BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

Friday the 11th day of November 2022

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

Appeal Nos.3 and 4 of 2022

A.No. 3 of 2022

1. M/s G.K.S.Technology Park Ltd.,
Rep. by its Managing Director

2. Mr.Suresh Vaidyanathan,
The Chief Executive Officer
G.K.S.Technology Park Ltd., ... Appellants

-Vs-

Mrs.T.Aananthi ... Respondent

&

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A.No. 4 of 2022

Mrs. T.Aananthi ... Appellant

-Vs-

1. M/s G.K.S.Technology Park Ltd.,
Rep. by its Managing Director

2. Mr.Suresh Vaidyanathan,
The Chief Executive Officer
G.K.S.Technology Park Ltd., ... Respondents

Both these appeals were taken on file on 27.01.2022 and came up for final hearing on 02.09.2022 in the presence M/s.Anant Merathia, Ranghasayee, Vetrivel and Kavin, Counsels for the Appellants in A.No.3 of 2022 and also the Counsels for respondents in A.No.4 of 2022. Likewise the respondent in A.No.3 of 2022 and the appellant in A.No 4 of 2022 appeared party-in-person. Having heard the arguments on both sides and having stood over for consideration till this date and this Tribunal delivered the following:

COMMON ORDER

1. The promoters, who suffered an order to pay compensation at the hands of the learned Adjudicating Officer, TNRERA in C.C.P.No.212 of 2019 dated 30.11.2021, have preferred the appeal in A.No.3/2022. On the other hand, the allottee seeking more compensation, have preferred a cross appeal in A.No.4/2022.

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2. As the facts and circumstances involved are one and the same, both these appeals are being disposed by this common order. For the sake of convenience the parties will be referred to as per their rank and status in A.No.3/2022.

3. It is the case of the appellants that vide allotment letter dated 12.09.2016 the respondent was allotted flat No.D-101 in the real estate project by name "VIHA" situated at No.13, V.O.C Colony, Anna Nagar East, Chennai – 102. Following the allotment, a sale agreement in respect of the UDS portion and a construction agreement were executed between the 1st appellant and the respondent during April 2017. As per the construction agreement the appellants shall complete the construction by October 2017 with a grace period of 3 months upto January 2018. The appellants completed the construction well ahead of the due date and obtained Completion certificate on 24.8.2017 from the Chennai Metropolitan Development Authority. The same was communicated to the respondent vide email dated 31.8.2017. The respondent failed to make payments as per payment schedule and had paid only 40% of the amount and there was an outstanding amount of Rs.79,09,484/- as on 31.8.2017.

4. The Counsel for the appellant contended that as per the terms of the construction agreement the appellants are entitled to charge interest against the outstanding amount. The appellants demanded the outstanding amount along with interest at 18% p.a. through various emails from 12.10.2017 onwards. But the respondent did not come forward to pay the outstanding amount with interest. The respondent expressed her inability to

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pay the balance amount with interest and asked for the formalities to cancel the booking. Accordingly the appellants communicated the details of the exact amount refundable in the event of cancellation vide emails dated 19.12.2018 and 27.12.2018. Suddenly the respondent gave up her idea of cancellation and came forward to continue in the project. She informed the same through email dated 31.12.2018 and requested for some rebate. The respondent promised to pay the outstanding amount by 05.04.2019. But she had not kept her promise and dragged the payment till June 2019.

5. The Counsel for the appellant further contended that after payments issue was somewhat over, the respondent preferred complaint before TNRERA in C.No.411/2019 demanding a particular car parking and the same was rejected by the TNRERA by order dated 19.12.2019. The respondent not satisfied with the said order preferred appeal in A.No.11 of 2020 before this Appellate Tribunal. The respondent succeeded in the said appeal and the appellants herein preferred second appeal in CMSA No.16 of 2020 before the Hon'ble High Court and the same is pending. While the complaint in C.No.411 of 2019 was filed and pending before TNRERA, the respondent also filed another complaint against the appellants in C.C.P.No. 212 of 2019 before the Adjudicating Officer, TNRERA claiming compensation on the ground of delay in handing over of possession and for mental agony.

6. After hearing both sides the learned Adjudicating Officer allowed the complaint and awarded compensation by way of interest at the rate of 10.35% p.a on the total amount of Rs.1,42,50,000/- from the respective dates of payment till date of handing over of possession of the apartment.

The learned Adjudicating Officer also awarded Rs.1,48,000/- towards the shortage in the extent of the apartment, Rs.50,000/- towards rectification of defects, Rs.22,867/- towards maintenance charges, Rs.5,00,000/- towards mental agony and Rs.25,000/- towards legal expenses. Hence the appeal.

7. It is the case of the respondent that the total costs of the apartment including the UDS comes to Rs. 1,45,56,735/-. The respondent availed Housing loan from SBI to a tune of Rs.1,03,27,000/ and the balance have to be paid as personal contribution by the respondent. Based on the execution of sale agreement and the construction agreement between the appellant and the respondent, a Tripartite agreement was also executed along with SBI during April 2017 itself. On various dates the respondent paid Rs. 50,00,000/- through the bank loan and Rs.20,00,000/- towards her personal contribution. In all a sum of Rs.70,00,000/- was paid on various dates up to September 2017.

8. The respondent further contended that there is a specific clause in the tripartite agreement by which the appellants agreed that on receipt of 50% of the total costs he shall execute a proper conveyance deed/sale deed in favour of the respondent and also agreed to deliver the registered sale deed along with original registration fee receipt directly to the State Bank of India. In order to satisfy the 50% of the total costs as mentioned in the Tripartite agreement, the respondent paid a another sum of Rs.2,50,000/- by means of a cheque during October 2017. But the appellant with a view to avoid execution of sale deed cunningly refused to receive the cheque payment. Without getting the sale deed registered, the respondent was

perplexed and find it very difficult to make both the appellants and the bank to meet in a point till the end of 2018.

9. The respondent also contended that from January 2019 to June 2019 she paid the entire balance amount of Rs.72,50,000/- from and out of the loan amount and out of her personal contribution. Including the earlier payment of Rs.70,00,000/- made during 2017 the respondent paid Rs.1,42,50,000/- as on 18.06.2019 excluding the registration charges. Later at the time of registration during March 2020, as per the directions of the High Court, the appellants demanded further payment of Rs.17,00,000/- towards balance sale consideration and registration charges. But the respondent paid Rs.15,50,000/- only to the appellants after deducting Rs.1,50,000/- towards the cost of 14 sq. ft. that fell shortage in the total plinth area. Thus including the earlier payment of Rs.1,42,50,000/- the respondent paid Rs.1,58,00,000/- to the appellants. But as per the final cost sheet forwarded by the appellants by email dated 12.08.2020 the total cost including registration comes to Rs.1,56,85,823/- .The appellants are liable to refund the excess amount collected from the respondent.

10. The respondent further contended that because of the adamant attitude of the appellants the respondent suffered a lot of mental agony. Further the respondent was ill-treated by the appellants on several occasions. Therefore, the respondent feels that the compensation for mental agony and for loss of enjoyment awarded by the Adjudicating Officer is not sufficient. Therefore the respondent prayed this Tribunal to award Rs.25,00,000/- as increased compensation towards mental agony and

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Rs.3,00,000/- as increased compensation towards loss of enjoyment, in addition to the compensation awarded on other heads by the Adjudicating Officer with interest. Demanding increased compensation the respondent preferred a cross appeal in A.No.4/2022.

11. Heard both sides. Records perused. Now the questions that arose for our consideration are as follows.

(a) When there is a tripartite agreement, whether the Respondent alone be held responsible for the delayed payment ?

(b) Whether, in the given circumstances, the mere delay in handing over of possession alone will entitle the allottee to claim compensation ?

12. Let us consider both the questions in common as the facts and circumstances are interdependent with each other. It is an admitted fact that the parties to these appeals and the State Bank of India had entered into a tripartite agreement during April 2017. There is a specific clause in the tripartite agreement by which the appellants have specifically agreed that on receipt of 50% of the costs, they shall execute a proper conveyance deed/sale deed in favour of the respondent and also agreed to deliver the registered sale deed along with original registration fee receipt directly to the State Bank of India and not to the borrower. The said Clause 7 of the tripartite agreement is reproduced hereunder:

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7. That on the receipt of 50% of the consideration amount the builder shall execute a proper conveyance deed/ sale deed in favour of the borrower. The builder undertakes to deliver the same along with original registration fee receipt directly to the State Bank of India and not to the borrower(s). Before the execution of the sale deed the builder shall inform the State Bank of India about the same on the completion of the project."

13. Further as per clauses 8 & 9 of the said tripartite agreement the appellants also agreed that the loan amount may be credited to their loan account No.412301010035429 with Union Bank of India, Nungambakkam Branch, from where the appellants have availed financing facility for the project. The appellants also agreed to inform the State Bank of India about the developments in the project. By this tripartite agreement the stage wise payment was ensured by the State Bank of India upon certain conditions. Instead of approaching the state Bank of India for stage wise payments in an appropriate manner, the appellants unnecessarily harassed the respondent by sending letters and emails demanding payments with interest charged at 18% p.a.

14. The interesting twist of this case lies here. As per the construction agreement the appellants agreed to complete the construction by 31.10.2017 with grace period of 3 months. However the appellant claimed to have completed the project two months ahead of the due date. If it was true, the appellant could have executed the sale deed get it registered and handed over the same to the bank and got the balance loan amount

released in their favour, instead of harassing the respondent. On the contrary the appellants approached the State Bank of India by writing a letter dated 11.9.2017 with a strange request to relax the condition imposed in Clause 7 of the Tripartite agreement by raising the earmarked percentage of the loan amount from 50% to 95% for the builder to execute a proper conveyance deed/ sale deed in favour of the borrower. All these aspects can be inferred from the letter dated 20.10.2017 of the State Bank of India found available in the typed set of papers of the appellants at page 71 and 72.

15. The appellants having received Rs.70,00,000/- as on 12.09.2017 out of the total cost of Rs.1,45,56,735/-, ought to have executed the conveyance deed in favour of the respondent and handed over the same to the bank for facilitating the bank to disburse the balance loan amount as per the terms of the tripartite agreement. Further the refusal by the appellant to receive the cheque for Rs.2,50,000/- issued by the respondent, itself shows something was fishy in their minds. On the other hand the appellants instead of coming forward to execute the conveyance deed, wrote such a letter to the State Bank of India on 11.9.2017 as stated above. One year later it appears, the State Bank of India accepted the request of the appellants and raised the earmarked percentage of the loan amount from 50% to 95%, for the builder to execute a proper conveyance deed/ sale deed and also released the balance loan amount during the early months of 2019 without the conveyance deed being executed. Thereafter the respondent was also able to make payment from and out of the loan amount and out of her personal contribution. As such the respondent continued her payments and paid

Rs.72,50,000/- from January 2019 to June 2019. Including the earlier payment of Rs.70,00,000/-paid during the year 2017, the respondent paid Rs.1,42,50,000/- as on 18.06.2019. Apart from this the respondent also paid the registration charges of Rs.15,51,200/-at the time of registration during March 2020.

16. Had the appellant executed the conveyance deed in favour of the respondent during September 2017 and handed over the conveyance deed to the State Bank of India, as agreed by him in the tripartite agreement, the property would have been mortgaged by the respondent in favour of the bank. In turn the bank would have disbursed the balance loan amount in favour of the appellant and there would not have been any delay in making further payments as there was sufficient amount was available at the loan account of the respondent. The appellant has to blame himself for writing such a letter to the State Bank of India on 11.09.2017 requesting to increase the earmarked percentage of the loan amount from 50% to 95%, for the builder to execute a proper conveyance deed/ sale deed. It appears that it took nearly one year for approval by the State Bank of India. Viewing from any angle the respondent alone cannot be made liable for the delayed payments. The appellant and the State Bank of India also not played well their respective roles as per the tripartite agreement.

17. On the other hand, the appellants harassed the respondent for no fault of her. The appellants, knowing fully well that it was the State Bank of India making payments on behalf of the respondent as per the Tripartite agreement, had sent several emails and letters demanding payments with

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interest at 18%. The respondent though initially had sent several reply emails in a humble manner, at one stage she got vexed with the demand of interest at 18% p.a. and gone to the extent of withdrawing from the project. For the queries raised by the respondent regarding the formalities for cancellation the appellants took nearly 12 months time in communicating the respondent about the formalities for cancellation. Thus the appellants strategically prevented the respondent from withdrawing from the project even.

18. Likewise, the delay in execution of sale deed and handing over of possession of the apartment after June 2019 cannot be attributed upon the appellant alone. When everything was set for registration of sale deed, the respondent took revenge actions against the appellants alleging that the appellant initially promised but later failed to allot a particular car parking. In fact the particular car parking was already allotted to another allottee during the year 2018 itself. Therefore if the respondent suffered any mental agony after June 2019 she has to blame herself for the same.

19. After the dispute with regard to the payment was somewhat over during June 2019, another dispute was raised by the respondent in respect of the allotment of specific car parking. Within few months the dispute reached the RERA in the form of a complaint in C.No.411/2019. The RERA rejected the claim of the respondent with regard to the allotment of specific car parking. The respondent preferred appeal before this Tribunal in A.No.11/2020 where she succeeded in getting the allotment of specific car parking. Against the said order of this Tribunal the appellants preferred

second appeal in CMSA No. 16 of 2020 and the same is pending before the Hon'ble High Court of Madras. As per the interim order passed by the Hon'ble High Court the appellants ultimately executed the sale deed in favour of the respondent on 06.03.2020 and handed over the possession of the apartment.

20. Regarding compensation for the delayed handing over of possession, both the appellant and respondent have equally contributed for the delay in handing over of possession as discussed above. Moreover the respondent has neither pleaded nor proved any loss or damage caused to her property due to the delayed handing over of possession by the appellants. The question of payment of any compensation arises only when there is a loss or damage caused to any person or to his property. But there are neither any pleadings nor any proof to show that the respondent had suffered any loss or damages required to be compensated. Therefore, the awarding of compensation by way of interest at 10.35% p.a. due to the delayed handing over of possession by the appellants is not justified and the same is liable to be set aside.

21. Regarding the order directing refund of the excess payment of Rs.1,48,800/- on the ground of shortage of extent of plinth area, the same is also liable to be setaside. Because the respondent had already adjusted a sum of Rs.1,50,000/- with the registration charges, and paid Rs.15,50,000/- only as against the demand of Rs.17,00,000/-, at the time of registering the sale deed on 06.03.2020. Therefore, no further payment can be awarded once again on the same ground.

22. In the facts and circumstances above discussed we are of the considered view that the order of the adjudicating officer awarding compensation on other heads is just and reasonable and there is no necessity for this Tribunal to interfere and alter the same.

23. In the result in so for as the A.No.03 of 2022 is concerned, the portion of the order of the Adjudicating officer in C.C.P.No.212 of 2019 dated 30.11.2021, awarding compensation by way of interest under the head of delayed handing over of possession under paragraphs 8(a) & (b) and the portion of the order granting the relief of refund of Rs.1,48,800/- in favour of the respondent in paragraph 8(d) are hereby set aside. The awarding of compensation on other heads and litigation costs, contained in paragraph 8(e), 8(f) and 8(g) hold good and remain as such. Accordingly the appeal in A.No.3 of 2022 is partly allowed. No costs.

24. In the result, in so for as the A.No.04 of 2022 is concerned the same is hereby dismissed. No Costs. Connected Miscellaneous applications if any pending are hereby closed.

Sd/-XXXX
ADMINISTRATIVE MEMBER

Sd/-XXXX
JUDICIAL MEMBER

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