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 : 02.02.2024

Delivered on : 09.02.2024

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

Appeal No.39 of 2022
and
M.A.No.124 of 2022

1. V.G.Ramakrishnan
2. Parvathy Ramakrishnan ... Appellants

- Vs -

M/s.Ozone Projects Private Ltd.,
represented by its CEO Jai Ganesh ...Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the impunged common order dated 03.12.2021 in C.C.P.No.36 of 2020 passed by learned Adjudicating Officer and allow the complaint in C.C.P.No.36 of 2020.

For Appellants : Mr. T.K.Bhaskar

For Respondent : No appearance

ORDER

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

1. The appellants/allottees have preferred a complaint in C.C.P.No.36 of 2020 on the file of the learned Adjudicating Officer, claiming compensation for the delayed delivery of possession. In respect of the same real estate project, similar complaints, claiming compensation, were also preferred by three other allottees in C.C.P.Nos.35, 37 and 51 of 2020. The learned Adjudicating Officer, after hearing both sides, passed a common order in C.C.P.Nos.35, 36, 37 and 51 of 2020 dated 03.12.2021 dismissing all the complaints, except the complaint in C.C.P.No.37 of 2020. Aggrieved over the order in C.C.P.No.36 of 2020, the appellants alone have preferred the above appeal.

2. Admittedly, the appellants were allotted the apartment No.A-802. The total cost of the apartment was fixed at Rs.1,90,06,944/-. The appellants have paid Rs.1,68,82,137/- and they are yet to pay a sum of Rs.21,24,807/- to the respondent/promoter. The due date for the delivery as per the construction agreement was October 2013. But the apartment, in fact, was handed over to the appellants with a delay of 5 years and 8 months only on 04.05.2019. After taking possession of the apartment, the appellants have preferred the complaint claiming compensation for the delay in handing over of possession.

3. It is the case of the appellants that their complaint was dismissed by the learned Adjudicating Officer by relying upon an unmarked document, namely, e-mail dated 02.01.2020 sent by the appellants to the respondent. According to the learned counsel for the appellants, there is nothing against the case of the appellants in the said e-mail, which was also not marked as an exhibit. According to the learned counsel for the appellants, it is an admitted fact that there was a delay of 5 years and 8 months in handing over the apartment to the appellants. Therefore, the learned counsel for the appellants prayed to set aside the order passed by the learned Adjudicating Officer in C.C.P.No.36 of 2020 dated 03.12.2021 and to award compensation as prayed for by the appellants in the complaint filed by them.

4. Despite several adjournments and opportunities given, the learned counsel for the respondent failed to appear and submit his arguments.

5. Heard the learned counsel for the appellants. Perused the materials available on record.

6. Admittedly, the apartment was handed over to the appellants after a delay of 5 years and 8 months. However, the appellants are yet to pay a balance amount of Rs.21,24,807/- (excluding interest) to the respondent/promoter towards the cost of construction. The cost of apartment was Rs.1,90,06,944/-. The appellants have paid a sum of Rs.1,68,82,137/- only. As rightly contended by the learned counsel for

the appellants, during the course of enquiry before the learned Adjudicating Officer, the e-mail dated 02.01.2020, alleged to have been sent by the appellants to the respondent, was not marked on either side. While so, the learned Adjudicating Officer, by relying upon the e-mail dated 02.01.2020, had observed in paragraph No.8 (ii) at page 6 of his order, as follows:

> "In the documents filed by the complainants, the email dated 02.01.2020 addressed to the respondent reveals that there was a discussion on compensation for the delay between the complainants and the respondent and a deal was arrived at. Considering the above circumstances, it is clear that only on arriving at a settlement, the complainants were allowed to take possession of the flat without payment of the balance amount due to the respondent. The complainants cannot agitate over the compensation now, since the compensation was paid as per mutually agreed terms and conditions. Therefore, the complaint is not maintainable and is liable to be dismissed."

The learned Adjudicating Officer proceeded to dismiss the complaint on the basis of the unmarked e-mail dated 02.01.2020 alleged to have been sent by the appellants/allottees to the respondent/promoter.

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7. During the pendency of the appeal, the appellants filed an application in M.A.No.124 of 2022 seeking to mark additional documents, including the e-mail dated 02.01.2020. The respondent also filed their counter in the said application.

8. On a perusal of the order passed by the learned Adjudicating Officer, it could be seen that the complaint was dismissed, solely relying on the e-mail dated 02.01.2020, which was not marked as a document in the complaint. Excepting relying upon the e-mail dated 02.01.2020, the learned Adjudicating Officer has not given any other reason for dismissing the compliant. In such circumstances, we are of the view that in the interest of justice and in order to give an opportunity to the parties to raise their contentions with regard to the email dated 02.01.2020, the matter should be remanded to the learned Adjudicating Officer for fresh consideration.

9. Since the matter is being remanded, the appellants are given liberty to produce all the documents before the learned Adjudicating Officer.

10. Accordingly, the order dated 03.12.2021 passed by the learned Adjudicating Officer in C.C.P.No.36 of 2020 is set aside and the matter is remitted back to the learned Adjudicating Officer for fresh consideration. Subject to admissibility and relevancy, both the parties are at liberty to produce all the relevant documents in support of their respective cases before the learned Adjudicating Officer. The learned Adjudicating Officer

shall give due opportunity of hearing to both the parties and dispose of the compliant afresh, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

11. With this observation, the appeal is allowed. The application in M.A.No.124 of 2022 stands closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to

1. The Adjudicating Officer, TNRERA

2. M/s.Ozone Projects Private Ltd.,
   represented by its CEO Jai Ganesh
   No.63, G.N.Chetty Road,
   T.Nagar, Chennai - 600 017.

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