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 22.11.2021

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

Appeal No. 59 of 2021

M/s.G.K.S.Properties Private Limited
Represented by Managing Director
Mr.K.V.Ramana Shetty ... Appellant

-Vs-

M.Palaniappan .... Respondent

This appeal was taken on file on 19.04.2021 and came up for final hearing on 22.10.2021 in the presence of M/s.D.Veda, Counsel for the appellant. The respondent appeared through M/s.SK.Rahul Vivek and N.S.Balachandhar, Advocates. 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 against the order of the Adjudicating Officer in C.C.P.No.20/2020 dated 23.02.2021. The appellant is the promoter and respondent is the home buyer and they have entered into construction agreement on 20.04.2018 with regard to the flat No.A-301, Dakshin Apartments with a built up area of 1575 sq.ft. and undivided share of land of 849.75 sq. ft. in Iyyappanthangal village, Sriperumbudur Taluk, Kanchipuram District. The undivided share of land was registered on 26.04.2018. The construction cost was fixed as Rs.60,26,178/- and the period of completion was fixed by March 2018 with a grace period of 3 months.

2. The home buyer preferred complaint on three grounds namely: delay in delivery, shortfall of measurement in corridor and non installation of reverse osmosis plant. The home buyer came forward with the compliant for the following reliefs:

a) Interest for the period of delay a sum of Rs.3,18,523/-

b) Compensation for deficiency in the width of corridor: Rs.2,00,000/-

c) Compensation for damages caused on deficiency in water treatment facility: Rs.1,00,000/-

d) Compensation for the mental agony caused : Rs.3,00,000/-

e) Cost of litigation : Rs.40,000/-

After contest the Adjudicating Officer has allowed the complaint in part and directed the promoter to pay the following amounts to the home buyer:

a) Delay compensation Rs.3,18,523/-

Verified RealEstate™

b) Compensation for short fall of the width of the corridor Rs.50,000/-

c) Deficiency regarding the water treatment facility Rs.50,000/-

d) Compensation for mental agony Rs.50,000/-

e) Litigation cost Rs.15,000/-

3. Aggrieved upon the same the promoter preferred this appeal on the following main grounds:

a) Delay in handing over possession contrary to the construction agreement.

b) The width of the corridor is not as per the unit plan instead of being 5'3", it is 5'1".

c) Reverse Osmosis plant was promised but not provided.

4. On the side of the promoter learned counsel would submit that the issuance of completion certificate was delayed due to usual bureaucratic reasons for which the promoter cannot be made responsible. The construction was completed and handed over to the home buyer at his request for starting interior work and for house warming function. For that purpose the possession was handed over to the home buyer on 17.04.2019 itself. The formal handing over of possession by record was only on 18.10.2019. Hence there is no delay in handing over of possession by the promoter to the home buyer. Therefore, payment of delay compensation does not arise. The second claim with regard to reduction in measurement of 2 inches in corridor. The CMDA has inspected

the property before issuing completion certificate and it has not find fault with any measurement in the flat. Further, thickness of plastering and painting either side per inch caused the deficiency. Therefore, this relief is also not sustainable and compensation for deficiency of two inches does not arise. The last relief claimed by the home buyer with regard to deficiency in water treatment. The promoter has agreed to provide relevant centralized filtration system will be provided based on water quality and also agreed in the construction agreement at Annexure (Features of the apartment) Structure as in column M Water supply and Water treatment: Centralized filtration system will be provided. As per the agreement the promoter has provided the same hence compensation does not arise. Every claim of the home buyer is not sustainable hence there is no need or necessity for granting compensation under the head of mental agony and inconvenience. Therefore the appeal has to be allowed.

5. The learned counsel for the home buyer would submit that the learned Adjudicating Officer after analyzing the entire material on record and came to a correct conclusion and there is no infirmity in the findings hence this appeal has to be dismissed.

6. Point for consideration:

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

Point No.1:

7. The home buyer and the promoter entered into construction agreement and undivided share sale deed obtained. The promoter agreed to deliver constructed flat in March 2019 along with 3 months grace period. The home buyer has paid entire sale consideration to the promoter and there is no due from the home buyer. These are the admitted facts.

8. According to the home buyer the possession has been handed over only on 18.10.2019 with delay of 6 months from the date of receipt of last payment made by the home buyer on 25.04.2019 hence the home buyer claimed interest as delay compensation and the same was also allowed by the Adjudicating Officer.

9. According to the promoter originally possession was handed over on 17.4.2019 itself at the request of the home buyer for the purpose of completing the interior works for house warming function. From 17.4.2019 onwards the home buyer is in possession of the flat and the formal handing over of possession for record purpose by document is only on 18.10.2019.

10. Perused both sides contention. How far the contentions of the promoter as well as the home buyer are sustainable have to be analyzed? Before going to analyze the merits the relevant agreement between the parties has to be looked into. The construction agreement dated 20.4.2018 in clauses

Verified RealEstate™

4 and 5 have dealt with period of completion and handing over of possession and as well as default. The relevant portion of the agreement runs as follows:

4. Period of completion handing over possession

a. The promoter shall endeavour to complete the construction of the apartment within March 2019 with grace period of 3 months from the date of this agreement .....

b. The promoter, upon completion of construction of apartment shall intimate to the allottee of the same at the last known address of the allottee by letter and the allottee shall take possession of the apartment within 15 days of receipt of such intimation....

c. .. ..

d. .. ..

e. Breach of terms and its remedy

a) allottees covenant

b) promoters covenant

subject to the force majeure clause, the promoter shall be considered to be on default in the following events:

1. ***Promoter fails to provide ready to move in possession of the apartment to the allottee within the time period specified. For the purpose of this clause, 'ready to move in possession' shall mean that the apartment shall be in a habitable condition which is complete in all respects;***
2. ***Discontinuance of the Promoter's business as a developer on account of suspension or revocation of his registration under the provisions of the Real Estate Regulatory Authority Act or the rules or regulations made there under;***
3. ***In case of Default by Promoter under the conditions listed above, Allottee is entitled to the following:***

i) .. ..

ii) .. ..

Provided that where an Allottee does not intend to withdraw from the project or terminate the agreement, he/she shall be

paid, by the promoter, interest at the rate specified in the Rules, for every month of delay till the handing over the possession of the Apartment.

11. As per the above clause 4 (a) the promoter shall complete the construction within March 2019 with grace period of 3 months. So the June 2019 is the due date for handing over possession. The clause 5 (b) defined the word default. In 5(b)(1) for the word ready to move in possession shall mean that the apartment shall be in a habitable condition which is complete in all respects. In 5(b)(3) in case of default by promoter under the conditions listed above, allottee is entitled to the following namely:

The allottee is entitled to stop making further payments,
The allottee shall have option for terminating the agreement.
In addition to that there is a proviso clause which runs as follows:
"Where an allottee does not intend to withdraw from the project he is entitled to interest from the promoter at the rate specified in the Rules for every month of delay till handing over the possession of the apartment.

12. As per the above covenant the apartment shall be in a habitable condition which is complete in all respects at the time of handing over possession. According to the promoter on 17.04.2019 itself possession was handed over. Whether the so called handing over possession can be construed as contemplated in the construction agreement clause 5(b) (1). For which the answer is available in the following mail communications:

"Mail dated 23.05.2019 at 4.32 p.m. by M.Palaniappan:

We have planned to do Grahapravesam and connected pooja in our house A301 on 14.06.2019 Friday early morning. I request you to extend your co-operation and possible help by providing power supply to the flat including the corridor on 13th and 14. Water supply may also be connected and all sanitary fittings be provided to the flat. We may allowed to use the parking space for dining purposes during day time.

Reply Mail by Suresh Nathan dated 23.05.2019 at 6 pm

Kindly be advised, we will give you temporary power as prescribed at site regarding water supply please note water is connected but will not be able to supply as considerable occupants are required to use the water and STP is to be in place to drain the water used, STP will require full power which is currently unavailable, sanitary ware on your confirmation will be installed. Parking space can definitely be used for dining purpose. Kindly inform us in advance regarding the area you would like to use for the function. For further assistance Ms. Revathy will get in touch with you. "

13. From the mail communication between the home buyer and the promoter it is very clear that flat is not completed as contemplated in the covenant clause 5 (b)(1) since electricity, water supply and drainage were not yet completed on 23.05.2019. So, the allegation of the promoter that possession was handed over on 14.6.2019 itself is not acceptable as per the agreement. Hence the proper handing over of flat was only on 18.10.2019. Therefore as per clause 5(b) proviso clause the home buyer is absolutely entitled for interest for every month of delay.

14. The home buyer claimed interest on the final payment of Rs.12,61,063/- paid on 25.4.2019 to 18.10.2019 at the rate of 10.65% and totally claimed Rs.3,18,523/- and the same was allowed by the learned

Adjudicating Officer towards delay compensation. Whether the claim as well as the calculation of interest is correct or not has to be analyzed? The date of payment is 25.4.2019 and handing over possession was on 18.10.2019 therefore the number of days delay is only 175 days. The interest rate 10.65% was fixed per annum. The amount paid by the home buyer was 12,61,063/- so the interest calculation will be as follows:

$$\frac{12,61,063 \times 10.65 \times 175}{100 \times 365} = 64,391.95 \text{ as round of } 64,392/-$$

15. Hence the home buyer is entitled to delay compensation by way of interest only to a sum of Rs.64,392/- from the promoter and the claim of Rs.3,18,323/- by the home buyer and the same as awarded by the learned Adjudicating Officer is not correct it is a miscalculation.

16. The next contention with regard to corridor measurement viz difference of two inches. According to the home buyer the corridor measurement agreed by the promoter is 5' 3"and it is shown in the unit plans at page No.A3 of the home buyers typed set. According to the promoter the difference of thickness to the extent of 1 inch is due to such minor addition to the existing structure which is necessitated by architectural and structural reasons therefore there is no deviation. The learned Adjudicating Officer has observed that the promoter failed to prove the same. In the site plan the corridor measurement shown as 5' 3" and the existing measurement admitted by the promoter is 5' 1" the difference is 2 inches. In this regard both the

promoter as well as the home buyer have not produced any documentary evidence to verify the same. The following is the guidance in this aspect:

IS 1661 : 1972
(Reaffirmed 1987)
Indian Standard
CODE OF PRACTICE FOR APPLICATION OF CEMENT AND CEMENT-LIME PLASTER FINISHES
(First Revision)
Fifth Reprint
SEPTEMBER 1996 UDC 693.621 : 69.001.3 0
Copyright 1972
BUREAU OF INDIAN STANDARDS
MANAK BHAVAN, 9 BAHADUR SHAH ZAFAR MARG
NEW DELHI 110002

7.3 Thickness of Plastering

7.3.1 Finishing coats (and single-coat work, where employed) shall be of such minimum thickness as just to provide a sufficient body of material to harden satisfactorily under the site conditions in any particular case.

7.3.2 The total thickness of two-coat work exclusive of keys or dubbingout shall be generally about, but shall not normally exceed 20 mm and -W it shall not exceed 15 mm in the case of in situ concrete soffits. The thickness of three-coat work shall be about, but shall not normally exceed 25 mm.

7.3.3 The thickness of an individual coat shall generally be as recommended in Table 2

TABLE 2 RECOMMENDED PLASTER SPECIFICATIONS (Clauses 7.3.3 AND 7.4.1)				
SL. NO.	NO.OF COAT OF PLASTER	SITUATION	Mix* (Proportion by Volume)	THICKENSS
(1)	(2)	(3)	(4)	(5)
i)	Single coat plaster	Both internal and external	1:0:3 1:0:4 1:0:6 1:1:6 1:2:9	10 to 15 mm

ii)	Two coat plaster: (a) Backing coat (b) Finishing coat	do	1:0:3 1:0:4 1:0:6 1:1:6 1:0:3 to 6 1:1:6 1:2:9	10 to 12 mm 3 to 8 mm
iii)	Three coat plaster: a) Base coat b) Second coat c) Finishing coat	Very rough surface; both internal and external	1:0:3 1:0:4 1:0:6 1:1:6 1:0:3 to 6 1:1:6 1:2:9 Fat lime and fine sand or marble dust in equal proportions	10 to 15 mm 3 to 8 mm 3 to 5 mm

11 FORMWORK

11.1 General

The formwork shall be designed and constructed so as to remain sufficiently rigid during placing and compaction of concrete and shall be such as to prevent loss of slurry from the concrete. For further details regarding design, detailing, etc, reference may be made to IS 14687. The tolerances on the shapes, lines and dimensions shown in the drawing shall be within the limits given below:

Verified RedState™

a)	*Deviation from specified dimensions of cross-section of columns and beams*	*+ 12 mm - 6*
b)	*Deviation from dimensions of footings*	
	1) Dimensions in plan	*+ 50 mm - 12*
	2) Eccentricity	*0.02 times the width of the footing in the direction of deviation but not more than 50 mm*
	3) Thickness	*± 0.05 times the specified thickness*

These tolerances apply to concrete dimensions only, and not to positioning of vertical reinforcing steel or dowels.

17. In the construction agreement it was agreed between the parties regarding wall finishes is as follows: (page No.19 of the typed set of promoter)

1. ***All External walls will be plastered with 1 coat primer + 2 coats of exterior grade emulsion paint***
2. ***All internal walls will be plastered to 2 coats putty + 1 coat primer + 2 coats premium emulsion from Dulux or Asian Paints.***

Verified RealEstate™

18. As per the above Indian Standard code the reduction is permissible due to plastering and painting thickness. The home buyer and the promoter have agreed to 5 coating of paintings in addition to the plastering. As per the above Indian Standard code of practice for application of cement and cement-lime plaster finishes and the thickness of plastering, the plea of the promoter is acceptable one and the home buyer is not entitled to any compensation on the ground of short fall in the width of the corridor.

19. The next claim with regard to reverse Osmosis Plant. The home buyer claimed that it is gathered from the discussions with the representatives of the respondent no RO plant is put up. Hardness level is also 1000 as against a desirable level of 300 just in above a month time of usage the water taps have gone so bad with calcification and floor tiles have become stained despite daily clean hence the home buyer claimed a sum of Rs.1,00,000/- towards absence of proper water treatment facility. The promoter denied the claim of the home buyer by stating that it was not agreed between the parties to provide RO plant.

20. Both parties took a different stand regarding water plant. Let us analyze the truth by way of looking into the construction agreement and brochure. Brochure is marked as Ex.A25 in which it has been specifically stated as follows:

Verified by RealEstate™

Specifications in brochure:
Water supply:
Relevant centralized filtration system will be provided based on water quality (page No 85 of typed set of home buyer).

Construction agreement annexure:
In the construction agreement in annexure clause M:
Water supply and water treatment:
a) .. ..
b) .. ..
c) .. ..
d) centralized filtration system will be provided (at page No.21 of the typed set of the promoter)

21. As per the above documents, which are the basis of the dispute, the promoter and the home buyer have not agreed for any RO water Plant. In the brochure as well as in the construction agreement both parties have agreed only for centralized filtration system. The above said system was planted and now it is in use in the apartment and the home buyer also has not disputed the same. In such circumstances the home buyer cannot ask for any further facility for water treatment against the construction agreement and the brochure. So the claim of the home buyer for compensation under the head of water treatment facility is not sustainable and on this ground the learned Adjudicating Officer awarded Rs.50,000/- towards compensation for water treatment is not acceptable and not correct. The home buyer is not entitled to any compensation towards water treatment facility.

22. The home buyer claimed a sum of Rs.3,00,000/- towards mental agony and the learned Adjudicating Officer awarded Rs.50,000/- under this

head. The compensation has to be adjudicated as per section 72 of The Real Estate (Regulation and Development) Act, 2016. Section 72 runs as follows:

> ***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.***

23. As per the above said provision while adjudicating the compensation the above said four factors have to be borne in mind and fix the compensation. The learned Adjudicating Officer has fixed the compensation of Rs.50,000/- for mental agony by stating as follows:

"Towards mental agony and inconvenience caused to the complainant, a sum of Rs.50,000/- is fixed".

The learned Adjudicating Officer has not followed Section 72 of the Real Estate (Regulation and Development) Act, 2016 and has not adduced any reason for the arrival of Rs.50,000/-.

24. As per the construction agreement clause 5(b) proviso clause compensation for delayed handing over possession is awarded as interest as per the Tamil Nadu Real Estate (Regulation and Development) Rules, 18. In the construction agreement except for delay handing over possession no other

compensation or interest is agreed between the parties. Even though the learned Adjudicating Officer is empowered to grant compensation subject to the factors contemplated under Section 72, the learned Adjudicating Officer without assigning any reason has fixed the compensation for mental agony which is not according to law. Hence the finding regarding compensation under the head of mental agony is set aside.

25. The learned Adjudicating Officer has awarded a sum of Rs.15,000/- towards litigation costs. It is highly excessive. Awarding of cost against a party cannot be a penalty and it must be fair and reasonable. Therefore this Tribunal fixed the litigation cost to the home buyer as Rs.10,000/- as just and reasonable instead of Rs.15,000/-. The point No.1 is answered accordingly.

26. In the result, this appeal is allowed in part. No costs. The order of the Adjudicating Officer in C.C.P.No.20 of 2020 dated 23.02.2021 is partly set aside and partly modified as follows:

(a) The home buyer is entitled to a sum of Rs.64,392/- only from the promoter towards delay compensation by way of interest instead of Rs.3,18,523/-. Hence the order of the Adjudicating Officer under the head of delay compensation is modified as Rs.64,392/- only.

(b) The order of the Adjudicating Officer towards compensations under the heads of short fall of the width of the corridor Rs.50,000/- deficiency regarding the water treatment facility compensation of Rs.50,000/- mental agony and inconvenience compensation of Rs.50,000/- are set aside and the

home buyer is not entitled to any compensation under the heads of short fall of the width of the corridor, water treatment facility and mental agony & inconvenience.

(c) The order of the Adjudicating Officer towards litigation cost is modified to Rs.10,000/- only instead of Rs.15,000/-.

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 22nd Day of November 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

Verified RedEstate