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: 13.10.2023

Delivered on: 03.11.2023

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

Appeal No.33 of 2022

Srinivasan Govindarajan ... Appellant

- Vs -

M/s. Casa Grande Shelter LLP,
rep. by its Managing Partner, M.N.Arun ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to allow the appeal by setting aside certain portion of the impugned order dated 11.02.2022 in C.C.P.No.48/2021 passed by the learned Adjudicating Officer set out in paragraphs:

(a) Para 8(K) and direct the Respondent to pay compensation of Rs.14,88,708/- to the Appellant for deficiency of service in the

Verified Real Estate ™

quality of construction work and for re-plastering and repairing of entire C-107 flat.

(b) Para 8(l) and direct the Respondent to pay compensation @ Rs.5,000/- per month to the Appellant towards purchase of water through lorries until the Respondent obtains the water connection from Chennai Metropolitan Water Supply and Sewerage Board.

(c) Para 8(m) and direct the Respondent to pay a sum of Rs.35,000/- per month towards rental income accrued with interest at the rate of 18% from 01.09.2019 to till date of possession, after receipt of occupancy certificate to the Appellant.

(d) Para No.9(c)(i) & (ii) and direct the Respondent to pay interest at the rate as ordered by the learned Adjudicating Officer per annum on Rs.64,18,500/- as compensation from 01.09.2019, the due date of delivery of possession to 05.11.2020, the date of filing of Form N to the Appellant and not to limit the same until 18.09.2020.

(e) Para 9(c)(i) & (ii) and direct the Respondent to pay interest pendente lite at the rate as ordered by the learned Adjudicating Officer per annum on the net cost of purchasing the Apartment of Rs.64,18,500/- as compensation from 05.11.2020, date of

Verified by RealEstate™

filing of Form N to till date of offer of possession after receipt of the occupancy certificate to the Appellant.

(f) Para (9)(c)(iii) and enhance mental agony compensation from ordered amount of Rs.1,00,000/- to Rs.20,00,000/-.

For Appellant : Mr.T.K. Bhaskar

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

ORDER

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

1. The Appellant is an Allottee of the real estate project by name "Casa Grand Asta" launched by the Respondent/Promoter in the year 2017 at Korattur, Chennai. The Appellant/Allottee booked an Apartment bearing No.C-107 on 27.09.2018. A Construction Agreement was entered into between the parties on 20.03.2019. As per the terms of the Construction Agreement, the Apartment should be handed over by August 2019.

2. It is the case of the Appellant/Allottee that as per Clause 4(a) of the said Agreement, the Respondent/Promoter agreed that timely delivery of possession of the Apartment is the essence of the Agreement. Clause 5(b)(1) of the said agreement stipulates that Subject to force majeure clause, if the Promoter fails to hand over the Apartment in a ready to move in stage within the time specified, the Promoter shall be

Verified RealEstate™

considered to be on default. Further, "Ready to move in possession" shall mean that Apartment shall be in a habitable condition which is complete in all respects. According to the Appellant/Allottee, the Respondent/ Promoter failed to complete the construction within the stipulated period.

3. It is the case of the Appellant/Allottee that the flat was handed over to him, vide letter dated 18.09.2020, for interior purpose only, without water, electricity, sewage amenities and other common amenities. In the same letter, it was informed by the Respondent/ Promoter that occupation of the Apartment will be announced officially. The electricity connection was given only during April 2021. The other amenities such as metro water and sewage amenities were not provided till date. Due to lack of these basic amenities, the Appellant/Allottee could not reside or lease out the apartment to a tenant.

4. The Appellant/Allottee, earlier preferred a complaint before TNRERA in C.No.122/2020, seeking directions against the Respondent/ Promoter to provide basic amenities. After enquiry, the TNRERA, by its order dated 30.12.2021, directed the Respondent/ Promoter to provide all the basic amenities as promised in the Construction Agreement on or before 31.03.2022. According to the Appellant/Allottee, those directions of the TNRERA were not fully complied with till date. Hence, an Execution petition was filed and the same is pending before the TNRERA. According to the learned Counsel for the Appellant/Allottee, the claim of

the Respondent/Promoter that possession was handed over on 18.09.2020 is not in accordance with the Clause 5(b)(1) of the Construction Agreement. Therefore, the Appellant/Allottee is entitled for interest, from August 2019 till the date of handing over of possession in habitable condition, on Rs.64,18,500/-, being the total cost of the Apartment paid by him.

5. It is the case of the Appellant/Allottee that till June 2021, the Respondent/Promoter bore the water tanker lorry charges for supplying water to the Apartments. After the Appellant/Allottee filed the complaint seeking compensation before the Adjudicating Officer, the Respondent/Promoter collected Rs.5,000/- from each Allottee towards the water tanker lorry charges from July 2021 onwards, including the Appellant/Allottee. According to the Appellant/Allottee, the Respondent/Promoter is bound to compensate the Appellant/ Allottee by paying Rs.5,000/- per month from July 2021 till metro water connection is obtained.

6. It is the case of the Appellant/Allottee that there are lot of defects in construction quality. The Respondent/Promoter had used substandard materials for plastering the apartment. As a result of poor construction, the entire apartment complex looks like an old building.

7. The learned Counsel for the Appellant/Allottee contended that the awarding of interest by the learned Adjudicating Officer at 9.30% per annum on the total cost of Rs.64,18,500/- from 01.09.2019 to

18.09.2020 is not correct. He further contended that interest should have been awarded from 01.09.2019 till the date of handing over of the apartment in a habitable condition. The Appellant/Allottee also claimed compensation towards loss of rental income at the rate of Rs.35,000/- per month with interest, compensation towards water tanker lorry charges at the rate of Rs.5,000/- per month, compensation of Rs.14,88,708/- towards defect rectification for re-plastering and repairing the entire apartment C-107, compensation of Rs.20,00,000/- towards mental agony and Rs.1,00,000/- towards litigation expenses.

8. On the other hand, it is the case of the Respondent that they have completed the construction during January 2020 and applied for the Completion Certificate on 23.01.2020, but the same was obtained only on 14.07.2020 due to Corona Pandemic at the relevant time, which was also informed to the Appellant/Allottee. The Respondent/ Promoter issued no due certificate to the Appellant/Allottee on 18.09.2020. It is clearly mentioned in the said certificate that the apartment was ready for possession. Due to Corona Pandemic, formal possession of the apartment was handed over through a letter dated 18.09.2020.

9. According to the learned Counsel for the Respondent/ Promoter, the delay of few months was not due to the negligence of the Respondent but due to Covid Pandemic, which factor was beyond the control of the Respondent/Promoter. According to the learned Counsel,

Verified by RealEstate

the stipulations contained in Clause 5(1) (b) of the Construction Agreement are subject to force majeure clause.

10. According to the learned Counsel for the Respondent/ Promoter, they are ready to rectify the defective plastering, therefore, there is no need for the Appellant/Allottee to carry out the same and that the Respondent/Promoter is taking steps to get metro water connection and the same is under process.

11. After hearing both sides, the learned Adjudicating Officer, TNRERA had allowed the complaint in part. The learned Adjudicating Officer has awarded interest at 9.30% on Rs.64,18,500/- from 01.09.2019 to 18.09.2020. The learned Adjudicating Officer had also awarded interest at 9.30% per annum on the amount of compensation so arrived, from the date of complaint till the date of payment. A sum of Rs.1,00,000/- towards mental agony and a sum of Rs.25,000/- towards legal expenses were also awarded. The other compensations claimed by the Appellant/Allottee were rejected by the learned Adjudicating Officer. Aggrieved over the same, the Appellant/Allottee preferred the above appeal before this Tribunal.

12. Heard both sides. The Appellant/Allottee in his grounds of Appeal has sought for as many as 6 reliefs (i.e.) (a) to (f).

13. So far as the prayer (a) seeking a direction to the Respondent/ Promoter to pay compensation of Rs.14,88,708/- to the Appellant/ Allottee for deficiency of service in the quality of construction work and

for re-plastering and repairing of entire C-107 flat is concerned, it is an admitted fact that the Appellant/Allottee had earlier preferred a complaint in C.No.123/2020 before TNRERA in respect of the same real estate project "Casa Grand Asta". The said complaint was filed seeking directions against the Respondent/Promoter to provide metro water supply and to deliver possession of the Apartment in a habitable condition as per clause 5(b)(1) of the Construction Agreement. No relief was sought in respect of the alleged defects in the construction quality in the said complaint in C.No.123/2020.

14. In the said Complaint, there was a specific reference made about the letter dated 18.09.2020 for handing over of possession. Therefore, it is obvious that the said complaint in C.No.123/2020 was filed subsequent to the handing over of possession of the apartment on 18.09.2020. If really, there was any defect in construction quality, the Appellant/Allottee ought to have pleaded the said issue in his previous complaint and sought for necessary directions in this regard. The Appellant/Allottee had spoken about the alleged defects in the construction quality for the first time in his email dated 03.02.2021. Even at that time, the complaint in C.No.123/2020 was pending before the TNRERA and the same was disposed of only on 30.12.2021. The Appellant/Allottee could have amended the reliefs sought for in the complaint and included the relief with regard to the quality of construction. However, he chose to remain silent.

15. The Appellant/Allottee was not able to explain as to why he did not plead and seek any relief on the alleged inferior construction quality. Admittedly, the Engineer's report and the quotation for re-plastering of the walls in all the rooms were obtained during the first week of December 2020 itself. Inspite of having the Engineer's report and the quotation ready with him, the Appellant/Allottee did not choose to file the same before the TNRERA during the course of enquiry in C.No.123/2020. No satisfactory explanation was offered by the learned counsel for the Appellant/Allottee for such omission. Therefore, it clearly establishes that the allegation with regard to the quality of construction was an after-thought. Even otherwise, as per Section 14(3) of the Real Estate (Regulation and Development) Act 2016, the Appellant/Allottee is entitled to have the defects rectified by the Respondent/Promoter, as the defect liability period of 5 years has not yet expired. Therefore, the rejection of the claim of compensation of Rs.14,88,708/- on this ground, by the learned Adjudicating Officer is proper.

16. With regard to relief (b) seeking a direction to the Respondent/Promoter to pay compensation at Rs.5,000/- per month towards the cost of purchase of water through lorries till the Respondent/ Promoter obtains water connection from CMWSSB, it is the specific case of the Appellant/Allottee that he has not taken possession of the Apartment till date as the same is not in a habitable condition and basic amenities such as water, electricity and sewage were not provided by the

Respondent/Promoter till date. It is pertinent to note that the Appellant/Allottee also claimed compensation towards loss of rental income alleging that due to lack of basic amenities, he could not lease out the apartment. The Appellant/Allottee, having taken the stand that he had not taken possession of the apartment, cannot ask for compensation at Rs.5,000/- per month towards water tanker lorry charges as there is no need for him to consume water. The Appellant/Allottee cannot blow hot and cold. Further, the Appellant/Allottee has not produced any documentary evidence for the payment of Rs.5,000/- per month towards water charges. In these circumstances, the relief of compensation prayed for by the Appellant towards water tanker lorry charges was rightly rejected by the learned Adjudicating Officer.

17. With regard to relief (c) for a direction to the Respondent/ Promoter to pay compensation at Rs.35,000/- per month towards loss of rental income with interest at 18% per annum from 01.09.2019 to the date of habitable possession is given, the learned Adjudicating Officer had rejected the claim on the ground that the Appellant/ Allottee had not produced any document to prove the alleged loss of rental income.

18. In order to get over the findings of the learned Adjudicating Officer, the Appellant/Allottee filed an application in M.A.No.121 of 2022 under Order 41 Rule 27 of C.P.C. for receiving additional documents and the said application was allowed on 11.10.2023. For the first time, the

Appellant/Allottee produced a copy of website by name "NoBroker.com" to prove the monthly rental value in the real estate project "Casa Grand Asta". As per the certificate under Section 65(b) of Indian Evidence Act submitted by the Appellant/Allottee, the webpage appears to have been downloaded and a printout was taken on 27.06.2022. In this webpage, a 3BHK flat, in the real estate project "Casa Grand Asta", was rented for Rs.32,000/- per month. But the Appellant/Allottee has not filed any document to prove the rental value three years before, i.e., as on 01.09.2019, from which date the Appellant/Allottee claimed loss of rental income.

19. As per the letter dated 18.09.2020 for handing over possession produced by the Appellant/Allottee himself, the possession of the apartment was handed over to the Appellant/Allottee for interior purpose. There is also a mention in the said letter that the official handing over will be announced later. It is pertinent to note that from March 2020 till December 2020, Corona Pandemic was in peak in Chennai. As on 18.09.2020, including the Appellant/Allottee, nearly 90 allottees took possession of their respective apartments. At the beginning, the allottees joined together through ZOOM meetings and provisionally formed an Association called "Casa Grand Asta Allottees Association". The Appellant/Allottee herein acted as the President of the said Association and had email correspondences with the Respondent/ Allottee with regard to providing of the amenities. All these clearly prove

Verified RegEstore

that possession was handed over to 90 allottees, including the Appellant/Allottee, on 18.09.2020 itself. Mere lack of basic amenities as per the Construction Agreement will not affect the nature and character of possession in any manner, as the Respondent/ Promoter provided all the necessary amenities by making necessary alternative arrangements. Therefore, the contentions raised by the learned Counsel for the Appellant/Allottee that the handing over of possession on 18.09.2020 was not in a habitable condition due to lack of basic amenities is hereby rejected. In these circumstances, the learned Adjudicating Officer rightly rejected the claim of compensation towards loss of rental income.

20. The reliefs (d & e) seeking for a direction to the Respondent/ Promoter to pay interest at the rate of 9.30% per annum (as ordered by the learned Adjudicating Officer) from 01.09.2019 to 05.11.2020 (i.e.) the date of filing of the complaint and future interest from 05.11.2020 to the date of habitable possession is given with all amenities, on the total cost of construction of Rs.64,18,500/- towards compensation for the delay in delivery of possession under Section 18(a) of the Real Estate (Regulation and Development) Act, 2016, the learned Adjudicating Officer had awarded interest from 01.09.2019 to 18.09.2020 only towards compensation for the delay in delivery of possession. As already stated, the Appellant/Allottee is disputing the nature and character of possession given on 18.09.2020. It is an admitted fact that formal possession was given to the Appellant/Allottee on 18.09.2020. Nowhere in the complaint,

the Appellant/Allottee has specifically disputed the formal handing over of possession on 18.09.2020.

21. In fact, after the possession was given on 18.09.2020 amid Corona Pandemic, nearly 90 allottees joined together over ZOOM meetings and formed "Casa Grand Asta Apartment Owners Association" and the Appellant/Allottee himself had acted as the President of the said Association. In the capacity as the President of the Association, the Appellant/Allottee had corresponded through e-mails with the Respondent/Promoter. In one of the e-mail dated 01.10.2020, the Appellant/Allottee, as the President of the "Casa Grand Asta Apartment Owners Association" had appreciated the prompt attention paid by the Respondent/Promoter to the queries raised by the Allottees' Association regarding the water supply, storage tanks, etc.

22. As rightly pointed out by the learned Adjudicating Officer, the possession handed over to the Appellant/Allottee for interior purpose on 18.09.2020 was never surrendered back to the Respondent/ Promoter. On the one hand, the Appellant/Allottee is claiming compensation towards water tanker lorry charges as if he is in possession of the apartment and on the other hand he is claiming interest for Rs.64,18,500/- till the date of delivery of habitable possession as if possession of the apartment was not at all given to him till date. The Appellant/Allottee cannot be allowed to blow hot and cold. The Appellant/Allottee has not approached the learned Adjudicating Officer with clean hands. Therefore, awarding

interest from 01.09.2019 to 18.09.2020 by the learned Adjudicating Officer towards compensation for the delay in handing over of possession requires no modification.

23. So far as the relief (f) seeking to enhance the compensation awarded by the learned Adjudicating Officer towards mental agony from Rs.1,00,000/- to Rs.20,00,000/- is concerned, in the given facts and circumstances, awarding of Rs.1,00,000/- towards mental agony by the learned Adjudicating Officer is just and reasonable.

24. We do not find any ground to interfere with the order of the learned Adjudicating Officer. Hence, the appeal is liable to be dismissed. Accordingly, the appeal is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to:

1. M/s. Casa Grande Shelter LLP,
   rep. by its Managing Partner, M.N.Arun
   No.111, 5th Floor, NPL, Devi,
   L.B.Road, Thiruvanmiyur,
   Chennai - 600 041.

2. The Adjudicating Officer, TNRERA.

Verified RealEstate™