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 29.09.2021

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

M.A.No.41 of 2021

in

Appeal No. 33 of 2021

M/s.Ozone Projects Private Limited
Rep. by its Senior DGM ... Applicant/Appellant

-Vs-

Mrs.Nirmala Ramesh ... Respondent/Respondent

This Miscellaneous Application was taken on file on 15.03.2021 and came up for final hearing on 20.09.2021 in the presence of M/s.BFS Legal, P.V.Balasubramaniam, D.Ferdinand, K.M.Aasim Shehzad, Akhil R Bhansali & Meera.M., Counsels for the appellant and M/s. Fox Mandal & Associates P.Jayaprakash & K.Lakshmi, Counsels for the respondents. 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:

ORDER

1. This appeal has been preferred by the promoter against the order of the Adjudicating Officer in C.C.P.Nos.300 and 301 of 2019 dated 18.12.2020. The promoter/appellant has also preferred this waiver application under Section 43(5) of The Real Estate (Regulations and Development) Act, 2016 to waive the condition to deposit part of the amount allowed by the Adjudicating Officer in C.C.P.No.300/2019 dated 18.12.2020 as no amount is payable by the promoter to the home buyer. In this order for easy understanding both parties are referred as per their original rankings as home buyer and promoter.

2. According to the promoter, as per order in C.C.P.No.300/2019 the amount liable to be paid by the developer to the home buyer is Rs.32,77,938/-. As per order in C.C.P.No. 301/2019 the amount payable by the home buyer to the developer is Rs.36,15,263/- hence the amount payable by the home buyer to the developer is Rs.3,37,325/-. Therefore, the appellant/promoter sought to waive the condition of pre-deposit under Section 43(5).

3. According to the home buyer, as per order in C.C.P.No.300/2019 the amount liable to be paid by the developer to the home buyer is Rs.33,46,171/-. The payment due along with interest liable by home buyer to the developer is Rs.28,90,406/-. Hence, after adjustment the promoter is liable to pay Rs.4,55,765/- to the home buyer.

4. The Learned Adjudicating Officer ordered in C.C.P.No.300/2019 that Rs.39,915/- is fixed as the delay compensation per month payable by the promoter from February 2014 to 7.11.2018 along with interest at the rate of 9% p.a. from 7.11.2018 to till date of payment. In addition to the above the home buyer is entitled to compensation of Rs.5,00,000/- and litigation expenses of Rs.25,000/-.

5. The Learned Adjudicating Officer ordered in C.C.P.No.301/2019 that the promoter is entitled for the outstanding amount due from the home buyer a sum of Rs.26,51,749/- with interest at the rate of 9% p.a. from the date of handing over till date of payment.

6. As per the above said two orders in C.C.P.Nos.300 and 301 of 2019 the liability of both home buyer and the promoter were fixed. The promoter preferred this Appeal against the order in C.C.P.No.300/2019. The promoter/appellant made calculation in para No.16 of the affidavit and arrived at the calculation as total amount Rs.32,77,938/- . The home buyer made a calculation and filed a memo to that effect and as per her calculation total comes to Rs.33,46,171/- . The difference between both the total amounts is very meager since the promoter calculated interest from November 2018 to February 2021. But the home buyer calculated interest from November 2018 to June 2021 so, 4 months interest amount difference.

7. The promoter claimed against the home buyer towards balance sale consideration claimed to the tune of Rs.36,15,263/-. Out of which the promoter claimed balance consideration Rs.29,69,416/- but the Adjudicating Officer fixed the outstanding amount due from the home buyer to the promoter as

Rs.26,51,749/-. Against that order the promoter has not challenged by way of any appeal but again he claimed Rs.29,69,416/- against the above said order it is not sustainable. So the calculation made by the promoter as outstanding is incorrect.

8. Now the point for consideration is how much amount is liable to deposit by the promoter under Section 43(5)?

9. The learned Adjudicating Officer fixed delay compensation @ Rs.15/- for 2661 sq. ft. per month from February 2014 to 7.11.2018 for 57 months, the amount comes to Rs.22,75,155/-. This amount is admitted by both sides by their written calculation filed before this Tribunal. For that amount 9% interest per annum from 7.11.2018 till date of payment was permitted. Even though both sides admitted the compensation amount and the rate of interest they have failed to calculate correct date of interest period. The promoter calculated interest upto February 2021 and home buyer calculated interest up to June 2021. Now both the period lapsed and so far they are not able to arrive at a correct amount of liability. Hence, to come to an end regarding calculation of interest the last date for payment is fixed at 5.10.2021 and the total number of days calculated from 7.11.2018 to 5.10.2021 as 1064 days. For the admitted amount Rs.22,75,155/- interest @ 9% p.a. the interest comes to Rs.2,04,763.95 per year. So the interest per day arrived at Rs.560.99 (2,04,763.95 / 365) for 1064 days the interest will be Rs.5,96,893.36 so the total amount delay compensation along with mental agony compensation and litigation expenses comes to Rs.33,97,048.36.

10. The learned Adjudicating Officer fixed the outstanding amount from the home buyer to the promoter as Rs.26,51,749/- and also permitted 9% interest from 7.11.2018 to till date of payment. The promoter calculated the interest from October 2018 to February 2021. But in the above said order from 7.11.2018 onwards alone the promoter is entitled for interest @ 9% p.a. so it has to be taken into account. The home buyer calculated interest for 12 months only. It is absolutely incorrect. As per the order the promoter is entitled to interest from 7.11.2018 to till date of payment. Now both the period lapsed and so far they are not able to arrive at a correct amount of liability. Hence, to come to an end regarding calculation of interest the last date for payment is fixed at 5.10.2021 and the total number of days calculated from 7.11.2018 to 5.10.2021 as 1064 days. For the ordered amount Rs.26,51,749/- permitted interest @ 9% p.a. So the interest comes to Rs.2,38,657.41 per year. For calculating per day interest while dividing by 365 days per day interest comes to Rs.653.85 it has to be multiplied by 1064 days the interest will be Rs.6,95,696.40 so the total balance sale consideration along with interest comes to Rs.33,47,445.40.

11. As per the above calculations the promoter is liable to pay to the home buyer Rs.33,97,048.36 and the home buyer is liable to pay to the promoter Rs.33,47,445.40. The difference comes to Rs.49,602.96. The promoter is liable to pay the home buyer the difference amount. For easy understanding the above said running calculations are shown as column wise which is as follows:

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Liability of Promoter to Home buyer	Amount Rs. P.	Liability of Home buyer to Promoter	Amount Rs. P.
As per C.C.P. No.300/2019 order delay compensation (2661 x 15 x 57) February 2014 to November 2018	22,75,155.00	As per order C.C.P. No.301/2019 balance sale consideration to be paid by the home buyer to the developer	26,51,749.00
Interest on Rs.22,75,155/- at the rate of 9% p.a. from 7.11.2018 to 5.10.2021 for 1064 days @ 560.99 per day	5,96,893.36	Interest @ 9% p.a. from 7.11.2018 to 5.10.2021 For 1064 days @ 653.85 per day	6,95,696.40
Mental agony	5,00,000.00		
Litigation expenses	25,000.00		
Total	33,97,048.36	Total	33,47,445.40
Balance liable to be paid by the promoter to the home buyer	**49,602.96**		

12. The promoter is liable to pay a sum of Rs.49,602.96 to the home buyer it is only a meager amount. Under Section 43(5) deposit of the compensation is a pre condition as per section 43(5) for entertaining appeal. The relevant portion of the section is as follows:

> ***Section 43***
> ***(1) .. ..***
> ***(2) .. ..***
> ***(3) .. ..***
> ***(4) .. ..***
> ***(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:***
> ***Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate***

Tribunal, <u>or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.</u>

13. As per the above proviso clause, for entertaining the appeal the total amount of compensation along with interest imposed against the promoter has to be deposited. The ordered amount after adjusting the outstanding due from the home buyer to the promoter, the balance amount liable to pay by the promoter to the home buyer is only Rs.49,602.96 and it is only a meager amount it has to be deposited by the promoter within the stipulated time to entertain the appeal. Already 6 months time has been lapsed due to incorrect calculations made by both sides. Therefore this Tribunal comes to a conclusion that the promoter/appellant is liable to deposit Rs.49,602.96 on or before 5.10.2021. If the appellant pays the amount before 5.10.2021 the appellant is at liberty to reduce the proportionate interest for the days paid in advance before 5.10.2021.

14. In the result, the promoter/applicant directed to deposit a sum of Rs.49,602.96 on or before 5.10.2021 under Section 43(5) of the Real Estate (Regulations and Development) Act, 2016, failing which this application shall stands dismissed. Call on 06.10.2021.

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 29th Day of September 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER