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 :21.06.2023

Delivered on:26.06.2023

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

Appeal No.27 of 2022

M/S. Grove OMR Properties Private Ltd.,
Represented by its Managing Director ... Appellant

- Vs -

David Joseph ... Respondent

PRAYER: Appeal filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 with a prayer to allow the appeal and to set aside the order dated 20.04.2022 in C.C.P.No.147 of 2020 passed by the Single Member, TNRERA.

For Appellants : Mr. P.V. Balasubramaniam, Senior Counsel
for Mr.K.Sathish

For Respondent : Ms. Shailaja Henry
for Mr.C.A.Theagarajan and
Mr.B.Henry M. Balachandran

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ORDER

1. The brief facts that are relevant for the disposal of this appeal are as follows:

The Respondent/allottee booked an apartment in the residential project by name "The Gem Grove" developed by the Appellant/Promoter at a total cost of Rs. 43,25,352.79 which includes the cost of construction, the value of the undivided share of land measuring 286 sq. ft., stamp duty, registration cost, legal fees, service tax, etc. A Construction Agreement and an Agreement for sale in respect of the UDS portion were executed between the parties on 22.05.2013. Subsequently a Sale deed in respect of the UDS portion was also executed and registered on 30.10.2013. As per the terms of the Construction Agreement, the Appellant/Promoter agreed to complete the construction within a period of 24 months from the date of Agreement. Inspite of the expiry of more than 7 years as on 8th November 2020 i.e., the date of filing of the complaint before the TNRERA, the Appellant/Promoter was not able to complete the construction and hand over the apartment to the Respondent/Allottee.

2. On 08.11.2020 the Respondent/Allottee preferred a complaint originally before the Adjudicating Officer, attached with TNRERA seeking refund of the amount of Rs. 38,51,333/- paid by him on various dates along with interest. In addition, the respondent/allottee also claimed the interest component amount of Rs. Rs.21,49,132/- remitted by him to the HDFC bank from where he availed a housing loan. In all, the Respondent/Allottee prayed for the payment of Rs.60,00,465/- with interest at 12% p.a. and also compensation for the mental agony suffered

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by him. The appellant/promoter raised the issue of jurisdiction of TNRERA by contending that the project was not an ongoing project as on 01.05.2017 i.e. the date of Section 3 of the Real Estate (Regulation and Development) Act 2016.

3. Later, in the light of the Hon'ble Supreme Court Judgment in the Newtech Promoters case, the complaint, involving the question of refund, was transferred to the file of Single Member, TNRERA. After hearing both sides, the Single Member vide the impugned order, has decided the issue of jurisdiction of TNRERA in favour of the Respondent/Allottee by holding that the project was an "ongoing project" as on 01.05.2017. The single member further directed the Appellant/Promoter to repay the sum of Rs.60,00,465/- as claimed, by the Respondent/Allottee along with interest at 9.30%. In so for as the claim of compensation is concerned the Respondent/ Allottee was given liberty to file a separate complaint before the Adjudicating Officer. Aggrieved over the said order passed by the Single Member, TNRERA, the Appellant/Promoter preferred this Appeal.

4. Heard both sides.

5. The project by name "The Gem Grove" consists of 680 apartments of various types. They all housed in six blocks with different block names. The Respondent/Allottee was allotted a two bedroom flat with a built up area of 998 sq. ft. in the sixth floor of 'Imperial Red Block' bearing flat No. IR 66. The learned Senior Counsel appearing for the Appellant/Promoter had raised the issue of jurisdiction of the TNRERA by relying upon Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. However during the course of argument he

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had fairly admitted that the construction of the said 'Imperial Red Block' in which the Respondent was allotted an apartment is still not completed in all respects and only the beams and columns were constructed.

6. Therefore, it can be understood that the entire 'Imperial Red Block', in which block, the Respondent/Allottee was allotted an apartment, stands incomplete and not fit for habitation as on date. It is not that the particular apartment allotted to the Respondent/Allottee alone is left incomplete. The entire block namely the 'Imperial Red Block' stands incomplete as on date. Therefore, the entire project will be considered as an 'ongoing project'. The provisions of the Real Estate (Regulation and Development) Act 2016 will prevail over the rules. The Rule 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 has no application in the given facts and circumstances of this case. Therefore all the contentions raised by the learned Senior Counsel on the issue of jurisdiction of TNRERA cannot be accepted.

7. Further the learned Senior Counsel appearing for the Appellant/Promoter contended that the awarding of interest at 9.30% for the entire claim amount of Rs.60,00,465/- by TNRERA is not proper, as it would amount to paying interest twice for the same principal amount paid by the Respondent/Allottee. The learned Senior Counsel also pointed out that the respondent/allottee was also given liberty to move the Adjudicating Officer for claiming compensation.

8. We have carefully considered the contentions raised by the learned senior counsel in this regard. The Complainant in his complaint has stated that he had paid a sum of Rs.38,51,333/- on various dates from 16.05.2013 to 11.11.2013. The Respondent/ Allottee also claimed, by way

of recouping the interest component of Rs.21,49,132/- remitted by him to the bank along with the monthly E.M.I. In all, the Respondent/Allottee claimed a sum of Rs.60,00,465/-. The Single member of TNRERA has directed refund of the entire amount of Rs.60,00,465/- along with interest at 9.30% as if the entire amount of Rs.60,00,465/- was paid to the Appellant/Promoter. The Single member of TNRERA ought to have directed refund of the actual amount paid to the Appellant/Promoter along with interest to be calculated from the respective dates of payments. In other words, awarding interest at 9.30% on the entire sum of Rs.60,00,465/- would amount to compensation. Since the TNRERA has given liberty to the Complainant to move to the Adjudicating Officer for compensation, the order of the TNRERA awarding interest at 9.30% on the entire sum of Rs.60,00,465/- is liable to be set aside.

9. Admittedly the actual amount paid by the Respondent/Allottee on various dates comes to Rs.38,51,333/-. The claim of the Respondent/Allottee with regard to the interest component of Rs.21,49,132/- remitted by him to the HDFC bank would not amount to refund. It would only amount to recouping of his cost of funds. Refund is distinct from recouping. Once liberty was given to the Respondent/Allottee to move the Adjudicating Officer for compensation, it is for the Adjudicating Officer to consider the claim at the time of computing the compensation as per Section 72 of the Act.

10. Therefore, it would be proper to direct the Appellant/Promoter refund the actual amount of Rs.38,51,333/- received by them from the Respondent/allottee on various dates from 16.05.2013 to 11.11.2013 along with interest at 9.30% which is to be calculated from

the date of the respective payments till the date of deposit made by the Appellant/Promoter under section 43(5). It is brought to our notice that at the time of filing this Appeal, the Appellant/Promoter has deposited a sum of Rs.93,49,532/- in three installments as per Section 43(5) of The Real Estate (Regulation and Development) Act, 2016.

11. In the light of the above discussion, the order passed by TNRERA in CCP No.147 of 2020 dated 20.04.2022 is modified as follows:

12. The Appellant/Promoter, instead of paying Rs.60,00,465/- along with interest at 9.30%, is directed to refund the entire amount of Rs.38,51,333/- along with interest at 9.30% from the date of respective payments made by the Respondent/Allottee till 22.09.2022 i.e., the date on which the first installment of pre deposit was made under Section 43(5) of the Act. **After the expiry of appeal time** the Respondent/Allottee is at liberty to withdraw the amount due to him as modified by this Tribunal, from and out of the amount deposited under section 43(5), by the Appellant/Promoter along with the proportionate interest accrued in the fixed deposit account. Balance amount if any available shall be refunded to the Appellant/Promoter. In other respects, the order passed by the TNRERA including the liberty granted remains intact.

13. In the result, the Appeal is disposed of with modification indicated as above. Connected Miscellaneous applications are closed.

Sd/- xxxx
CHAIRPERSON

Sd/-xxxx
ADMNINISTRATIVE MEMBER

Sd/- xxxx
JUDICIAL MEMBER

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