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 29.11.2021

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

Appeal No. 61 of 2021

M/s.Casa Grande Civil Engineering Pvt. Ltd.,
Rep. by its Managing Director ... Appellant

-Vs-

1. Ajmal Khan
2. Finozia Farveen .... Respondents

This appeal was taken on file on 19.4.2021 and came up for final hearing on 27.10.2021 in the presence of M/s.T.Gowthaman, U.Gokulakrishnan, B.Pachaiyappan and S. Roshan, Counsels for the appellant. The respondents appeared in person. 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:

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ORDER

1. This appeal has been preferred against the order of the Tamil Nadu Real Estate Regulatory Authority in C.No.45/2020 dated 16.09.2020 by the appellant/promoter against the respondents/home buyers. For easy understanding the parties are arrayed hereinafter as per their original rankings as home buyers and promoter.

2. The promoter has promoting a residential Apartment complex at Alandur in the name of Casagrande Bellissimo and offered a prelaunch price at Rs.121.81 lakhs and a total cost is Rs.130.81 lakhs including car park and other charges. Believing the representation of the promoter the home buyers had entered into an agreement for sale dated 26.10.2017 with the promoter and purchased 797 sq. ft of undivided share for a sale consideration of Rs.21,35,960/-. On the same day they have entered into a construction agreement with regard to a residential unit bearing Apartment No.j-101 in 1st floor measuring 1157 sq.ft carpet area (or 1635 sq. ft. super built up area) in the apartment complex put up in schedule C along with one covered car park and open car park in the residential complex Casagrande Bellissimo. The promoter agreed to complete the construction by November 2019. On the same day the home buyers paid Rs.64,74,192/- balance construction cost of Rs.40,36,848/- shall be paid as per the payment schedule. The home buyers have remitted a total sum of Rs.1,29,58,840/- to the promoter out of which a sum of Rs.30,00,000/- was remitted through bank loans. The respondent had

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issued the allotment letter dated 14.04.2017 in which the promoter has shown the car parking as tandem covered. ON 25.05.2018 the promoter has informed through email to the home buyers that they already committed two tandem covered car park at the time of booking. However, registering the project with the RERA they are unable to extend the car park roof and shall be able to provide one covered park and one open car park and shall provide discount of Rs.25,000/-. The home buyers by way of reply by mail stated that the promoter had collected Rs.4,50,000/- for two tandem covered car park and the promoter is liable to return Rs.90,000/-. Apart from the above the promoter did not complete the construction as agreed and due to the delay the home buyers are living in a rental house for the monthly rent of Rs.23,000/- and also paying interest for the bank loan. Hence the home buyers came forward with the complaint for the relief of handing over possession along with one covered car park and one open car park.

3. The respondent deny the allegations of the home buyers and stated that the home buyers customer care had inadvertently sent an email including car park charges at the time of booking, which was merely an intra-company cost-factoring which had nothing whatsoever to do with the home buyers. The mistake was promptly rectified in the agreement entered into with the home buyers which does not include the car parking charges. At the time of booking the promoter had allotted 100% covered car park to the home buyers in anticipation of the approval of the same. However, while securing the approval from the authority, the promoter could only obtain sanction for 1/3 rd covered

car park area as against its original plan. Since it was not possible to provide a covered car park to the home buyers the promoter had provided Rs.25,000/- as compensation purely as a good will gesture to the home buyers. The compensation was provided only on account of the change in the plan and not car park charges. The promoter further stated that the delay in handing over of the flat was only due to the factors which were beyond the full control of the promoter such as non availability of sand and scarcity of water for the project. Inspite of the same the promoter had completed the project and obtained the completion certificate by 4.2.2020. Hence the home buyers are not entitled to any relief.

4. After contest the Regulatory Authority found that as per the project of the promoter was registered with the authority on 23.8.2017 (Regn. No. TN/01/Building/0028/2017 dated 23.8.2017). As per the registration detail, the flat No.J-101 is earmarked for one covered car park only. But the promoter entered into construction agreement with the home buyers in October 2017 had promised to provide one covered car park and one open car park. Hence the authority directed the promoter to provide only one car park to the home buyers and to reduce the cost of construction by Rs.2.25 lakhs regarding car park. Further the authority has also imposed a penalty of Rs.5,00,000/- under Section 60 r/w Section 61 of The Real Estate (Regulation and Development) Act, 2016. Further the authority has also directed the promoter to hand over the apartment completed in all respects along with all amenities before

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30.9.2020. Aggrieved upon the same the promoter preferred this appeal on the following main grounds:

- Any communication sent pursuant to a conclude contract is not binding on the other party unless a specific amendment to that effect is carried out in the original agreement and consequently the email relied upon has now bearing on the subject proceedings.
- The promoter had provided Rs.25,000/- as compensation to the home buyers purely as a good will gesture only on account of the change in plan and not car park charges.
- Car park charges were merely an intra-company cost-factoring which had nothing whatsoever to do with the home buyers.

5. The learned counsel for the appellant would submit that the learned Regulatory Authority has miserably failed to appreciate the above said grounds properly hence on these grounds alone the order of the Regulatory Authority has to be set aside.

6. The home buyers as a party in person would submit that even though full amount was remitted by them so far they are not able to get the possession of the apartment. Further would submit that the promoter has suppressed about the registration obtained from RERA for only one car park and entered into construction agreement for two car parks and collected money for two car parks. The learned Regulatory Authority rightly directed the promoter to return the cost of one car park Rs.2,25,000/- and rightly imposed

penalty to the promoter. Even though the learned authority has rightly directed the promoter to hand over possession before 30.09.2020 but not handed over. Hence there are no merits in the appeal and it has to be dismissed.

7. Point for consideration:

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

Point:

8. The project of the promoter is a RERA registered project and the home buyer and the promoter entered into construction agreement on 26.10.2017, in which the promoter agreed to provide one covered car park and one open car park and agreed to hand over the possession of the apartment by November 2019. These are the undisputed facts.

9. The promoter has registered its project before the RERA bearing registration No.TN/01/Building/0028/2017 dated 23.8.2017. The promoter and the home buyers entered into construction agreement on 26.10.2017. After two months from the date of registration the construction agreement was entered into. As per the RERA registration the project details of the promoter are as follows:

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AREA STATEMENT FOR CASA GRANDE "BELLISSIMO" AT ALANTHUR CHENNAI

Sno	Block	Floor	Flat no	Type	RERA Carpet Area (sec 2(k)) (Sq.m)	Exclusive Balcony (sq.m) Exclusive Verandah / Utlity / Service / Open Terrace (sq.m)	Proportionate Common Area (Sqm)	Total Area (sq.m)	UDS	land Area (sq.m)	covered	Open
313	J	1st	J101	3 BHK+3T	107.53	6.18	NIL	28.24	151.90	74.04	1	Nil

10. As per the above registration particulars only one covered car park and open car park mentioned as Nil. The above said registration was obtained on 23.8.2017. After two months on 26.10.2017 the promoter entered into construction agreement with the home buyers in which in Schedule D it has been stated as follows:

SCHEDULE – 'D'

(Location of apartment to be put up by the promoter and to be delivered to the allottee/s)

A residential unit bearing Apartment No.J-101 in first floor measuring about 1157 sq. ft. carpet area (or 1635 sq. ft. super built up area), in the apartment complex put up in schedule C along with one covered car park and one open car park in the residential project "Casagrande Bellissimo".

11. Against the area statement particulars furnished by the promoter to the RERA registration authority, the promoter has entered into construction agreement with the home buyers for two car parking area. It is a disputed fact. Since the promoter failed to adduce proper explanation for the above dispute the Regulatory Authority imposed penalty of Rs.5,00,000/- by invoking

Section 60 r/w Section 61 of The Real Estate (Regulation and Development) Act, 2016. As one of the grounds of appeal the promoter has questioned the order of the learned Regulatory Authority that the agreement between the parties is a concluded contract and without any amendment to the said agreement, the mere communication will not bind upon the parties to the agreement. The Regulatory Authority has not taken into account any communication of the promoter. The Regulatory Authority found that the promoter has stated in the area statement regarding only one covered car park. Against that area statement in the construction agreement the promoter agreed to provide one covered car park and one open car park hence it is against the area statement therefore, it imposed penalty. The authority has not relied any communication of the servants of the promoter.

12. On the side of the promoter by way of another ground by stating that car park charges was merely an intra-company cost-factoring which had nothing whatsoever to do with the home buyers. The learned Regulatory Authority has not questioned the cost of the car park agreed between the promoter and home buyers. The Regulatory Authority found that the promoter has obtained registration for only one car park and charged for two car parks hence the authority has rightly directed the promoter to return the cost of the one car park. There is no infirmity.

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13. The next ground put forth by the promoter is that as a good will gesture only a sum of Rs.25,000/- as compensation to the home buyer on account of the change in plan and not car park charges. The promoter even after the registration before the RERA for only one covered car park and against that registration the promoter has collected cost for the two car parks and the same was questioned by the home buyers then only the promoter returned Rs.25,000/- as compensation. There is no need or necessity for the promoter to pay any compensation to the home buyer since the promoter has collected cost of two car parks and permitted to provide only one car park. In such circumstances, it is the duty bound of the promoter to return the amount to the home buyers. It is not at all a compensation and the returned amount of Rs.25,000/- is very meager hence the authority directed the half of the amount collected by the promoter. The learned Regulatory Authority has rightly directed the promoter to refund half of the amount to the tune of Rs.2,25,000/-.

14. The learned Regulatory Authority imposed a penalty of Rs.5,00,000/- against the promoter under Section 60 r/w Section 61 of the Real Estate (Regulation and Development) Act, 2016. It is relevant to mention the above said specific provisions:

60. Penalty for contravention of section 4.

If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the

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estimated cost of the real estate project, as determined by the Authority.

61. Penalty for contravention of other provisions of this Act.

If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

Section 2:

(y) "garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

Section 4: ***Application for registration of real estate projects.***

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) to (h) .. ..

(i) the number and areas of garage for sale in the project;

15. As per Section 2(y), within a project having a roof and walls on three sides for parking any vehicle is the covered car park and as per the area statement of the promoter. The promoter has mentioned the same under

Section 4(2)(i) in the prescribed form for registration before the RERA. After getting registration the promoter entered into construction agreement with the home buyers and sold two car parkings which is against section 4(2)(i). Hence the authority has imposed penalty. What is the necessity of imposing penalty to the promoter has to be analyzed?

16. Before this the Real Estate (Regulation and Development) Act, 2016, was promulgated the construction industry is an unregulated one. Why Central Legislation was enacted to regulate the construction industry can be ascertained from the report of the Parliamentary Standing Committee in which the background of the Real Estate (Regulation and Development) Bill 2013, has narrated which runs as follows:

REPORT

Background

The Real Estate (Regulation and Development) Bill, 2013 was introduced in the Rajya Sabha on 14th of August 2013. The Bill contains the Statement of Objects and Reasons which spells out the reasons behind initiating the legislation by way of this Bill. It inter alia states as follows-

"The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.

In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

The proposed Bill will ensure greater accountability towards consumers, and significantly reduce frauds and delays as also the current high transaction costs. It attempts to balance he interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fasttrack dispute resolution mechanism. The proposed Bill will induct professionalism and standardisation in the sector, thus paving the way for accelerated growth and investments in the long run.

* * *

17. Due to the absence of professionalism and standardization and lack of adequate consumer protection in the construction industry and to ensure greater accountability towards consumers and significantly reduce frauds and delays the necessity arose for enactment of this legislation. The preamble of this Act further ensure sale of real estate project in an efficient and transparent manner and protect the interest of consumers in the real estate sector. The preamble of this Act is as follows:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the

interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

18. Even after the enactment of this Act on the above stated backgrounds and implemented throughout India. But the promoter, though registered the project as per the Act, when entering into construction agreement with the home buyers forget everything and completed the agreement against the registration particulars. Particularly in this case as per the registration of the project of the promoter he has disclosed in the area statement of the project he is going to provide only one covered car park but in the agreement the promoter has promised to provide one covered car park and one open car park. After the entering into agreement the promoter simply proposed to pay a sum of Rs.25,000/- as compensation to the home buyers in the name of "as a good will gesture" and put forth the defence as it is not against the registration and it is only a change of plan. The attitude of the promoter after knowing fully well that he cannot provide two car parks even then he collected the amount for two car parks and proposed to return a small amount as if the promoter is keen on taking care of the home buyers would amounts to cheating and it is not as a good will gesture. Therefore this Tribunal comes to a conclusion that the Learned Authority has rightly came to a correct conclusion and imposed penalty of Rs.5,00,000/- according to law

and there is no infirmity in the findings of the Learned Regulatory Authority regarding direction to pay penalty as well as direction to hand over possession. This appeal is devoid of merits hence this appeal not deserves to be allowed. The point is answered accordingly.

19. In the result, this appeal is dismissed with costs. The order of the Regulatory Authority in C.No.45/2020 dated 16.09.2020 is confirmed.

Connected Miscellaneous applications are closed.

This Order is dictated to the Stenographer and transcribed and typed by her in the computer, corrected and pronounced by us in the open court on 29th Day of November 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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