BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Reserved on : 02.08.2023

Delivered on : 07.08.2023

Coram : Hon'ble Mr.Justice M.Duraiswamy, Chairperson
Mr.R.Padmanabhan, Judicial Member

Appeal No.22 of 2022

Mr. Vishnukumar Balasubramanian
Represented by his Sister and Power of Attorney Agent,
Mrs.Subhasree ... Appellant

- Vs -

M/s. Casa Grand Builder Private Limited
Represented by its Managing Director, Arun MN ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 as against the order of dismissal of the complaint in C.C.P.No.01/2021 passed by the learned Single Member, TNRERA dated 31.03.2022.

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For Appellant : Mr. T. Raghavan

For Respondent : Mr. O.L.V. Ganesan

ORDER

The facts that are relevant for the disposal of the above appeal are as follows:

1. The appellant booked a flat in the real estate project namely "Casa Grande Monte Claro" promoted by the respondent on 21.07.2015. On the date of booking itself the appellant paid a sum of Rs.5,00,000/-. The appellant continued to make further payments on various dates. In all the appellant paid a sum of Rs.2,02,80,259/- upto 16.06.2018. No Sale Agreement and Construction Agreement were executed between the appellant and the respondent. The respondent assured to hand over the flat on or before 31.07.2019, but failed to hand over before the said date. Inspite of several requests the respondent failed to complete the construction and hand over the flat. The appellant availed bank loan and was paying heavy interest to the bank. Thus, the appellant suffered huge loss due to the delay caused. Left with no other option, by letter dated 30.12.2019 the appellant cancelled the booking and demanded refund of the entire amount of Rs.2,02,80,259/- with interest.

2. It is the case of the appellant that he was forced to enter into an unregistered agreement for sale and construction agreement on 10.01.2020. According to the appellant, the respondent acted with the malafide intention. The respondent even after execution of the said

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agreements failed to hand over possession of the apartment till date. The appellant further contended that the respondent has violated sections 11(4)(f), 13 and 17(1) of the Real Estate (Regulation and Development) Act, 2016. The appellant preferred a complaint before the learned Adjudicating Officer, TNRERA in C.C.P.No.1 of 2021 demanding refund of the entire amount paid by him along with interest. Later on the point of jurisdiction the above complaint was transferred to the file of the learned Single Member, TNRERA.

3. It is the case of the respondent that the real estate project was completed within the due date and communicated the same to the appellant through email dated 20.09.2019 along with the completion certificate issued by the CMDA. By the time the appellant cancelled the booking during December 2019 most of the other allottees took possession and started living in their respective apartments. According to the respondent, the appellant was not entitled to any reliefs as claimed by him in the complaint.

4. After hearing both sides, the learned Single Member, TNRERA vide the impugned order dated 31.03.2022 dismissed the complaint. Aggrieved over the same, the appellant preferred this appeal before this Tribunal.

5. Heard both sides.

6. It is an admitted fact that the appellant booked a flat with the respondent for a total cost of Rs.2,21,10,520/- and that the appellant paid a sum of Rs.2,02,80,259/- upto 16.06.2018. The flat was booked on 21.07.2015 by paying a sum of Rs.5,00,000/- and subsequent payments were made without entering into any agreement

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for sale and construction agreement. As per the email dated 30.12.2018 sent by the respondent to the appellant the respondent agreed to deliver the apartment on or before 31.07.2019. It is the case of the respondent that they have shared the completion certificate issued by CMDA with the appellant through email dated 20.09.2019. This fact was not denied by the appellant. Even after seeing the completion certificate, the appellant, instead of paying the balance amount, cancelled the booking abruptly by sending a cancellation letter dated 30.12.2019 for the reasons best known to him.

7. Admittedly, within next 10 days the appellant changed his mind and entered into an agreement for sale and construction agreement with the respondent on 10.01.2020. This itself shows that the appellant had withdrawn his decision to cancel the booking. Even thereafter the appellant has not come forward to pay the balance amount. Without making the balance payment, the appellant is not entitled to demand delivery of possession. The appellant has not stated any valid reasons for entering into such agreements within 10 days of his cancellation of booking in his complaint. Once the appellant entered into an agreement for sale and construction agreement within few days of his cancellation, he is estopped from contending otherwise. The appellant cannot be allowed to blow hot and cold.

8. Viewing from any angle, the appellant is not entitled for refund as claimed by him. However it is open to the appellant to take possession of the flat on payment of the balance sale consideration and on receipt of the balance sale consideration the respondent /

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promoter shall handover the possession of the flat to the appellant/Complainant. We find no grounds to interfere with the impugned order of dismissal of the complaint filed by the appellant. Hence the appeal is liable to be dismissed.

9. In the result, the appeal is dismissed.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
JUDICIAL MEMBER

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