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 21.02.2022

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

Appeal Nos.92 to 97 of 2021

A.No.92/2021

M/s.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ... Appellant

-Vs-

1.Mr.Mohamed Yaseen
2.M/s. Shriram Properties Ltd.,
Rep. by its COO,
Mr.KAV Ramesh Kumar ...Respondents

A.No.93/2021

M/s. Shriram Properties Ltd.,
Rep. by its AVP – Finance & Accounts,
Mr.K.Manikanteswaran ... Appellant

-Vs-

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1.Mr.Mohamed Yaseen
2.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Aignatory,
Mr.R.Murugesan ...Respondents

A.No.94/2021

M/s.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ... Appellant

-Vs-

1.Mr.Mohamed Thahir
2.M/s. Shriram Properties Ltd.,
Rep. by its COO,
Mr.KAV Ramesh Kumar ...Respondents

A.No.95/2021

M/s. Shriram Properties Ltd.,
Rep. by its AVP – Finance & Accounts,
Mr.K.Manikanteswaran .... Appellant

-Vs-

1.Mr.Mohamed Thahir
2.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ...Respondents

A.No.96/2021

M/s. Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan .... Appellant

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-Vs-

1.Mr.K.M.Mohamed Rasik Ali
2.M/s. Shriram Properties Ltd.,
Rep. by its COO, Mr.KAV Ramesh Kumar ...Respondents

A.No.97/2021
M/s. Shriram Properites Ltd.,
Rep. by its AVP – Finance & Accounts,
Mr.K.Manikanteswaran .... Appellant

-Vs-

1.Mr.K.M.Mohammed Rasik Ali
2.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ... Respondents

These appeals were taken on file on and came up for final hearing on 7.2.2022 in the presence of M/s. Aravind Raj, Karthik Sundaram, Pavan Kumar Gandhi, Counsels for the appellant. M/s.Deepika Murali, Anusha Peri, Shreya Narayanan, Counsel for the 2nd respondent. M/s. Genicon & Associates, T.V. Suresh Kumar, N.A.Srinivasan, R.Poovalingam, K.Balaganesh, D.Vignesh, & S.Lakshmi Narayana, Counsel for the 1st respondent in A.Nos. 93 to 97 of 2021. 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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COMMON ORDER

1. The home buyers preferred three complaints before the Adjudicating Officer against the promoter and marketing agent. The Adjudicating Officer directed both the promoter and marketing agent to refund the amount paid by the home buyers after deduction of 5% in the total amount paid hence both of them preferred these appeals. All the six appeals preferred against the three orders of the Adjudicating Officer in C.C.P.Nos.308, 309 and 310 of 2019 in three complaints. Since the point for consideration with regard to quantum of deduction is one and the same for all the six appeals hence common order is pronounced. Hereinafter in these appeals the appellants are called as promoter/marketing agent and the respondents are called as home buyers as per their original rankings.

2. The home buyers booked flats in the project namely "Divine City" at Mangadu developed and promoted by the Cybercity Mangadu Project (P) Limited and marketed by M/s. Shriram Properties Ltd., On 5.6.2018 the home buyers made a booking for the construction of apartments. Subsequently the home buyers and promoter entered into sale and construction agreement separately. The sale price of the apartment was fixed at Rs.64,07,309/- the period of completion 36 months with a grace period of 6 months. The promoter agreed to complete the apartment on 22.3.2022. So far the home buyers paid Rs.11,83,993/-. On 2.4.2019 the home buyers sent a mail and expressed his inability to continue with the project by citing his financial difficulty and requested for the complete repayment of fund without reduction

of the booking amount. The promoter offered to return only Rs.8,78,107/- with deduction of Rs.3,05,886/- by way of cancellation charges and GST. The home buyers not agreed for the same and came forward with complaints before the Adjudicating Officer. After contest the Adjudicating Officer directed the promoter to deduct 5% of the amount paid by the home buyers and directing the promoter to pay litigation expenses Rs.10,000/-. The Adjudicating Officer directed the promoter as well as the marketing agent shall either jointly or severally return the cancellation charges as stated supra. Aggrieved upon the same the promoter as well as the marketing agent has preferred separate appeals on the following main grounds:

- Adjudicating Officer has no jurisdiction to entertain the complaint since he has jurisdiction to adjudicate compensation only.
- The Adjudicating Officer has not find any violation of Section 19(1) and 19(2).
- Section 19(4) cannot be applied to the present facts and circumstances.
- The home buyers have not disclosed the actual reason for cancellation of booking.
- The agreements between the parties were not properly appreciated
- The cancellation letter did not express any consent about the progress in the construction of the project.

- Clause 8(1) of the construction agreement was not properly appreciated.
- The principles of quantum meruit not applicable to the facts of this case when the contract expressly provides for the same.
- The marketing agent is not a promoter and marketing agent has not received any consideration and no agreement between the marketing agent and the home buyers. In such circumstances the liability cast upon the marketing agent is not according to law.

3. The learned counsel for the appellants would submit that the promoter and the home buyers have entered into agreement for sale and construction agreement but unfortunately the learned Adjudicating Officer has not considered the terms of the agreement regarding breach of terms and its remedy and fixed the deduction on the basis of the quantum meruit which is not applicable to the facts of this case. Therefore these appeals have to be allowed.

4. The learned counsel for the home buyers would submit that the learned Adjudicating Officer has passed orders after considering the entire facts on record and came to a correct conclusion and there is no infirmity in that finding. Therefore these appeals have to be dismissed.

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5. Points for consideration:

Whether the appeals deserve to be allowed or not?

Point:

6. The home buyers preferred complaint against the promoter and marketing agent for the relief of interest at the rate of SBI MCLR plus 2 % on the amount paid by the home buyers, to refund the cancellation charges with same interest, compensation for mental agony Rs.10,00,000/- and for litigation costs Rs.50,000/-. After contest the learned Adjudicating Officer directed the promoter and the marketing agent cancellation charges at the rate of 10% on the amount paid by the home buyers with litigation cost of Rs.10,000/- and negatived the other claims. These are the admitted facts.

7. According to the appellants cancellation charges has to be calculated as per the agreement clause 8(1) and not on the principles of quantum meruit. According to the home buyers the fixation of cancellation charges by the Adjudicating Officer is according to law. These are the disputed facts.

8. In these appeals the scope is very limited. The only point raised by the appellants is with regard to fixation of cancellation charges. The cancellation charges fixed by the learned Adjudicating Officer as 10% of the amount paid by the home buyers. The appellants relied construction agreement clause 8(1). It is relevant to mention the clause 8(1) which runs as follows:

8. BREACH OF TERMS AND ITS REMEDY:

(a) Allottee's COVENANT:

1. In the event of the ALLOTTEE failing to pay the aforesaid sums in the manner provided in Schedule D or cancel/withdraw from the Project except for the default of the PROMOTER, then the PROMOTER at their discretion after due notice of 15 days to the ALLOTTEE is entitled to cancel this Agreement and re-allot the Apartment, to another party and the ALLOTTEE shall thereafter have no right, interest or claim over the Apartment. Consequent to such termination, subject to deduction of the Booking Amount, the PROMOTER shall refund the monies collected from the ALLOTTEE executing 90 days of such cancellation without interest, simultaneous to the ALLOTTEE executing necessary cancellation and registration of the Agreement and/or sale deed by the ALLOTTEE. Further, the ALLOTTEE agrees to bear the registration expenses and charges for such cancellation. Alternatively, the PROMOTER shall be entitled to claim interest as per the prescribed rules from the ALLOTTEE for such delayed payment, subject to the PROMOTER having fulfilled their obligations with regard to the construction of the flat contracted by the ALLOTTEE herein.

9. As per the above said clause it is very clear that consequent to such termination subject to deduction of the booking amount the promoter shall refund the monies collected from the allottee.

10. The learned Adjudicating Officer fixed the quantum of deduction as 10% on the principles of quantum meruit. The learned counsel for the appellants has relied the following Hon'ble Supreme Court verdict to establish that the deduction percentage on the principles of quantum meruit is not sustainable.

2019 5 SCC 341

Mahanagar Telephone Nigam ..vs Tata Communication Limited

Compensation quantum meruit is awarded for work done or services rendered, when the price thereof is not fixed by a contract. For work done or services rendered pursuant to the terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for the consideration payable in that behalf.

11. As per the above citation when there is a contract and there is a specific agreement between the parties regarding compensation for breach of contract it has to be followed and the principle quantum meruit is not applicable. In this case the learned Adjudicating Officer has not assigned any reason why agreement clause 8(1) was not followed. In such circumstances this Tribunal accepted the arguments of the appellants and found that fixation of 10% on the amount paid by the home buyers is not sustainable as per the above verdict.

12. The learned counsel for the appellant further relied Hon'ble Supreme Court verdict which runs as follows:

MANU/SC/0489/1996
Housing Urban Development ... vs Kewal Krishan Goel & Others

13. In the premises as aforesaid the impugned judgment and direction of the High Court in each of the appeal are set aside and it is held that the appellant would be entitled to forfeit the earnest money which had been deposited along with the application form and on deducting the said 'earnest' the balance amount may be refunded to allottees - respondents who had made application for refund in question. The appeals are allowed to the extent indicated above but in the circumstances there will be no order as to costs.

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13. In the above said Hon'ble Supreme Court verdict it was held that the appellant/promoter would be entitled to forfeit the earnest money and the balance may be refunded to allottees.

Before the Tamil Nadu Real Estate Appellate Tribunal (TNREAT)
A.No.64 of 2020
M/s.Alliance Villa Pvt. Ltd. Rep by its Managing Director, Manoj Namburu Vs Mohana Sundari and another.

Even though in the schedule of payment two different booking amounts it is stated for the convenience of the promoter. The home buyers are concerned it is only one unit and one villa so two booking amount cannot be claimed by the promoter.

Before the Haryana Real Estate Appellate Tribunal
A.No.600/2019 and A.No.1321/2019
Godrej Project Development Limited Vs. Ankur Dhanuka
Ankur Dhanuka Vs Godrej Project Development Limited & Another

In view of the above said legal position only the nominal amount can be considered to be the earnest money. The earnest money mentioned in clause 11 of the application form clause 2.6 of the agreement i.e., 20% of the sale price which comes to Rs.31,64,848/- cannot be considered to be the earnest money liable to be forfeited.
The learned authority has allowed the appellant/promoter to forfeit 10% of the total sale consideration being the reasonable amount.

14. In the above said verdict of the Haryana Real Estate Appellate Tribunal it was held that the promoter claimed 20% of the sale price as earnest money but the authority allowed only 10% and the same was confirmed by the Appellate Tribunal as reasonable amount.

15. From the above verdicts of the Hon'ble Supreme Court in HUDA -vs- Kewal Krishan Goel case promoter is entitled to deduct earnest money as

cancellation charges. The verdict of this Tribunal in Alliance Villa Private Ltd case booking amount alone permitted as cancellation charges. In Haryana Real Estate Appellate Tribunal case a reasonable booking amount fixed as 10% against 20%. So all the verdicts has permitted the booking amount as per the agreement and not followed the quantum meruit principle. Hence by following the above verdicts this Tribunal is inclined to fix the cancellation charges as contemplated in the agreement at page No. 30 of the typed set of the appellant as clause No.8(a) in which it has been specifically mentioned as deduction of the booking amount. Booking amount mentioned in page No.1 of the typed set of the appellant the booking amount mentioned as Rs.1,59,226/- only. In the above said agreement clause 8(1) except booking amount nothing was mentioned for deduction namely GST etc., Therefore this Tribunal comes to a conclusion that the promoter is entitled to deduct Rs.1,59,226/- only as cancellation charges from the amount paid by the home buyers and the promoter is liable for refund of the balance amount.

16. Regarding interest on the refund amount is concerned the order of the Adjudicating Officer is according to Rule 18 of The Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 hence there is no infirmity in that finding.

17. Therefore this Tribunal comes to a conclusion that these appeals are liable to be allowed in part regarding quantum of cancellation charges and regarding other findings the order of the Adjudicating Officer is confirmed. The point is answered accordingly.

18. In the result, these appeals are allowed in part with regard to quantum of cancellation charges as booking amount only viz. Rs.1,59,226/- without any interest or GST or any other charges. Regarding the awarding of interest for refund and litigation cost the order of the Adjudicating Officer in C.C.P.Nos. 308, 309 and 310 of 2019 dated 27.07.2021 and 30.4.2021 respectively, are confirmed.

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 21st Day of February 2022.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
ADMN. MEMBER

Sd/- xxxx
JUDL. MEMBER

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