is in excess to the tune of Rs.6,94,610/- Regarding compensation is concerned the Learned Adjudicating Officer has not assigned any reason for such reduction in compensation under various heads. The litigation expenses are concerned the claim by the Appellant is Rs.1 lakh but is awarded only Rs.35,000/-. It is also without assigning any reason. The Learned Adjudicating Officer has allowed the counter claim of the respondent for a sum of Rs.4,99,000/- which was not proved by the respondent. For the counter claim claimed by the respondent without paying any court fees. Hence the counter claim is not maintainable. The above said findings of the Learned Adjudicating Officer is not according to law and without assigning any reason and the reduction of claim of the appellant was also without assigning any reason. Therefore the appeal has to be allowed.

4. According to the respondent, originally the total cost of the flat is Rs.1,92,99,900/- the complainant paid only Rs.1,88,00,000/- and the due is Rs.4,99,900/-. All the alterations were made on the request of the complainants and service tax of 5% and sales tax of 2% were agreed to be paid by the complaints. The learned Adjudicating Officer after considering the evidence of both sides came to a correct conclusion and there is no infirmity in that finding. Therefore this appeal has to be dismissed.

5. Point for consideration:

1. Whether this appeal is deserves to be allowed or not?

Point :

6. On the side of the appellant there are 19 grounds put forth by the appellant against the order of the adjudicating officer. Let us see the above said grounds one by one. The grounds of appeal point No.'a' is only a formal one. The grounds of appeal point No.'b' with regard to shortage of plinth area. Let us analyse the same.

7. According to the Appellant the plinth area of the apartment originally agreed for was 963 Sq.ft exclusive of common area. As per the evidence of CW2 and his report Ex.A23 what is available is only 899 Sq.ft. Therefore, shortage in plinth area is 64 Sq.ft. But the adjudicating officer fixed shortage only to the extent of 61 sq.ft. The above said finding with regard to 61 sq.ft is not correct according to the appellant. As per the approved plan plinth area measurement is only 960 sq.ft. After physical verification of the flat the CW2 found that the plinth area of the flat is only 899 sq.ft. As per the version of RW2 plinth area is 952 sq.ft. Even though

RW2 has not disclosed which date he inspected the flat and measured. Yet, the actual measurement taken by the CW2 available in his flat as 899 sq.ft against 960 sq.ft. taken into consideration by the Adjudicating Officer. Though, it was agreed by both parties that the actual area is 963 sq..ft. the drawing given for the approval of the building plan it is only 960 sq..ft. As per the construction the plinth area is only constructed to the tune of 899 sq. ft. So it was taken into account by the Learned Adjudicating Officer since the appellant is liable to pay for the actual construction plinth area only. Therefore, the shortage between building plan plinth area and actual plan plinth area is only 61 sq. ft. viz., 960 to 899 sq. ft. There is no infirmity in the above said finding. Hence, the grounds of appeal in point 'b' put forth by the appellant is not sustainable. Grounds of appeal point No.'b' is answered accordingly.

8. The grounds of appeal points 'c', 'd' and 'e' are with regard to cost of construction. According to the appellant the agreed cost of construction per sq. ft. is Rs.14,800/-. The Adjudicating Officer has fixed compensation for shortage in plinth area at Rs.5,000/-per sq. ft. which is very low but if calculated at the rate of Rs.14,800 per sq. ft. which is charged to the shortage of 64 sq. ft. a sum of Rs.9,47,200/- ought to have to been awarded. In the construction agreement the rate of Rs.14,800/- per sq. ft. does not find place. In the agreement regarding construction cost stated in page no.2 stated as follows:

The parties hereto mutually further agreed and covenant as follows:

a. **The first party hereby appoints the second party as his builder to construct the apartment described in schedule "B" as per the**

Verified by RealEstate™

specifications contained in schedule "C" and on an agreement *of Rs.1,26,63,000/- (Rupees one Crore Twenty Six Lakhs Sixty Three Thousand only). (Which includes car Park, Service Tax, Deposits towards EB, CMSSB, etc.,)*

9. In the above said clause total cost of construction including car park, service tax, and deposit towards EB and CMSSB, stated as Rs.1,26,63,000/-. In which cost of construction per sq. ft. has not been stated in the above said agreement page no. 1 to 6. Regarding cost of construction per sq. ft. it is mentioned only in the e-mail of the respondent dated 14.07.2016 which is marked as Ex.A5 and the same is runs as follows:

As per our discussion kindly note our quote,

1175 sqft@Rs.14,800/-	Rs.1,73,90,000.00
Car park	Rs. 3,50,000.00
UDS Registration	Rs. 4,97,000.00
Construction Regn.	Rs. 2,48,500.00
VAT	Rs. 2,48,500.00
Service Tax	Rs. 7,10,000.00
EB, Metro Water etc..	Rs. 1,25,000.00
Total	Rs.1,95,69,000.00

10. The cost of construction per square feet at the rate of Rs.14,800/- is not mentioned anywhere except in Ex.A5, nowhere mentioned in any of the agreements namely joint venture agreement or agreement for construction i.e. in Ex.A4 and Ex.A6. As per Ex.A5 dated 7.6.2016, the construction cost is quoted as "1175 sq. ft at Rs.14,800/- =Rs.1,73,90,000/-".

Subsequent to Ex.A5 on 2.8.2016 the appellant and the respondent entered into agreement for construction and fixed the cost of apartment as

Rs.1,26,63,000/- including the cost of car park, service tax, deposits towards EB, CMWSSB. For the above said three inclusion costs in the agreement for construction no specific amount has been stated. In Ex.A5 email costs mentioned for car park is Rs.3,50,000/- deposits for EB and CMWSSB as Rs.1,25,000/- and service tax as Rs.7,10,000/-. In Ex.B1 Account statement of the respondent service tax is mentioned as Rs.7,05,240/- only excluding the above said three costs from the total construction agreement costs the remaining will be the construction cost it comes to Rs.1,14,82,760/- . The above said amount is fixed for 1175 square feet. So the cost of construction per square feet will be Rs.1,14,82,760/- divided by 1175 is equal to 9,772.561. As per agreement of construction page No.2 there is a specific clause regarding reduction of area leads to reduction of cost which runs as follows:

> ***"Should there be excess in the area constructed than shown in plan, the first party hereby agreed to make proportionate payment for such excess constructed areas. If the area of the apartment is less than area shown in the scheme plan, the consideration specified herein been reduced".***

11. As per the above said covenant as found in ground of appeal point No.'b' the plinth area to the extent of 899 square feet only is available as against 960 square feet in the approved plan, the appellant is entitled to reduction in consideration of cost for the 61 square feet at the rate of Rs.9,772.561 per square feet, the reduced cost comes to Rs.5,96,126.22 and the appellant is entitled for that amount. Grounds of appeal point Nos.'c' ,'d' and 'e' are answered accordingly.

12. The appellant in the grounds of appeal point No.'f' questioned the cost of construction and claimed refund. The respondent has also claimed refund it was also questioned by the appellant in grounds of appeal point Nos.'p', 'q' and 'r'. All the above said points have to be discussed hereunder. In Ex.B1 the accounts detail issued by the builder/respondent to the owner/appellant in which the amount details are as follows:

Sale deed	Rs . 49,68,000.00
Construction agreement	Rs. 1,26,63,000.00
UDS registration stamp duty	Rs. 3,47,760.00
UDS registration fees	Rs. 49,780.00
Construction agreement stamp duty	Rs. 1,26,630.00
Construction agreement registration fees	Rs. 1,26,730.00
Sales tax @ 2%	Rs. 2,53,260.00
Service tax @ 4%	Rs. 7,05,240.00
Extra Work	
Additional electrical work, material With labour	Rs. 16,500.00
Service area balcony safety grill Material with labour	Rs. 16,000.00
Kitchen frame with door fittings Material with labour	Rs. 12,000.00
Safety grill gate material with labour	Rs. 9,500.00
Kitchen and balcony French door glass Work difference	Rs. 5,500.00
Total	Rs.1,92,99,900.00
Amount paid by the owner/appellant	Rs.1,88,00,000.00
Balance claimed by the respondent from the appellant	Rs. 4,99,900.00

13. As per the construction agreement Ex.A6, the builder has to construct the apartment described in schedule B as per the specifications contained in schedule C and on an agreement of Rs.1,26,63.000/- (which includes car park, service tax, deposits towards E.B, CMWSSB, etc.). As per

Ex.B1 account statement of the builder except service tax amount and extra work amount total comes to Rs.1,85,35,160/-. If both service tax Rs.7,05,240/- and extra work amount Rs.59,500/- are added the total comes to Rs.1,92,99,900/-. So as per the construction agreement Ex.A6 the total cost of UDS sale amount, stamp duty, registration charges except service tax the total amount comes to Rs.1,85,35,160/-. The construction agreement amount Rs.1,26,63,000/- includes car park, service tax, deposits towards EB and CMWSSB. Out of Rs.1,85,35,160/- the appellant paid as per Ex.B1 Rs.1,88,00,000/-. The appellant has paid excess of Rs.2,05,340/-. When the fact is so the claim of the respondent that Rs.4,99,900/- the balance amount to be paid by the appellant is not correct.

14. According to the appellant he has claimed the following amount from the respondent:

Construction agreement amount	Rs.1,26,63,000.00
Construction agreement stamp duty	Rs. 1,26,630.00
UDS sale deed amount	Rs. 49,68,000.00
UDS stamp duty	Rs. 3,47,760.00
Total	Rs.1,81,05,390.00
Total amount paid by the appellant	Rs.1,88,00,000.00
Excess amount claimed by the appellant From the respondent	Rs. 6,94,610.00

The appellant not included the following amounts in their calculation are:

UDS registration fees	Rs. 49,780.00
Construction agreement Registration fees 1%	Rs.1,26,730.00
Sales tax	Rs.2,53,260.00

Total	Rs.4,29,770.00

15. If the above said difference amount Rs.4,29,770/- added with the appellants' expenses amount Rs.1,81,05,390/- total comes to Rs.1,85,35,160/- . Along with this amount service tax at 4% Rs.7,05,240/- and extra work amount Rs.59,500/- added the total comes to Rs.1,92,99,900/- which is the claim amount of the respondent as per Ex.B1.

16. As per Ex.A6 construction agreement the total agreement cost was fixed at Rs.1,26,63,000/- which includes car park, service tax, deposits towards EB, CMWSSB, etc. The respondent has not included the car park amount Rs.3,50,000/-, deposits towards EB and CMWSSB Rs.1,25,000/- as per the agreement Ex.A6. But unfortunately the respondent included the service tax Rs.7,05,240/- in his calculation sheet Ex.B1 but in Ex.A6 construction agreement service tax amount is included in the total construction cost so he cannot include in the said amount. The respondent wrongly included the service tax amount of Rs.7,05,240/-. Likewise, the appellant has also failed to include UDS registration fees Rs.49,780/, Construction agreement Registration fees 1% Rs.1,26,730/-, Sales tax Rs.2,53,260/- totally Rs.4,29,770/-. Hence both the appellant and respondent have made calculation wrongly and claimed amount vice versa.

17. As per Ex.A6 construction agreement the appellant is liable to pay construction agreement amount Rs.1,26,63,000/- along with UDS sale deed cost, UDS registration stamp duty cost, UDS registration fees, construction

agreement stamp duty, construction agreement registration fees, sales tax. As per construction agreement the appellant is not liable to pay service tax Rs.7,05,240/-. So the total amount the appellant has to pay is Rs.1,85,35,160/- only except the service tax. Along with this amount extra work amount Rs.59,500/- when is added the total comes to Rs.1,85,94,660/- it is a total amount to be paid by the appellant. Towards this amount admittedly the appellant had paid Rs.1,88,00,000/-. When the total expenses amount of Rs.1,85,94,660/- deducted from the paid amount of Rs.1,88,00,000/- the balance excess amount paid by the appellant to the respondent is only Rs.2,05,340/-, the appellant is entitled to that amount.

18. As per the grounds of appeal point No.'f' the appellant claimed from respondent a sum of Rs.6,94,610/- or at least Rs.6,44,586/- is not correct and the appellant is entitled to claim Rs.2,05,340/- only from the respondent as excess paid amount. The respondent is not entitled to any refund of amount from the appellant. Grounds of appeal point Nos.'f' ,'p', 'q' and 'r' are answered accordingly.

19. The appellant claimed compensation under various heads under the grounds of appeals point Nos.'g' to 'm'.

Sl. No	Particulars of deficiency	Amount of Compensation claimed (in Rs.)	Reply of respondent for alleged deficiency
1	Common toilet wall thickness less than 9"	50,000	Thickness of common toilet outer wall reduced at request of appellant
2	Room corner walls are not at 90°	1,00,000	Room corner walls are manual workings hence

			allowance of plus or minus 5 mm is permitted
3	Window grills not placed properly	80,000	Window grills placed properly if any defect ready to rectify
4	Sunshade deficiency	20,000	Sunshade provided to the whole flat
5	Safety grill for eastern balcony not provided	1,00,000	Eastern balcony designed for the whole project safety grill not provided in agreement
6	Safety grill for the main door not properly fixed	15,000	Safety grill was an additional job work and done in the presence of appellant
7	Main door lock Godrej brand not fixed	15,000	Brand of lock has not been mentioned in the agreement
8	Standard brand switches not provided	20,000	The brand Litaski is a reputed brand and approved by the builder
9	No runway on western side, southern side blocked by Genset, deviation in position of the columns has caused hardship for parking and taking vehicles	3,00,000	With regard to the runway the appellant is aware of the scheme issued by the builder and on the basis of Vasthu hence no deviation
10	Solar water heater not provided	2,00,000	Instead of solar water heater Genset provided and no provision in the agreement for solar water heater

The claim of the compensation by the appellant before the RERA is as follows:

1	Rectification of mistakes in construction	9,00,000
2	Damages for mental agony	10,00,000
3	Extra money paid	6,94,610
4	Legal expenses	1,00,000
5	Shortage of plinth area	9,47,200
6	Delay in handing over of possession	63,483
7	Court fee	5600
8	Valuer's fee	15,000
	Total	37,25,893

20. Out of the total claim Rs.37,25,893/- the Adjudicating Officer granted compensation of Rs.3,05,000/- towards shortage of plinth area, Rs.63,483/- towards compensation for delay in handing over possession, regarding defects in construction compensation granted Rs.2,00,000/-, for mental agony Rs.50,000/- compensation granted, litigation expenses Rs.35,000/- are allowed. Totally Rs.6,53,483/- was allowed for the complainant. The claim of compensation as extra money paid is rejected. The claim of respondent towards the balance amount of Rs.4,99,900/- from the appellant is allowed.

21. The main contention of the appellant is that while reducing the compensation the Adjudicating Officer has not adduced any reason for the reduction. Moreover, the appellant has not produced any evidence proportionate to the claim of compensation.

22. Regarding shortage of plinth area this Tribunal modified the compensation from Rs.3,05,000/- to Rs.5,96,126.22 as found in answer to grounds of appeal point Nos.'c' 'd' and 'e' as above.

23. Regarding compensation for handing over of possession the appellant has not insisted during the course of arguments for the compensation under this ground. Hence the findings of the Adjudicating Officer to the tune of Rs.63,483/- is confirmed.

24. The remaining compensations regarding defects in construction, mental agony and litigation expenses have to be decided by this Tribunal.

The appellant has specifically stated about the evidence adduced by them as grounds of appeal point No.'l'. In which he has stated as follows:

"When the complainants have clearly and specifically set out such details in page nos. 8 and 9 of the complaint."

25. The above said details are copied in the previous paragraph of this Order in page No.10 & 11 in column nos.1 to 3. The appellant has mentioned the deficiency and mentioned the amount as compensation. It is not an evidence and it is a claim of compensation by the appellant before the Authority. The claim of compensation for deficiency ought to have been proved by the appellant/complainant through the physical verification of the defective construction by the technical expert and through his report and valuation for correcting the defects is the evidence. Mere self serving story of the appellant/complainant is not at all an evidence. Hence the Adjudicating Officer in his order in para No.9(c) has stated that "there is no evidence on the method of assessing the compensation towards the compensation for each defects requiring rectification". Therefore considering the overall picture relating to the defects in the construction compensation is fixed as Rs.2,00,000/-. Whether the conclusion of the Adjudicating Officer in fixing compensation is correct or not has to be analysed on the basis of the guidance of the Hon'ble Supreme Court in the following verdict.

(2003) 7 SCC 197

Divisional controller, KSRTC Vs Mahadeva Shetty and another

It has be 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. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. 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 wide 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. (See Helen C. Rebello v. Maharashtra State Road Transport Corporation (AIR 1998 SC 3191).

26. In the above verdict (1999) 1 SCC 90 Helen C Rebello Vs Maharashtra SRTC and (1995) 1 SCC 551 RD Hattangadi Vs Pest Control (India) (P) Ltd. were relied and explained the meaning of the word 'just compensation'. Compensation has to be fixed on the basis of the two concepts namely pecuniary damages and non-pecuniary damages. Pecuniary damages may include expenses incurred by the claimant (i) medical attendance (ii) loss of earning of profit upto the date of trial (iii) other material loss. So far as non-pecuniary damages are concerned they may include (i) damages for mental and physical shock, pain and suffering (ii) loss of amenities of life (iii) loss of expectation of life (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life. These are the principles and ingredients to be taken into account while fixing the compensation. While applying these principles for fixing compensation the appellant/complainant has not adduced any piece of evidence. To ascertain how much amount is required to rectify the defects the appellant has simply stated in the columns as round figures as compensation. Even though the appellant examined a technical person as CW2 one Mr.Rathna Kannan who is a Chartered Engineer and Government

Registered Valuer and Class 1 Licensed Surveyor (Chennai Corporation). In his report he has stated the following:

> *a) Actual plinth area of flat F-1 is 899 sq. ft as per plan 960 sq.ft*
> *b) Car-parking provided in run-way and gen-set also fixed in run-way*
> *c) Column position and direction differ from approved drawing*
> *d) No run-way on the western side because of mid landing-3 feet-expanded in run-way western side area*
> *e) Overhead tank directly sit on head room roof, so seepage, dampness in head-room, it causes structural weakness for head room roof and water tank."*

27. The CW2 has not disclosed anything with regard to the defects in construction and fixing of grills, sunshade, etc. In such circumstances how the appellants/complainants came to a conclusion that they are defective since the appellants/complainants are not technical persons. So the Learned Adjudicating Officer came to the right conclusion that there is no evidence for the method of assessing the compensation. The defects namely thickness of wall, room corner walls, window grill, sunshade, safety grill, door lock, branded switches are concerned are easily assessable and they are construed as pecuniary damages. The Learned Adjudicating Officer has fixed compensation to the tune of Rs.2,00,000/-. But the appellants/complainants are not willing to accept the same. In such circumstances, to assess the correct and accurate damages they ought to have employed a qualified engineer to obtain a report from him and claim the compensation as per the expert opinion, the claim can be an acceptable one. But here, the appellants/complainants have not produced any evidence as stated supra and mere narration of defects and amounts alone are not sufficient to construe as an evidence. Therefore this Tribunal

Verified RealEstate™

comes to a conclusion that there is no infirmity in the finding of the Learned Adjudicating Officer regarding defects compensation.

28. The next claim of compensation is with regard to mental agony. The Learned Adjudicating Officer has fixed the compensation for mental agony at Rs.50,000/- by considering the facts and circumstances of the case. The appellants/complainants claimed Rs.10,00,000/- toward damages for mental agony in their complaint. The compensation for mental agony comes under the category of non-pecuniary damages. The mental agony cannot be measured in terms of money. The appellants/complainants paid a sum of Rs.9,772.56 per square feet for the construction and they paid in advance to the tune of Rs.1,88,00,000/-. Even then the appellants are not satisfied with the performance of the respondent in construction. The respondent went to the extent of saying in his counter as "not stated in the agreement", additional job work, extra work, vasthu are the explanations and reasons for not adhering to the efficiency in performance of the work. The respondent has not invested money and completed the project. He has completed the project after receiving the amounts from the appellants. Moreover after investing huge amount nearly about 2 crores the completion of the house is not as expected by the appellants. In such circumstances certainly there is a possibility for causing mental agony due to defective performance. Furthermore, the deviation from the building plan by not providing run-way on western side in which also there is a possibility of causing mental agony. As per the above referred Apex Court verdict inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life are all possible due to defective flat at the cost of

huge investment of nearly about 2 crores because they have invested their lifelong savings for their dream home. After the receipt of huge amount of cost of construction at the rate of Rs.9,772.56 per square feet the builder went to the extent of saying reply for the defect as manual work allowance 5mm plus or minus is permissible. To avoid such allowance in performance the appellant paid huge amount for construction. Even then the appellants are not able to get a non-defective flat. Already the respondent stated in his counter as ready to rectify on 12.07.2019 itself, till date the respondent has not taken any steps to rectify the defects. In such circumstances this Tribunal comes to a conclusion that the compensation fixed by the Learned Adjudicating Officer under the head of mental agony a sum of Rs.50,000/- is very meager. The total cost of construction paid by the appellant for 899 square feet in to the tune of Rs.87,85,531/-. In the construction agreement the usual clauses are incorporated between the homebuyer and builder with regard to delay in handing over possession at the rate of Rs.5 or 10 per square feet as penalty. In RERA Act Sec 59 to 69 penalty is fixed @ 10% or 5% for contravention of the RERA Act, Rules and Regulations. By following the above as a tool for calculation for the defective construction fixing penalty of 10% of the total construction cost as compensation for mental agony would be a just compensation. It is more reasonable for the appellants and respondent. The respondent also will not be prejudiced in fixing penalty @ 10% on the actual cost of construction. The compensation is fixed as Rs.8,78,553/- at 10% on Rs.87,85,531/- but is round of Rs.8,78,500/- instead of Rs.50,000/- for mental agony.

29. Regarding litigation expenses are concerned the Learned Adjudicating Officer has fixed Rs.35,000/- but the appellants claimed to the tune of Rs.1,20,600/- without any basis. Litigation expenses granted by the Learned Adjudicating Officer to the tune of Rs.35,000/- is actual litigation expenses Rs.5,600/- plus some fixed lumpsum amount. It is not the compensation. So the awarding of Rs.35,000/- towards litigation expenses is reasonable since the appellants have not produced any piece of evidence to prove that they have spent more than Rs.35,000/-. In such circumstances there is no infirmity in the findings of the Learned Adjudicating Officer with regard to litigation expenses are concerned.

30. Regarding deviation of the approved plan is concerned the Authority concerned namely CMDA has to take steps to find out the deviation and take suitable action. In this regard it is the duty of the Tamil Nadu Real Estate Appellate Tribunal to direct the CMDA to inspect and verify the building of the appellants and whether there is any deviation from the building plan and to take legal action against the builder. It is the purpose of the RERA Act to implement the same by letter and spirit to achieve professionalism and transparency in the construction industry. The point is answered accordingly.

31. In the result this appeal is partly allowed and the order of the Adjudicating Officer is set aside with regard to the amount to be paid by the appellants to the respondent, the refund of amount to be paid by the respondent to the appellant and compensations are modified. Remaining portions of the order of the Adjudicating Officer are confirmed. The final appeal order is as follows:

Verified RegiEstate™

a) The Order of the Adjudicating Officer with regard to shortage of plinth area to the tune of 61 square feet is confirmed.

b) The Order of the Adjudicating officer with regard to the compensation for shortage of plinth area at Rs.3,05,000/- is modified and enhanced as the appellants are entitled for a sum of Rs.5,96,126/- as compensation from the respondent for 61 square feet shortage plinth area, at the rate of Rs.9772.56 per square feet.

c) The claim of the appellants for refund of excess amount paid is partly allowed and the appellants are entitled for refund a sum of Rs.2,05,340/- only from the respondent as excess amount paid by the appellants to the respondent.

d) The Order of the Adjudicating Officer with regard to the compensation for mental agony Rs.50,000/- is modified as the appellants are entitled for compensation of Rs.8,75,500/- from the respondent.

e) The compensation regarding delay in handing over possession of the flat at Rs.63,483/- and compensation under the head of defects in construction Rs.2,00,000/- and litigation cost Rs.35,000/- awarded by the Adjudicating Officer are confirmed.

f) The Order of the Adjudicating Officer regarding the payment of balance amount of Rs.4,99,900/- from the appellants to the respondent is set aside and the respondent is not entitled to any amount from the appellants and the claim of the respondent is dismissed.

Verified RedFlag™

g) The appellants are entitled to cost of this appeal from the respondent.

h) The respondent is directed to pay the appellants the above ordered amount within three months from the date of this order.

i) The CMDA Authority is directed to inspect the appellants' flat building after due notice to both appellants and respondent to ascertain any deviation from approved building plan and if any deviation to take suitable legal action against the builder within three months and file report to this Tribunal. A copy of this order shall be sent to the Member Secretary CMDA for necessary action and report.

This order is directly dictated to the Stenographer and typed by her in the computer and corrected and pronounced by us in the Open Court on 4th November 2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

Verified RealEstate™