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 20.10.2021

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

Appeal No. 62 of 2021

R. Venkataraman ... Appellant

-Vs-

Indian Railway Welfare Organization
Through its Managing Director. .... Respondent

This appeal was taken on file on 28.04.2021 and came up for final hearing on 22.09.2021 in the presence of M/s.R.Pandian, L.Kabilan, S.Sriramulu, Counsels for the appellant and Mr.G.Prakash, Counsel 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:

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ORDER

1. The appellant/complainant preferred a complaint before the Adjudicating Officer in C.C.P.No.341/2019 against the respondent/respondent for the relief of compensation for delay and mental agony with costs. After contest the complaint was dismissed on 11.03.2021. Aggrieved upon the same appellant/complainant preferred this appeal.

2. According to the appellant/complainant, he is a primary member of the Indian Railway Welfare Association/respondent. As per the brochure of the respondent promised to provide open car parking but later changed to two wheeler parking. As per the sanctioned plan open car parking slot could not be provided for want of sufficient space and only two wheeler parking has been provided. The complainant came forward with the complaint for the relief of compensation on the ground of failure to provide car parking, delay in construction, delivery of the dwelling unit. After contest the court below dismissed the compliant as not entitled. Aggrieved upon the same the complainant preferred this appeal.

3. According to the respondent/respondent, during the year 2004 the respondent has acquired land admeasuring 11.87 acres in Ambattur village near Ambattur railway station, Chennai and floated a Group Housing Scheme in the year 2006 namely the Rail Vihar, Ambattur, Chennai Phase II and the same was advertised by the respondent during May 2006 for construction of 4 types

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of dwelling units namely Type A,B,C & D. Subsequently, Group Housing Scheme 2014 another brochure was issued for phase II B. The complainant has been allotted a Type B dwelling unit as per the allotment letter dated 29.9.2006 and the complainant has taken over the possession of his dwelling unit No.B-59 vide letter dated 17/22 January 2019. IRWO had purchased the 11.88 acres of land in March 2004 out of its own resources by transferring funds from other projects and not from allottees money which was collected against the demand survey. In March 2004 IRWO had paid Rs.6,41,53,000/- towards cost of land and another Rs.75,12,880/- towards stamp duty and registration and other Rs.4.91 lakhs towards miscellaneous expenses. The total money collected from allottees was only Rs.71,81,000/- which was just 10% cost of land and stamp duty etc. and thus the allottees plea that entire land was purchased out of money provided by these allottees of Chennai Phase II A or that they have right/claim on entire land is not based on facts and is misconceived. Further, cost escalation is based on actual input costs already incurred or likely to be incurred till completion of project and is justified. If any allottee is not willing or able to pay the increased cost he can withdraw and IRWO would refund full amount deposited/paid by him along with interest.

4. From the pleadings of both parties the learned Adjudicating Officer framed two points for consideration namely, i. Whether the complainant is entitled for compensation on the ground of failure to provide car parking, delay in construction and delivery of the dwelling unit and failure of registration of the property and provide common facilities and for mental agony?. ii. What are the reliefs, the complainant is entitled to?. After analyzing both side evidences

the learned Adjudicating Officer negatived the claim of the appellant/complainant. Aggrieved upon the same the appellant/complainant has come forward with this appeal on the following main grounds:

a) Non availability of any time limit mentioned in the brochure for completing the project will not give any leeway for the respondent to evade his responsibility to complete the project in a time frame normally acceptable in the similar projects elsewhere.

b) Non availability of contract between the appellant and respondent is not a bar for the Adjudicating Officer to reject the claim on the following grounds:

   i. Town and Country Planning Act granted 3 years period for building permission.

   ii. It is statutory duty on the part of the respondent to execute construction agreement from 1.10.2013.

   iii. In the tripartite agreement respondent organization is a party and has committed completion time to bankers.

   iv. The Hon'ble supreme court of India in a catena of cases has stated that one sided clauses in builder-buyer agreement is unfair trade practice.

c) The delay of 13 years in completing the project due to the mismanagement by the respondent in view of the one sided condition in the brochure.

d) Extraordinary delay caused due to the unprofessional attitude of the respondent namely, layout submitting in 2007, obtained approval in 2011, non-disclosure of emissions to the allottee, sharing of

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common facilities and non submitting of plans for shops and community centre during 2007 while applying originally.

e) Various causes adduced for the delay namely, court cases and change of phase II to II A and II B are not acceptable.

f) In the brochure paragraph No.5.3 for Type B dwelling unit provision of open car parking envisaged but it was not taken into account.

g) The cost of dwelling unit not worked out but claimed for registration.

5. For the above said reasons the order of the Adjudicating Officer is liable to be reversed. On the side of the appellant the learned counsel further would submit that the respondent failed to consider the request of the appellant for change of type B to type C or type D and the appellant was ready to pay the enhanced amount due to the type C or type D. The only reason adduced by the appellant for change of house is security of his car during his absence and it was not considered by the respondent. The appellant has requested the respondent by saying alternative space for his dwelling unit and ready to built his own dwelling unit. It was also not considered by the respondent. In such circumstances, since all the efforts from the year 2006 ended in vain the appellant frustrated and got mental agony. Even then the learned Adjudicating Officer failed to consider the plea of the appellant only on the ground that there is no privity of contract between the appellant and the respondent by way of construction agreement. The reason adduced by the Adjudicating Officer is not sustainable hence appeal has to be allowed.

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6. The Learned counsel for the respondent would submit that the respondent has clearly and categorically explained the reasons specifically and periodically and also gave an option to the allottees, those who are not willing to accept the delay, to withdraw from the project with refund of paid amount along with interest through letters dated 08.10.2009, 4.9.2013, 22.01.2015 and 23.11.2016. In the letter dated 4.9.2013 it has been specifically stated regarding delay the respondent has advised that they can withdraw from the scheme and if they so desire and in that case the amount paid will be refunded with interest. Even then the appellant has not chosen to utilize the opportunity and accepted the terms and conditions and kept quite. But at the same time, the appellant repeatedly asking for change of type of house, knowing fully well that it is not possible. After hectic steps taken by the respondent the dream of home to the employees of the Railway become fruitful hence the learned Adjudicating Officer has correctly came to a conclusion and rightly negatived the claim of the appellant. Therefore the appeal has to be dismissed.

7. Point for consideration:

Whether the appeal deserves to be allowed or not?

Point:

8. The appellant/complainant is a retired railway employee and who is the part of the respondent organization and he applied for allotment of dwelling unit and got possession are all admitted facts and no dispute. The appellant/complainant came forward with the complaint against the respondent for the relief of compensation for delay delivery of possession of dwelling unit and non allotment of car parking as promised in the brochure and it caused

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mental agony for which also the appellant/complainant claimed compensation. The respondent/respondent admitted the delay of delivery of possession of dwelling unit and non allotment of car parking. But the respondent adduced reasons for the above occurrence due to administrative delay and change of construction plans as per the instruction of the approving authority. The learned Adjudicating Officer accepted the plea of the respondent and negatived the claim of the appellant/complainant. Now the appellant/complainant came forward with an appeal to set aside the finding of the Adjudicating Officer on 11 grounds, out of which ground No.1 and 2 with regard to agreement, ground No.3 and 4 with regard to management, ground No.5 with regard to cause for delay, ground No.6 with regard to car parking area, ground No.7 with regard to stamp paper, ground No.8 with regard to accounts, ground No.9 & 10 with regard to common amenities, ground No.11 with regard to investment of the amount for purchase of land.

9. Perused both side contentions. On perusal it is crystal clear that the project is completed with abnormal delay. According to the appellant the above said abnormal delay caused due to change of plan and scheme, mismanagement and unprofessional attitude, non execution of construction agreement, court cases, etc., According to the respondent, the above said abnormal delay caused not due to defect on their part. Further, they have explained the delay in number of letters. Whether reasons adduced by the respondent are acceptable or not have to be analyzed.

10. On the side of the respondent they have produced Ex.B8 from page No.37 to 53 of the Typed set of the respondent, in which a letter addressed to the appellant/complainant by the General Manager, Sri.V.Ramasamy on 8.10.2009. In the above said letter the General Manager has explained the reason for the delay as follows: The proposal is to construct dwelling units of twin type. The plans for the A B C and D units have been already finalized. 91 persons have initially opted for twin units and they have been allotted for different types of dwelling unit and 48 members have gone for arbitration demanding construction of independent units. During 2007 the plans for layouts was prepared with 91 units in one particular area and a provision for construction of 48 units at a later date for the members who had gone for the arbitration. The arbitrator has upheld construction of twin units. The layouts submitted to the CMDA initially during 2007. In February 2008 CMDA did not accord sanction advising that the site is prone to emission and therefore residential activities may not be desirable. At this stage there were two courses of action – 1. Close the scheme 2. Go on appeal to the government. Then appeal was preferred then the government obtained remarks from the pollution control board and finally passed orders in November 2008 then again CMDA wanted revision of plans for the layout. In the meanwhile, arbitration award was passed and 48 members opted for different type of units hence 139 types of units had to be constructed. Then CMDA also raised a new issue in April 2009 and advised to get a letter from the revenue authority regarding status of the road. The above said problems are beyond the control of IRWO. Subsequently in the year 2014, phase II was clubbed as phase II A and phase II B, then due to court cases and abandonment of work of the contractors.

These are the reasons adduced by the respondent for the delay. The appellant/complainant has not denied the above said reasons but he went to the extent of saying that the delay is due to mismanagement and unprofessional attitude. On the side of the appellant for the above said reason the appellant has given four reasons. The first one is applied for layout approval 2007 but obtained only in 2011. For which, the reason is non disclosure regarding industrial zone prone to emissions. In the previous portion of the above said letter why the layout plans were returned has been clearly narrated. After the hectic steps they have obtained permission by accepting the condition imposed by the pollution control board so, the delay cannot be avoided and the reason stated by the appellant is not sustainable. Another two reasons adduced by the appellant amalgamation of phase II and building plan submitted for community centre. The above said two items are promised in the brochure hence the above said reasons are also cannot be neglected. Therefore, the allegation by the appellant as mismanagement and unprofessional attitude of the respondent is the root cause for the abnormal delay is not proved and not acceptable one.

11. The next ground with regard to construction agreement. The respondent issued a brochure group housing scheme 2014 and issued a brochure in which it has been stated as follows:

> ***"The Indian Railway Welfare Organization (IRWO) had acquired land measuring 11.87 acres in Ambattur, near Railway Station in Chennai phase II A scheme for construction of 140 independent dwelling units in part area of land in May 2006 and these dwelling units are presently under construction. IRWO is now launching***

Chennai phase II B for construction of three types of dwelling units in multi-storey configuration of stilt + 4 and stilt + 3 in the balance area of land."

12. In the above said brochure it has been specifically stated that already for 140 dwelling units were under construction and in the balance area they have proposed to construct multistorey constructions. For the above said construction land was purchased from and out of transfer of funds from other projects and not from allottee's money. After purchasing the land they have conducted demand survey and formulated scheme on 'no profit no loss basis' purely as a welfare activity. Furthermore the constructions were made by reputed construction company and not by IRWO. There is no privity of contract between the allottee and the builder so there is no need or necessity to enter into a construction agreement. Furthermore, it is a welfare measures for the employees of the Railway and the scheme is formulated by the Indian Railways by a separate entity namely Indian Railway Welfare Organization. Hence for initial expenses namely purchase of land by transferring funds from other projects then collected amounts from the allottees. The scheme of construction is not as a private builder hence there is no need or necessity for any construction agreement between the allottee and the builder. Therefore this ground is also not sustainable.

13. The appellant claimed compensation on the ground of mental agony since he was not allotted with car park as stated in the first brochure 2006, in which paragraph No.5.3 it has been specifically stated as 'open car space' in the application form in column No.25 option for 'additional car park' it is not

disputed, But unfortunately due to delay in getting approval it leads to amalgamation of phase II as 2 A and 2 B. Then subsequently in 2014 another brochure was issued and remaining space in the total project have been utilized and also promised to accommodate either car parking space or scooter parking space subject to availability of the space. Admittedly, on the advice of the pollution control board for providing open space for emission hence considerable portion of land was provided for that purpose so naturally there is a possibility for reduction of space for construction utility. Therefore, the reason adduced by the respondent is an acceptable one and furthermore if the appellant is not willing to accept the dwelling unit he can very well withdraw from the scheme. But the appellant has not done so. The appellant knowing fully well that it is not possible to change the dwelling units after the scheme was reopened. Frequently, the appellant seeking for the change of dwelling units through number of letters. In the letter dated 28.12.2017 the appellant clearly stated as follows:

> ***"I understand that the open car parking shown for Type B in the brochure has been changed into two wheeler parking".***

Even then the appellant has been repeatedly asking for the same. Then finally came forward with this complaint.

14. Even after the possession handed over in January 2019 till 2021 the appellant has not chosen to get the sale deed registered. For which the appellant has not taken any steps so far. Therefore, the learned Adjudicating Officer has negatived the claim of the appellant for compensation.

15. The grounds adduced by the appellant to interfere with the findings of the Adjudicating Officer is not sufficient and furthermore there is no merits in the appeal. Therefore this Tribunal comes to a conclusion that this appeal not deserves to be allowed. The point is answered accordingly.

16. In the result, the appeal is dismissed. No costs. The order of the Adjudicating Officer in C.C.P.No.341 of 2019 dated 11.03.2021 is confirmed.

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 20th Day of October 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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