BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL
CHENNAI

Friday, the 5th Day of August 2022

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

A.No.21 of 2022

M/s. Alliance Villas Pvt. Ltd.,
Rep by Managing Director
Manoj Namburu ...Appellant

-Vs-

1. Mr.S.Dominic Savio
2. Mrs D.Clotine Marie ... Respondents

This is an appeal U/s 44(1) of the Real Estate (Regulation and Development) Act 2016 as against the Order passed by the Learned Adjudicating Officer in CCP 60 of 2020 dated 14.12.2021.

1. Mr.S.Dominic Savio
2. Mrs D.Clotine Marie ... Complainants

-Vs-

M/s. Alliance Villas Pvt. Ltd.,
Rep by Managing Director
Manoj Namburu ... Respondent

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This appeal was taken on file on 17.06.2022 and came up for final hearing on 03.08.2022 in the presence of M/s. AAV Partners, P.H.Manoj Pandian and N.Zahid Ahmed, Counsels for the appellant. Having heard the Counsel for the appellant through video conferencing and having stood over for consideration till this date and this Tribunal delivered the following:

ORDER

1. On 03.08.2022 this appeal came up for admission. Heard the Counsel for the appellant. This is an appeal against the order passed by the Learned Adjudicating Officer, attached with RERA in CCP 60 of 2020 dated 14.12.2011, directing the appellant/Promoter herein to refund the entire amount of Rs. 93,26,565/- paid by the Respondent/Allottee, towards the construction costs, along with interest @ 10.20% P.A.. The learned Adjudicating Officer also directed the Appellant to refund a further amount of Rs.8,00,086/- paid by the Respondent/Allottee towards the home loan insurance, along with interest @ 10.20% P.A.. Further the learned Adjudicating Officer also awarded lump sum compensation of Rs.5,00,000/-in favour of the Respondent/ Allottee and also directed the appellant/Promoter to pay Rs. 25,000/- towards litigation expenses. As against the said order the appellants/promoters have preferred this appeal before this Tribunal.

2. As per Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, no appeal shall be entertained unless the appellant deposited the total amount to be paid to the allottee including

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interest, compensation if any. In this connection the learned counsel for the appellant submitted that the Adjudicating Officer has no jurisdiction to pass such an order for refund with interest. The learned Counsel went to the extent of arguing that the Order passed by the learned Adjudicating Officer, that too by over looking the Supreme Court Judgment, is non est in law. In support of his contention the learned counsel would rely upon the judgment of the Supreme Court in M/s.New Tech Promoters and Developers Private Limited Vs State of UP & others.

3. We have carefully perused the Supreme Court judgment relied on by the learned counsel for the appellant. After detailed discussion Hon'ble Supreme Court at paragraph No.86 has concluded as follows:

> 86. *From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.*

4. From the above judgment of the Hon'ble Supreme Court, we find some force in the arguments of the learned counsel for the appellant. In the light of the Supreme Court Judgment it is very clear that the learned Adjudicating Officer has no power to order for refund, interest. He has got powers to adjudge compensation only. The judgment of the Hon'ble Supreme Court was in fact brought to the notice of the learned Adjudicating Officer. Inspite of it the learned Adjudicating Officer proceeded to direct refund with interest. The direction of the learned Adjudicating Officer to refund the sum of Rs.93,26,565/- (paid towards the construction costs) and Rs.8,00,086/- (paid towards the home loan insurance) to the respondent/allottee, ultra vires the judgment of the Hon'ble Supreme Court. The question of refund has to be decided only by the Regulatory Authority as per the judgment of the Hon'ble Supreme Court. Therefore, the order of the learned Adjudicating Officer is non est in law.

5. Even if composite application is filed in respect of refund and compensation it can be segregated at the appropriate stage as directed by the Hon'ble Supreme Court in paragraph No.83 of the said judgment, which is reproduced hereunder.

> *83. So far as the single complaint is filed seeking a combination of reliefs, it is suffice to say, that after the rules have been framed, the aggrieved person has to file complaint in a separate format. If there is a violation of the provisions of Sections 12, 14, 18 and 19, the person aggrieved has to file a complaint as per form (M) or for compensation under form (N) as referred to under Rules 33(1) and 34(1) of the*

Rules. The procedure for inquiry is different in both the set of adjudication and as observed, there is no room for any inconsistency and the power of adjudication being delineated, still if composite application is filed, can be segregated at the appropriate stage.

6. The learned Adjudicating Officer ought to have segregated the complaint and proceeded to decide the issue of compensation only by directing the complaint to file a separate complaint before the Authority in respect of the claim of refund. To facilitate such segregation the entire matter has to be remitted back to the learned Adjudicating officer for fresh disposal according to law. The appeal cannot be entertained at this stage. Consequently, the appellant need not be required to deposit those amounts before this Tribunal.

7. In the result, we hold that since the order of the learned Adjudicating Officer has been passed without jurisdiction, the same is non est in law and inexecutable. To avoid confusion in future the order of the Adjudicating officer in CCP 60 of 2020 dated 14.12.2021, being non est in law, is hereby setaside. Finally with a view to implement the directions of the Hon'ble Supreme Court the order passed by the learned Adjudicating Officer, is hereby remitted back to the RERA with the following directions:

i. The order of the Adjudicating officer in CCP 60 of 2020 dated 14.12.2021, being non est in law, is hereby setaside.

ii. The complaint filed in CCP No.60/2020 on the file of the Adjudicating officer is hereby ordered to be restored.

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iii. After such restoration the learned Adjudicating officer shall issue notice to both parties and after giving them an opportunity of being heard, shall decide the question of segregation of the claims of refund and compensation, as per the directions of the Hon'ble Supreme Court and the matter shall be decided afresh.

iv. The appeal is disposed accordingly. Connected Miscellaneous applications are ordered to be 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 5th Day of August 2022.

Sd/-xxxxx
ADMINISTRATIVE MEMBER

Sd/-xxxxx
JUDICIAL MEMBER

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