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 02.03.2022

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

Appeal No. 115 of 2021

1. Somasundaram Gopalakrishnan,
   filed through their Power Holder
   Sivakami Shunmugam,

2. Meenakshi Shunmugam,
   filed through their Power Holder,
   Sivakami Shunmugan ... Appellants

-Vs-

M/s. Ozone Projects Private Limited.,
Rep. by its MD.Vasudevan Sathyamurthy .... Respondent

This appeal was taken on file on 10.11.2021 and came up for final hearing on 25.02.2022 in the presence of counsels for the appellants, M/s.C.Suraj and A.Ashwinkumar and counsels for the respondent M/s.BFS Legal, P.V.Balasubramaniam, D.Ferdinand, K.M.Aasim Shehzad, Akhil R Bhansali and M.Meera. Having heard the arguments of both sides through video conferencing

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and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. This appeal has been preferred by the home buyers against the order of the Adjudicating Officer in C.C.P.No.85 of 2020 dated 31.08.2021. In this appeal the home buyers are the appellant and the promoter is the respondent. Hence hereinafter the parties are called as per their original rankings as home buyers and promoter.

2. The home buyers and the promoter entered into agreement for sale and construction on 09.04.2015 with regard to the project of the promoter namely 'Metrozone' at Anna Nagar, Chennai. The promoter undertook to complete construction and hand over apartment by September 2016 with a grace period of 3 months. The sale price of the apartment was fixed as Rs.1,36,96,776/-. Out of the said amount Rs.36,91,462/- was paid by the home buyers from their own funds and balance amount was paid by availing loan from HDFC. As per tripartite agreement the promoter promised to make pre EMI payments to HDFC until the delivery of possession of the flat. Since the promoter failed to deliver possession of the flat the home buyers came forward with the complaint with the Adjudicating Officer for the refund of the sale consideration paid, EMI payments made by home buyers along with interest, compensation and litigation costs. After contest the Adjudicating Officer directed the promoter to pay the home buyers a sum of Rs.36,91,462/- along with interest at the rate of 10.15% p.a.

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along with pre EMI payments made by the home buyers to the tune of Rs.7,54,340/-. The Adjudicating Officer also directed the promoter to repay the sum of Rs.1,27,00,000/- to HDFC along with interest. The Adjudicating Officer awarded compensation and litigation costs Rs.2,00,000/- and Rs.25,000/- respectively. The promoter has not preferred any appeal against that order. But the home buyers preferred this appeal in addition to the relief granted by the Adjudicating Officer for the relief of directing the promoter to pay the home buyers a sum of Rs.25,35,461/- which were paid as pre EMIs and came forward with this appeal on the following main grounds:

- The home buyers paid a sum of Rs.12,23,593/- from the date of filing of the complaint from February 2020 to February 2021 and the same was proved through Ex.A11.
- After filing of proof affidavit the home buyers continued to pay the pre EMIs. The total comes to Rs.25,35,461/-.

3. The learned counsel for the home buyers/appellants would submit that the learned Adjudicating Officer failed to consider the pre EMI paid by the home buyers after the complaint before the Adjudicating Officer. Hence this appeal has to be allowed.

4. The learned counsel for the promoter/respondent would submit the learned Adjudicating Officer has considered all factors and rightly taken into consideration the payment of EMIs made by the home buyers till the filing of

the complaint. There is no infirmity in that finding. Therefore this appeal has to be dismissed.

5. Point for consideration:

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

Point:

6. The home buyers booked a flat and entered into agreement for sale and construction with the promoter on 9.4.2015 and the promoter agreed to deliver possession in September 2016 with grace period of 3 months and also agreed to pay pre EMIs as per the tripartite agreement and not delivered the flat as agreed hence the home buyers came forward with the complaint before the Adjudicating Officer and the Adjudicating Officer ordered for refund with interest, compensation, litigation costs and pre EMI payments made by home buyers till the filing of the complaint. These are the admitted facts.

7. The disputed facts between the parties is that the pre EMI payments made by the home buyers after the filing of the complaint till September 2021 to the tune of Rs.25,35,461/-. This is the only grievance raised by the home buyers by way of this appeal. So the scope of this appeal is very limited. Therefore we have to analyze whether the home buyers are entitled to reimbursement of pre EMIs as claimed by the home buyers after the filing of the complaint before the Adjudicating Officer. To decide this issue we have to look into the agreements between the parties and the defence put forth by the promoter and admission of the promoter which runs as follows:

AGREEMENT

TRIPARTITE AGREEMENT dated 10.04.2015 between the borrower, builder and HDFC (at page No.53 of the typed set of the appellant).

> ***"The housing loan advanced to the borrower by HDFC shall be repayable by the borrower by way of Equated Monthly Installments (EMI). The date of commencement of EMI shall be the first day of the month in which the disbursement of the loan will have been completed and consequently the due date of payment of first EMI shall in such a case be the last day of the said following month. Till the commencement of EMI the borrower shall pay Pre-EMI which is the simple interest on the loan amount disbursed calculated at the rate of interest as mentioned in the respective loan agreement of the Borrower.***
>
> ***The borrower has informed HDFC of the scheme of arrangement between the Borrower and the Developer in terms whereof the Developer hereby assumes the liability of making the Pre EMI interest payments under the Loan Agreement as payable by the borrower to HDFC only for a period of 20 months from the date of first disbursement of the loan or September 2016 (month & year) whichever is earlier, but in any case not beyond the above said period September 2016 (the period be referred to as the "Liability Period" and the Liability be referred to as "Assumed Liability"). Pre-EMI payable by the Borrower in terms of Loan Agreement dated 11.4.2015 for the Liability Period shall be appropriated and deducted out of the disbursements to be effected by HDFC to the Builder, therefore, neither the Builder nor the Borrower need to pay any further Pre-EMI over and above the amounts so deducted for the Liability Period. It is however agreed that during the liability period the repayment liability is joint and several by and between the Borrower and the Builder. The assumption of liability by the Builder in no manner whatsoever releases, relinquishes and/or reduces the liability of the Borrower and that same shall not be affected in any manner on account of any difference and/or dispute between the Borrower and the Builder under the arrangement between them."***

ADMISSION

LETTER OF PROMOTER TO THE HOME BUYERS DATED 10.04.2015 (Typed set of the appellants at page No.56)

> ***"However, in the rare event of handing over getting delayed beyond September 2016, we request you to make the Pre EMI/EMI payments to HDFC Limited and upon production of receipt/statement showing payment of the Pre EMI/EMI, we shall reimburse the entire***

Pre EMI/interest component of the EMI within 7 working days from the date of producing the receipt statement."

8. As per the agreement of tripartite between the home buyers, promoter and HDFC, the promoter has clearly and categorically agreed to assume the liability of making the pre EMI interest payments under the loan agreement as payable by the borrower to HDFC only for a period of 20 months. In this regard the promoter has admitted his liability and paid pre EMI interest from April 2015 to June 2019 to the tune of Rs.42,19,615/- . The promoter has clearly and categorically admitted about its liability in paragraph Nos.3 and 21 of their counter affidavit filed before the Adjudicating Officer in C.C.P.No.85 of 2020 which runs as follows (at page No.89, 90 and 93 of the typed set of the appellants):

"3. The Respondent submits that the allotment of Unit AD 1304, The Metrozone to the Complainants was under a special Scheme wherein the Respondent had taken liability to pay the pre-EMI to the bank till intimation to the Complainants that the unit is ready for occupation. It is relevant to mention here that the Respondent had paid pre-emi interest from April 2015 to June 2019 amounting to around Rs. 42,19,615/-. From July 2019 because of Statutory restrictions imposed by RBI, the Respondent/Developer could not pay pre-emi directly to the Bank/HFI and requested the Complainant to pay the emi till the unit is ready and agreed to reduce the same from the balance outstanding dues of 24.71 Lakhs payable by the Complainants.

21. The Respondent most respectfully submits that they are willing to adjust the entire amount of pre-emi payable by the customer from July 2019 till May 2021 against balance sale consideration payable by the Complainant and willing to hand over the residential unit to the Complainant which will be ready for occupation by May 2021."

9. According to the promoter they have paid pre EMI interest from April 2015 to June 2019 amounting to Rs.42,19,615/- and also requested the home

buyers to pay the further EMI till handing over possession and agreed to reimburse the same by way of adjustment from the balance outstanding dues. The learned Adjudicating Officer directed the promoter to pay the pre-EMI payment till the filing of the complaint by the home buyers. But the home buyers in addition to that they sought for future pre EMI payments payable by the home buyer to HDFC at the rate of 12% per annum from the date of filing the complaint till date of realization. The learned Adjudicating Officer has negatived the claim of the complainants regarding future pre EMIs. Aggrieved upon the same now the home buyers preferred this appeal.

10. As per the tripartite agreement the promoter agreed to pay pre EMI interest only for a period of 20 months from the date of first disbursement of the loan or September 2016. But due to delay in handing over possession the promoter has paid pre EMI interest from April 2015 to June 2019 amounting to Rs.42,19,615/- and requested the home buyers to pay the pre EMI till the delivery of possession of the flat and agreed to reimburse the same as per the letter dated 10.4.2015. The very purpose of agreement for the payment of pre EMI by the promoter is sale of flat by the promoter to the home buyers. Now the home buyers on 28.12.2019 by way of letter through their power agent sought for refund of the sale consideration paid by them and expressed their unwillingness to take over the flat from the promoter due to delay and then filed complaint before the Adjudicating Officer on 21.2.2020. Hence the learned Adjudicating Officer has directed the promoter to pay the pre EMI payments made by the home buyers till the filing of the complaint i.e. February 2020. The

home buyers by way of this appeal sought for reimbursement of pre EMI payments till September 2021. The agreed portion of reimbursement by the promoter is not allowed by the learned Adjudicating Officer is the only grievance in this appeal.

11. As per the counter affidavit of the promoter filed before the Adjudicating Officer the promoter has agreed to adjust the entire amount of pre EMI payable by the customer from July 2019 to May 2021. The promoter agreed to reimbursement by way of adjustment in the balance sale consideration only on the basis of sale of flat to the home buyers. Now the home buyers are not willing to complete the purchase from the promoter. Under such circumstances, whether the promoter is liable to pay pre EMI has to be analyzed.

12. Admittedly, the home buyers obtained housing loan from the HDFC to the tune of Rs.1,27,00,000/-and the home buyers paid from their own fund only to the tune of Rs.36,91,462/-. Towards the said borrowing the home buyers are paying interest to the HDFC without deriving any benefit by way of loan i.e., purchasing flat. But at the same time the promoter has derived benefit from the home buyers loan amount from HDFC therefore the promoter is liable to pay the pre EMI interest as agreed by the promoter till May 2021. If the promoter delivered the flat as agreed there is no chance for deriving of benefit arose, since both the promoter and the home buyers would equally be benefitted. Now the beneficiary is the promoter alone hence this Tribunal comes to a conclusion that the promoter is liable to pay the pre EMI interest portion alone as agreed only till

May 2021. The home buyers claimed further period from June 2021 to September 2021 for that period the promoter have not agreed to reimburse the same.

13. Therefore this Tribunal comes to a conclusion that this appeal is liable to be allowed in part. The point is answered accordingly.

14. In the result, this appeal is allowed in part and the order of the Adjudicating Officer in C.C.P.No.85/2020 dated 31.8.2020 is modified and confirmed as follows:

a) The promoter is directed to reimburse the pre EMI payment interest component only made by the home buyers to HDFC from March 2020 to May 2021.

b) The order of the Adjudicating Officer is confirmed with regard to direction to reimburse the pre EMI payment made by the home buyers to HDFC with interest from August 2019 to February 2020.

Connected Miscellaneous applications are closed.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 2nd Day of March 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER