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 22.12.2021

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

Appeal No. 76 of 2021

M/s.Casa Grande Engineering Pvt. Ltd.
Represented by its Managing Directors
Tvl. Arun Mn & Anirudh Iyer ... Appellant

-Vs-

1. Mrs.Nivrutha
2. Mr.Arun Raghuveeran .... Respondents

This appeal was taken on file on 08.07.2021 and came up for final hearing on 06.12.2021 in the presence of M/s.Ganesh and Ganesh, Advocates for the appellant and M/s.Chennai Law Associates, M.L.Joseph, K.Subhashini Suresh, Amar.K.Panwar, R.S.Shakthivel, Nandini Murali, A.Aravind and K.V.Pawan Kumar, Advocates 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 Regulatory Authority in C.No.100 of 2020 dated 10.06.2021. The home buyers preferred a complaint against the promoter for the relief of handing over possession of flats with all amenities and facilities and for direction to provide two covered parking to the allotted two flats of the home buyers along with cost. Both the home buyers approached the promoter for the purchase of flats. The promoter issued allotment letter on 29.6.2017 by allotting D416 and D417 in Casagrande Bellissimo in 4th floor with super built up area 590 sq. ft. land area 288 sq. ft. at the rate of Rs.47,74,250/- for each apartment. The above said property situate at Pazhavanthangal village, formerly Adambakkam village, Kannan Colony 5th Street, Alandur Taluk, Kanchipuram District. The above said property is promoted by M/s.Casagrande Civil Engineering Private Limited.

2. The appellant/promoter is the respondent and the homebuyers/respondents are the complainants in the original complaint before the Regulatory Authority. For easy understanding and to avoid confusion the appellant and the respondents are referred in this appeal as per their original rankings as promoter and home buyers.

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3. The home buyers approached the promoter for purchase of flats and the promoter issued allotment letter on 29.06.2017 and subsequently on 29.8.2017 the home buyers and the promoter entered into separate agreements for each flats bearing Nos.D416 and D417 along with one covered car park each in the residential project Casagrande Bellissimo. On 30.3.2018 and 4.4.2018, the promoter sent emails by allotting one covered car park and one open car park for the home buyers. Subsequently on 15.4.2019 a construction agreement was registered between the parties in which for both the flats D416 and D417 one open car park each mentioned in schedule D. Since the promoter failed to deliver the apartments as promised the home buyers preferred a complaint before the Regulatory Authority on 16.09.2020. After contest the Regulatory Authority directed the promoter to provide one covered car park each for these two apartments as per CMDA approval and as per the registration of this project with the Regulatory Authority and directed the promoter to file compliance report before 30.6.2021. The authority also directed the home buyers to pay back to the promoter the discount given by the promoter at the time of taking possession of two covered car parks from the promoter. Further the Regulatory Authority has also imposed penalty of Rs.10 lakhs on the promoter and directed to pay before 30.06.2021. Aggrieved upon the same the promoter preferred this appeal on the following main grounds:

- The levy of penalty is not due to misrepresentation of the appellant but the same is due to misinterpretation of the records.
- As per further discussion the respondents have agreed and accepted the said modified allotment of car parks and the parties have also

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mutually agreed that there shall be a discount of Rs.1.50 lakhs for the home buyer due to the said modification. The revised payment schedule after the discount and the confirmation of the modified allotment was again communicated by the promoter vide email dated 4.4.2018. The home buyers have availed the said discount and accepted the modified allotment. Therefore it is crystal clear that there is no suppression of fact or any misrepresentation occurred in the whole transaction.

- The promoter has only stated about the overall short fall of the covered car park as per the approvals as against the original plan.
- When the appellant received the approvals and registered the project with the authority the appellant noted the shortfall to allot one covered car park for all flats and after discussion sent the mail on 30.3.2018 to the home buyer about the modified allotment of one covered car park and one open car park towards the said flats.

4. The learned counsel for the appellant would submit that the home buyers accepted the proposal of allotment of open car parks and entered into registered construction agreement. They have not objected the same and made further payments. Now they came forward with the complaint with regard to car park is only an afterthought. Therefore the complaint itself is not maintainable. But the learned Regulatory Authority without proper appreciation of the subsequent events and imposed penalty without any basis hence the order of the Regulatory Authority has to be set aside.

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5. The learned counsel for the home buyers would submit that the promoter has fraudulently obtained the consent of the home buyers to restrict their rights for getting one covered car park as against the originally allotted two covered car parks. The home buyers have also expressed their willingness to repay the reduction amount. Further would submit that the promoter has purposely suppressed the original construction agreement dated 29.08.2017. Therefore the Regulatory Authority came to a correct conclusion and there is no infirmity and the appeal has to be dismissed.

6. Point for consideration:

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

Point:

7. According to the appellant/promoter even though the promoter agreed to allot covered car park for each of the flats, after the receipt of the approvals and noted the short fall of 47 covered car parks and then registered the project with the Authority. Subsequently after discussion by giving discount to the tune of Rs.1.50 lakhs and accepted by the home buyers and construction agreement was registered on 15.4.2019.

8. According to the respondents/home buyers the above said consent was obtained by fraud by way of registered construction agreement. The promoter has failed to hand over the flats even after promised date has been lapsed.

9. The promoter has formulated scheme for developing a Residential project and obtained planning permit on 11.5.2017 by CMDA and obtained building permit on 19.5.2017 from the Greater Chennai Corporation. The home buyers approached the promoter for purchase of two flats and the promoter issued allotment letter on 29.6.2017 for 590 sq. ft. built up and 288 sq. ft. land area with one covered car park for each flat. The promoter has registered the project under the Real Estate Act before the Real Estate Regulatory Authority, Chennai on 23.8.2017. Subsequent to that the promoter and home buyers entered into construction agreement on 25.9.2017 for two flats along with one covered car park for each flat. These are the admitted facts and not disputed by both parties.

10. The disputed facts is that as per mail dated 30.3.2018 and 4.4.2018 sent by the promoter to the home buyers with regard to one covered car park and one open car park was accepted by the home buyers and also agreed for the discount of 1.50 lakhs. Then, subsequently on 15.4.2019 both parties have entered into new construction agreement for open car park for each flat. The home buyers have not accepted this fact and stated that their consent was obtained fraudulently. Which one is true has to be analyzed? Before going to discuss the merits the relevant crucial dates are essential which are as follows:

Planning permission	***11.5.2017***	***Not produced***
Building Permission	***19.5.2017***	***Not produced***
Allotment letter	***29.6.2017***	***One covered car park each***
RERA registration	***23.8.2017***	***One covered car park each***

Unregistered construction agreement	***25.9.2017***	***One covered car park each***
E-Mails by promoter	***30.3.2018 and 4.4.2018***	***One covered car park and one open car park***
Registered construction agreement	***15.4.2019***	***Open car park only for each flat***

11. The appellant/promoter has filed memorandum of appeal in which in paragraph No.f (i) to (viii) raised the grounds only with regard to car park and imposition of penalty. In paragraph No.g stated about the compliance of the direction of the Authority regarding electricity connection. In paragraph No.h the appellant/promoter has stated as follows:

> ***"h. It is also submitted by the appellant that the allotments of all flats and car parks have been fully completed and the acceptance of the respondents relating to the modified terms of allotment viz., one covered car park and one open car park is binding on them and factually there is no scope available for allotting the covered car park in favour of the respondents. Therefore, the direction of the Learned Authority to allot one covered car park is neither legally tenable nor factually sustainable."***

12. The scope of this appeal is very limited only with regard to allotment of car parking and imposing of penalty. Admittedly, the promoter obtained CMDA approval on 19.5.2017. Subsequent to that the promoter registered the project with RERA on 23.08.2017. Before RERA registration the promoter has issued advertisement for sale of apartments and also issued allotment letter to the home buyers on 29.6.2017. After RERA registration only both the promoter and home buyers entered into construction agreement on 25.9.2017. But in paragraph No.9

of the counter of the promoter before the Regulatory Authority the promoter has stated as follows:

> ***"The respondent had allotted 100% covered car park to the respondent in anticipation of the approval for the same. Thereafter, the respondent while securing the approval, they could only obtain sanction for 1/3rd covered car park area as against its original plan."***

13. After obtaining building permission only, the promoter has issued allotment letter, in which the promoter has stated that two covered car park for the home buyers. If really the promoter has obtained building permission for lesser number of covered car parks, the promoter need not have mentioned about the covered car park in the allotment letter. Subsequent to that building permission and issuing of allotment letter only the promoter has registered before the RERA in which also he has stated about the covered car park for each flat. For obtaining RERA registration the promoter shall file 'Form A' Application for registration of project in which he has specifically stated about the number and areas of covered car park available in the project etc which is as follows:

FORM "A"
[See rule 3 (2)]
APPLICATION FOR REGISTRATION OF PROJECT

1. .. ..
2. (i) to (x) .. ..
(xi) the number and areas of covered parking available in the project;
(xii) the number of open parking areas available in the project;
(xiii) to (xv) .. ..
(xvi) a declaration in FORM "B".
3. .. ..

FORM "B"
[See rule 3(4)]

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DECLARATION, SUPPORTED BY AN AFFIDAVIT, WHICH SHALL BE SIGNED BY THE PROMOTER OR ANY PERSON AUTHORIZED BY THE PROMOTER

Affidavit cum Declaration

1 to 9 .. ..

Verification

The contents of my above Affidavit cum Declaration are true and correct and nothing material has been concealed by me therefrom. Verified by me at _____ on this _____ day of _____.

Deponent

14. In 'Form A' Application for Registration the particulars stated in the columns are to be declared by affidavit cum declaration format. In the above said verification column the promoter has specifically stated that the contents of above are true and correct and nothing material has been concealed. In the above said declaration the promoter has declared that out of 340 apartments for 293 covered car parks to be allotted by the promoter and 52 open car parks to be allotted by the promoter. Out of 293 covered car parks the home buyers are included. Now the promoter has stated in the counter in paragraph No.9, as stated supra, in the grounds of appeal paragraph No.f (ii) specifically mentioned about the short fall. Regarding short fall is concerned it came to the knowledge of the promoter before he entered into construction agreement on 25.9.2017 itself. Even then the promoter has entered into agreement and promised to provide covered car park for each flat and concealed the short fall of covered car parks. Then in 30.3.2018 and 4.4.2018 the promoter has sent mails that they are going to allot one covered car park and one open car park. Subsequently, on 15.4.2019 while executing sale deed for undivided share again obtained a construction

agreement with only open car park for each flat. The above said agreement dated 15.4.2019 at page no.71 and 117 of the typed set of the appellant allotment of open car park in schedule 'D' is against allotment letter, construction agreement dated 29.8.2017 and RERA registration area statement as well as in 'Form A'. The above said act of suppression of the promoter amounts to concealment. The preamble of The Real Estate (Regulation and Development) Act, 2016 is emphasized the word 'transparency' in the real estate sales. The purpose of the Act itself defeated by the promoter by concealing the allotment of covered car park. The preamble of the 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.***

15. The real estate Act ensure sale of real estate project in an efficient and transparent manner to protect the interest of consumers in the real estate sector. But unfortunately the promoter knowing fully well that the short fall of covered car parks, even then entered into agreement for covered car park and collected money for the same and subsequently without obtaining any written consent from the home buyers by sending mails has altered the allotment of car park unilaterally and then by way of registration of construction agreement again in which suppressing the previous promises of allotting covered car parks and allotted open car parks. If really the story narrated by the promoter is true

regarding consent of allotment of car park from the home buyers it can be very well can be recited in the subsequent registered construction agreement but the promoter has not done so. That is why the learned Regulatory Authority came to a conclusion that the promoter has misrepresented about the car parks and imposed penalty. Section 7 (1) (A) of this Act has speaks about the misleading representation which runs as follows:

> ***7. Revocation of registration***
>
> ***(1) (A) the practice of making any statement, whether in writing or by visible representation which,—***
>
> ***(i) falsely represents that the services are of a particular standard or grade;***
>
> ***(ii) represents that the promoter has approval or affiliation which such promoter does not have;***
>
> ***(iii) makes a false or misleading representation concerning the services;***

16. As per Section 7(1)(A)(ii) the promoter has not obtained approval for 340 covered car parks but represented by advertising and by way of allotment letter and unregistered construction agreement agreed to allot covered car park for each flat. Against that promise by way of registered agreement allotted only open car parks. Therefore the authority has found that it amounts to misrepresentation and concealment hence imposed penalty. There is no infirmity in the findings of the Learned Authority. Further, the promoter has purposely suppressed and concealed the short fall of covered car park and made promises as a make belief affair knowing fully well. Therefore this Tribunal comes to a conclusion that the suppression and concealment is purposeful, the attitude of the promoter completely defeated the purpose of the Act by obtaining registered construction agreement again to legalize the concealment. Hence the imposing of

penalty by the Regulatory Authority is not sufficient and to meet the ends of justice imposing of penalty of Rs.20,00,000/- is justifiable. The point is answered accordingly.

17. The appellant/promoter as ground No.'h' has stated that "the allotments of all flats and car parks have been fully completed and the acceptance of respondents relating to the modified terms of allotment viz one covered car park and one open car park is binding on them and factually there is no scope available for allotting the covered car park in favour of the respondents, therefore the direction of the learned authority to one covered car park is neither legally tenable nor factually sustainable." The above said ground is absolutely against the promise made by the promoter. The promoter himself has voluntarily allotted two covered car parks to the home buyers even after knowing fully well that there is shortage of covered car park and against the subsequent promise on 15.4.2019 registered construction agreement as schedule 'D' allotted only open car parks. Against the promise and against the documents executed by the promoter, unilaterally changed the allotment of car parks to the home buyers and promised covered car parks were allotted to some other home buyers. If really the home buyers herein accepted the terms there is no need or necessity to approach the RERA. The alleged consent obtained by the promoter from the home buyers is not according to law hence they are bound to allot the covered car park as promised by them.

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18. In the result, this appeal is dismissed with costs and the order of the Regulatory Authority in C.No.100/2020 dated 10.6.2021 is confirmed and enhancing the penalty imposed by the Regulatory Authority which is as follows:

(a) The penalty imposed by the Regulatory Authority is enhanced to Rs.20,00,000/- against the promoter.

(b) The promoter is directed to deposit the balance Rs.15,00,000/- before the Regulatory Authority within two weeks.

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 December 2021.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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