BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate (Regulation And Development) Act 2016)

Wednesday the 20th day of April 2022

Coram : Ms.Leena Nair, Administrative Member
Mr.R.Padmanabhan, Judicial Member

A. No. 78 of 2021

M/s. VGN Property Developers Pvt. Ltd.
Rep. by its Authorized Signatory
No. 153 Wallace Garden 2nd street
Nungambakkam, Chennai 600 006 ... Appellant

Vs

1. AR.Arun Ramesh S/o N.A.Rajendiran
2. M.Jaya Priya W/o Arun Ramesh
No. 57/66, Venkadachalam Street,
Royapuram, Chennai 600 013 ...Respondents

This appeal was taken on file on 13.7.2021 and came up for final hearing on 06.4.2022 in the presence of M/s.K.Harishankar, Srinath Sridevan, T.K. Bhaskar, R.Radeesh Manikandan, B.Gopinath and Mithreyi Kasthuri Rangan, Counsels for the appellant and M/s.K.R.Ramesh Kumar, N.K.Vanan, S.Pavithra, G.Muthulakshmi and J.Preethi, Counsels 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 promoters as against the order of the Adjudicating Officer in C.C.P.No.296 of 2019 dated 25.02.2021, directing the promoters / respondents to pay compensation, interest and costs to the allottee / Complainant. For the sake of convenience the parties herein after will be referred to as per their rank and status before the RERA.

2. **The case of the complainants in brief is as follows:** Both the complainants are husband and wife. The complainants as an allottee and the respondent as promoter, entered into an agreement dated 22.3.2018 with in respect of the construction of a dwelling unit measuring 1444 sq. ft. bearing unit No.204, second floor, block D of the proposed project VGN Temple Town at Thiruverkadu Village, Poonamallee Taluk. The respondent also agreed to execute a sale deed conveying 661 sq. ft. of undivided portion of vacant site. The total cost of construction together with all amenities, infrastructure, fees, all taxes, duties, levies, registration charges, stamp duty and also the value of the undivided portion of vacant site was fixed at Rs.55,35,834/-.

3. As per the agreement the respondent agreed to complete the project within 6 months i.e., before September 2018. A grace period of 3 months was also allowed between the parties for completion of the construction. Therefore, in any event the construction should be completed and possession should be handed over to the complainants before December 2018. The total

sale consideration has been fully paid by the complainants on various dates. The complainants suggested some alterations by way of additions for which also the complainants paid the additional costs of Rs. 68,558/- as demanded by the respondent on 31.03.2018.

4. The respondent did not come forward to complete the construction as agreed by him. The complainants were all along pressing for compensation for the delay caused in handing over the possession, as they were residing in a rented premises by paying monthly rent of Rs.15,000/-. The respondent in his email communications during March 2019 had admitted the delay and offered to pay Rs.5/- per sq. ft. towards compensation. The complainants did not agree for the same as it was very meager. Finally after completing the construction the respondent handed over possession on 9.10.2019 but failed to pay compensation as claimed by the complainants. Before handing over the possession the respondent insisted the complainants to execute a no claim letter confirming their satisfaction regarding the construction and delivery. Though the complainants have refused to execute such a letter, the respondent adamantly insisted for execution of such a letter before handing over of possession. The complainants left with no other alternative have executed such a letter as insisted by the respondent. Immediately after taking possession, the complainants have preferred the complaint before the Adjudicating Officer RERA on 15.10.2019 and claimed compensation of Rs.10,78,070/- on various heads. Hence the complaint.

5. **The case of the respondent in brief is as follows:** It is true that the complainants have approached the respondent to book a flat in the

project called VGN Temple Town. It is also true that after verifying the details of the project and being satisfied with the same had entered into an agreement with the respondent on 03.3.2018. As per the clause 11(a) of the agreement the construction has to be completed before March 2019 with a grace period of 6 months. Therefore, including the grace period the respondent is expected to hand over possession during September 2019. As such the building was completed within the said period. At that stage the complainants demanded some alterations and customization works as additional features and also paid a sum of Rs.68,558/- towards the additional works to be done. After carrying out the additional works the building was handed over during October 2019. Therefore there was hardly one month delay in handing over the possession of the flat. Even such delay was caused due to the last minute demand for alterations and customization works demanded by the complainants. The other allegations raised by the complainants in their complaint regarding loss of rent, interest, etc., are all false, baseless and without any documentary evidence. Therefore, the complaint is liable to be dismissed.

6. During the course of trial before the Adjudicating Officer attached to the RERA, both the parties have submitted their proof affidavit in lieu of oral evidence along with documents. Exhibits A1 to A18 were marked on the side of the complainants and Exhibits B1 to B4 were marked on the side of the respondent.

7. After hearing both sides the learned Adjudicating Officer attached to the RERA have directed the respondent to pay compensation on various

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heads, interest and costs by his order dated 25.2.2021. Aggrieved over the same the respondent has preferred this appeal before this Tribunal.

8. Heard the counsels appearing for both sides in detail. The counsel for the appellant / Respondent would argue that the registered agreement dated 3.5.2019 (Ex.B4) was not at all considered by the Adjudicating Officer. That the Adjudicating Officer wrongly relied upon the unregistered agreement dated 22.3.2018 (Ex.A2 and A3) and came to a wrong conclusion in calculating the delay in handing over of possession. He would further argue that the unregistered agreement dated 22.3.2018 would be hit by Section 49 r/w Section 17 of the Registration Act. According to the counsel the unregistered agreement ought not to have been received in evidence. On these grounds the appeal may be allowed and the order of the Adjudicating Officer is liable to be set aside, the Counsel for the appellant / Respondent argued.

9. On the other hand the counsel for the respondents / Complainants would argue that as per Section 13 of the Real Estate (Regulation and Development) Act, 2016 there is a duty cast upon the promoter. Section 13 requires that a Promoter shall not accept any amount from the buyer without first entering into a registered written agreement. He would further argue that the appellant / respondent having wilfully suppressed the existence of an unregistered agreement dated 22.03.2018 and also the receipt of huge amounts from the Respondents / Complainants, they have clearly violated Section 13 of the Act 2016. In fact, as per Ex.B1 on 31.3.2018 itself, the appellant/respondent has received the additional amount of Rs.68,558/-

towards the cost of alterations by way of additional constructions demanded by the respondents/complainants. According to the learned counsel for the respondents/complainants the agreement dated 22.3.2018 though unregistered, can be relied upon for collateral purposes. The registered agreement dated 03.5.2019 (Ex.B4) was fraudulently obtained from the respondents/complainants. The contents of the Ex.B4 agreement itself are self contradictory thereby proving that it was obtained fraudulently to suite the convenience of the appellant/respondent. Hence the appeal is liable to be dismissed, the counsel for the respondents/complainants argued.

10. Points for consideration:

1. Whether the awarding of compensation on the basis of the unregistered agreements dated 22.3.2018 (Ex.A2 and A3) is correct or not ?
2. Whether the appeal deserves to be allowed or not?

Point No.1:

11. At the outset the appellant/respondent in their counter affidavit filed before the trial court, at page No.1 and paragraph No.2 had admitted the existence of the agreement dated 22.3.2018. However the execution of another agreement dated 03.05.2019 is in serious dispute. Surprisingly nowhere in their counter, the appellant / respondent have mentioned that there was a registered agreement dated 03.5.2019. Without specifically mentioning about the existence of the registered agreement dated 03.5.2019, the appellant/respondent had pleaded that the time for completion of the

construction including the grace period of 6 months expires only during September 2019.

12. At this juncture, it may be relevant to have a look at the registered agreement dated 03.5.2019 marked as Ex.B4 (page No.14 in the typed set of papers). This agreement in question appears to have been executed on 03.5.2019 and registered on 06.5.2019. At page 6 and paragraph 11 (a) of the agreement it was strangely mentioned that the construction can be completed by March 2019 plus an additional grace period of 6 months (proposed handing over date) from the date of agreement. It may be noted that it is highly improbable and impossible also. When the construction agreement itself was executed on 03.5.2019 how possession can be given prior to 03.5.2019. This itself is a self serving evidence to show that the Ex.B4 registered agreement dated 03.5.2019 itself was a camouflage document, obtained by the appellant/respondent to suite his convenience and with ulterior motive.

13. On the other hand there is no dispute between the parties as to the execution of agreement dated 22.3.2018 (Marked as Ex.A2 and found in Page 48 of the typed set of papers). As already stated the appellant/respondent in their counter affidavit filed before the trial court, at page No.1 and paragraph No.2 had admitted the existence of the agreement dated 22.3.2018. Following this agreement dated 22.03.2018, the appellant / Respondent also executed a Deed of Guarantee in favour of the Creditor Bank namely M/s HDFC Ltd during March 2018 itself (no specific date is available) so as to get the housing loan sanctioned faster and funds transferred to their account as

quickly as possible. The said Deed of Guarantee has been marked as Ex.A4. There is a clear mention in the said Deed of Guarantee at page 2 about the execution of agreement dated 22.03.2018 between the appellant / respondent and the respondent / complainant. This would go to show that the agreement dated 22.03.2018 has been acted upon between the parties.

14. Moreover as per Ex.A10 (Page 121 of the Typed set of papers) Consolidated receipt dated 14.10.2019 issued by the appellant/respondent, for a sum of Rs.53,00,000/- (fifty three lakhs) and odd have been paid to the appellant / respondent by the respondent/complainant on various dates during the period from 23.7.2017 to 4.5.2018. Only a sum of Rs.2,76,792/- was paid on 9.10.2019. As per Ex.A10 Consolidated receipt it is also proved that immediately after the execution of Ex. A2 agreement dated 22.03.2018 the appellant/respondent received a huge amount from the respondent/complainant before May 2018 towards the costs of construction. Had the agreement came into existence only on 03.5.2019 as stated by the appellant/respondent what made him to receive payments amounting to several lakhs from the respondent/complainant before the agreement dated 03.05.2019. There is no convincing reply from the side of the appellant and there cannot be a reply also. The appellant/respondent having entered into an agreement on 22.03.2018 and received payments of several lakhs during 2018, now cannot turn around and say that the said agreement was not registered.

15. As per Section 13(1) of the Act 2016 there is a duty cast upon the promoter, which runs as follows:

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> ***13. No deposit or advance to be taken by promoter without first entering into agreement for sale. - (1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.***

Therefore it is the duty of the appellant / respondent to take necessary steps to register the agreement dated 22.03.2018 immediately after it's execution. The respondent / complainant cannot be allowed to suffer for the omission committed by the appellant / respondent. The violation of Section 13(1) itself attracts penalty under Section 61 of the Act, 2016. A person cannot be allowed to take advantage of his own mistake.

16. Lastly the learned Counsel for appellant/respondent would argue that the delay of one month was due to the last minute requests made by the respondent/complainant to make some alterations and customization works. Again this is also not correct even as per the averments in the counter affidavit filed by the appellant/respondent himself. At page 4 paragraph No.7 of the counter affidavit the appellant/respondent have stated as follows:

> *"However, the complainant vide email dated 26.3.2018 demanded the respondents to make alterations and customization works in the flat and paid the respondent Rs.68,558/- towards these alterations. The respondent accepted the proposal made by the complainant and quoted the alteration and customization charges vide their email dated 30.3.2018...."*

> *"Therefore it is submitted by the respondent that the delay in completion was not attributable to the respondent but was due to the last minute instructions for alteration and customization given by the complainant."*

17. As already stated the agreement was entered into between the parties on 22.3.2018 itself. The respondent/complainant within few days thereafter vide email dated 26.3.2018 requested the appellant/respondent to make some alteration and customization works in the flat. In fact, the respondent/complainant have also paid the additional cost of Rs.68,558/- towards the alteration and customization works in the flat on 31.3.2018 itself, as evident from the appellant/respondent's own document in Ex.B1 (Page 1 of the typed set of papers) receipt dated 31.3.2018.

18. Therefore, the case of the appellant/respondent that the delay was due to the last minute request for the alteration and customization works also fails. In any event the case of the appellant/respondent cannot be accepted. Having failed to register the agreement as per section 13 of the Act and received the entire payments on the basis of the unregistered agreement a Promoter cannot take advantage of the non registration of the construction agreement and deny compensation, interest and costs to the Allottee.

19. At the conclusion we hold that the awarding of compensation, interest and costs on the basis of the unregistered agreement dated 22.3.2018 by the learned Adjudicating Officer attached with RERA, Chennai is correct. Accordingly we answer the point No.1 in favour of the respondent / Complainant.

20. Point No: 2

In view of the answer to the Point No.1 as above we hold that the appeal deserves to be dismissed. Accordingly we answer this point.

21. In the result the appeal is hereby dismissed. The appellant /Respondent is hereby directed to pay a sum of Rs.50,000/- (fifty thousand only) to the respondent / Complainants towards the expenses incurred by them in defending this appeal.

This Order is directly dictated to the Stenographer, typed in the computer by her, corrected and pronounced by us in the open court on this 20th day of April 2022.

Sd/- xxxx
Administrative Member

Sd/- xxxx
Judicial Member

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