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 10.01.2022

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

Appeal No. 58 of 2021

1. D.K.Bhagavathi Nath
2. B.Rajalakshmi
3. T.S.Manohar ... Appellants

-Vs-

M/s.BBCL Shrishti Homes LLP,
Rep.by its Designated Partner, Vummidi Ananth .... Respondent

This appeal was taken on file on 16.4.2021 and came up for final hearing on 22.12.2021 in the presence of Mr.D.K.Bhagavathi Nath, appellant/party in person and M/s.AAV Partners, P.H.Manoj Pandian, N.Zahid Ahmed and Sonali J. Counsels for the Respondent. 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 home buyer against the order of the Adjudicating Officer in C.C.P.No.304 of 2019 dated 23.02.2021. In this appeal herein after, the parties are called as per their original rankings as home buyers and promoter.

2. The home buyers booked a villa house with the promoter and paid a sum of Rs.1,67,34,700/-. The promoter under took to complete and hand over possession of house in January 2016 with a grace period of 6 months. But the promoter handed over the villa house only on 18.8.2018. Subsequently, the Kundrathur Panchayat, affixed a letter in the common area of the building stating that the compound wall of the building lies within the area gifted to the Panchayat hence sought for removal of the same within the stipulated time failing which the Panchayat will remove it at the cost of the promoter. Since the promoter has not taken any steps the compound wall was demolished. The promoter has also not provided the amenities as promised. Hence the home buyers came forward with the complaint in form 'N' for the violation of obligations of promoter under Section 12 of the Act and claimed compensation to the tune of Rs.1,00,00,000/-. After contest the Adjudicating Officer allowed the complaint in part and awarded delay compensation, compensation for mental agony and litigation cost. Aggrieved upon the same the home buyers preferred this appeal on the following main grounds:

- None of the facilities/amenities as stated in the MOU has been provided by the promoter till date.

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- In pursuance of the promoters' brochure the home buyers had incurred heavy loss and damage by investing a huge sum of money for the gated community villa.
- Promoter is liable for the delay in handing over possession of the villa.
- The promoter had violated his obligated duties as stated under Section 11(4)(a). As per section 14(3) the allottee shall be entitled to receive appropriate compensation in the manner as provided under this Act.
- The villa was a gated community and the compound wall was demolished by the Kundrathur Panchayat after notice on the ground that the common passage for the road has been encroached. The promoter has not denied the same nor had given a proper explanation.
- The promoter made a false promise as gated community to attract investors like the home buyers.

The above said grounds were not properly appreciated by the learned Adjudicating Officer hence interference of the Tribunal sought for by the learned counsel for the appellant/home buyers.

3. The learned counsel for the promoter would submit that prior to the relevant approvals being obtained during the year 2015, the land for roads and common areas was gifted to the local authorities. The layout approval was given by the CMDA bearing No.16/2014 dated 16.5.2014 and the Commissioner Kundrathur Panchayat Union Padappai had issued layout approval and was

approved in R.C.No.502/2013/43 dated 20.5.2014. The fact of gifting of roads to the Panchayat was known to the home buyers prior to purchasing the villas/row houses as the gift deed was furnished to them. The promoter had obtained planning permit and building permit for construction of the villa in plot No.2 vide planning permit Ddis.No.2859/2014/A3 dated 11.7.2014 and building permit No.Mu.Mu.No.27/2014-15. The project of the promoter does not fall under the purview of the RERA thus falls out of the jurisdiction of the Adjudicating Officer. Hence the appeal has to be dismissed.

4. Point for consideration:

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

Point:

5. According to the appellants/home buyers handing over of possession made by the promoter with delay after filing this complaint. Promised amenities/facilities not complied with and obligated duty not done by the promoter and moreover encroached portion and put up compound wall was demolished by the Panchayat. Hence the appellants/home buyers came forward with the complaint for the relief of compensation of Rupees One crore.

6. According to the promoter denied the claim of the appellants on the grounds of jurisdiction, no concealment and moreover it is the layout project and not the group development project and it is only an individual villa construction

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agreement hence RERA Act is not applicable and registration of the project does not arise.

7. The learned Adjudicating Officer found that the promoter promised to deliver constructed villa in July 2016 and it was handed over only on 18.8.2018 hence the home buyers are entitled for delay compensation. Regarding encroachment on public ground and demolition of compound wall legal notice served to the promoter but not denied. The promoter would content that facts of land gifted to Panchayat were never suppressed. The learned Adjudicating Officer found that the brochure reveals that the promoter promised villa life of a gated community to the buyers and the road constructed for the exclusive use of the buyers of the villa, inside the compound wall was opened for public by demolishing of the compound wall leads to violation of obligations imposed under section 12 of the RERA Act by the promoter hence awarded delay compensation on the total consideration @ 10.05% per annum from August 2016 to August 2018. Due to violation of obligations, promises made for gated community, destruction of compound wall by Panchayat and unfinished amenities and facilities caused mental agony hence awarded Rs.5,00,000/- towards compensation and Rs.20,000/- towards litigation expenses.

8. Even though the promoter preferred appeal in A.No.70/2021 it was dismissed for non compliance under Section 43(5) of the RERA Act. Now the home buyers themselves preferred this appeal on the main ground with regard to disparity between the claim and award of compensation. The only contention on

the side of the home buyers in this appeal is that their contentions were not properly appreciated by the learned Adjudicating Officer. Both the promoter and home buyers have filed applications for reception of additional evidence under Order 41 Rule 27 CPC in M.A.No.183/2021 and M.A.No.194/2021 respectively and both the applications are not relevant to decide the issue in this appeal. Hence both the applications are dismissed. Now let us discuss how far the contention is tenable have to be analyzed?

9. The home buyers have not questioned the findings of the learned Adjudicating Officer and questioned the quantum only. Therefore the scope of this appeal is very limited. Quantum of delay compensation and quantum of compensation for mental agony have to be analyzed one by one. Let us take the first issue with regard to quantum of delay compensation. The learned Adjudicating Officer found that the delay from July 2016 to 18.8.2018 i.e., 25 months and 3 days, and awarded interest @ 10.05% p.a. for the total sale consideration paid amount. Whether the awarding of interest is correct according to Section 18(1) of the RERA Act? Now let us see the relevant provisions namely section 18(1) proviso clause and Rule 18 which runs as follows:

> ***Section 18. Return of amount and compensation:***
> ***1. If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -***
> ***a. ..***
> ***b. ..***
> ***provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.***
>
> ***Rule 18. Rate of interest payable by the promoter and the allottee.-***

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The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two per cent.

Provided that in case the State Bank of India marginal cost of lending rate is not in use it would be replaced by such Bench Mark lending rates which the State Bank of India may fix from time to time for lending to the general public.

10. Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 speaks about the interest for every month of delay at such rate as may be prescribed. But Rule 18 of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 speaks about the rate of interest shall be State Bank of India highest marginal cost of lending rate plus 2 per cent. In this case the learned Adjudicating Officer has followed Rule 18 and awarded current rate of interest at 10.05% per annum. It is not the case of the home buyers that the rate of interest is not according to law. Therefore the finding with regard to rate of interest is according to law hence interference does not required and the same is confirmed.

11. The next point to be analyzed is with regard to quantum of compensation for mental agony. The learned Adjudicating Officer has awarded compensation to the tune of Rs.5,00,000/- for violation of obligations, destruction of compound wall and on account of unfinished works and facilities. The compensation cannot be measured in terms of money. At the same time what are the factors to be taken into account while adjudging the compensation is contemplated under Section 72 of the Real Estate (Regulation and Development) Act, 2016, namely:-

Section 72:

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.

12. The home buyers have not disclosed specifically about the amount of loss caused as a result of the default of the promoter and the amount of disproportionate gain or unfair advantage made as a result of the default. In such circumstances the Hon'ble Apex Court has guided with the word 'Just compensation' and the compensation should not be a windfall to the victim and should not be a source of profit to the victim in the verdict of the Karnataka State Road Transport Corporation case which is reported in

(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. 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.

13. As per the above Apex Court verdict "the expression "just" denotes equitability, fairness and reasonableness, and non- arbitrary. If it is not so it cannot be just". In this case the home buyers have not produced any documentary evidences to prove the amount of disproportionate gain by the promoter and the amount of loss caused by the promoter due to his default. In such circumstances the quantum of compensation cannot be fixed correctly. Therefore the learned Adjudicating Officer has fixed the quantum of compensation as Rs.5,00,000/- on the basis of veracity of delay of 25 months in handing over of possession, destruction of compound wall, unfinished amenities and facilities and false representation as gated villa community in the brochure and fixed the quantum on presumption and assumption by the default of the promoter. The specific allegation against the promoter is that the promoter has misrepresented as the villa houses are gated community in the brochure. But in the counter filed by the promoter before the Adjudicating Officer and stated that OSR land were gifted to the Panchayat and the same is known to the buyers. The promoter has not specifically denied the allegations of the home buyers that he has not promised for any gated community. The promoter has failed to ensure transparency in his real estate project and it defeats the very purpose of the Real Estate Act. In such circumstances this Tribunal comes to a conclusion that there is no infirmity in the findings of the Adjudicating Officer. At the same time the misrepresentation by the promoter is against Sections 7 and 12 of The Real Estate (Regulation and Development) Act, 2016 and it has to be dealt with properly to implement the Real Estate Act in letter and spirit. Therefore this Tribunal is constrained to issue directions, in view of the misrepresentation, to the

Regulatory Authority to prevent the violations of the promoter. Therefore this Tribunal comes to a conclusion that this appeal does not deserves to be allowed. Point is answered accordingly.

14. In the result, this appeal is dismissed and the order of the Adjudicating Officer in C.C.P.No.304 of 2019 dated 23.2.2021 is confirmed and this Tribunal issued the following directions to the Tamil Nadu Real Estate Regulatory Authority to ensure compliance of the obligations cast upon the promoters under this Act and Rules & Regulations:

a) The Regulatory Authority is directed to invoke Section 38 of the Real Estate Act in regard to any contraventions of obligations cast upon the promoter with regard to the complaint made by the home buyers in this case regarding gated villa community in the brochure.

b) The Regulatory Authority is directed to ensure that the promoter has followed the Real Estate (Regulation and Development) Act, 2016 while selling the villas by way of construction agreement through the conversion of layout project into real estate project.

c) The Regulatory Authority is directed to report to this Tribunal regarding the above directions within one month.

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 10th Day of January 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

Verified by RedEstate