BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 20.07.2022

Coram : Ms.Leena Nair, Administrative Member

R.P.Nos.3 to 8/2022

in

A.Nos.92 to 97/2021

R.P.No. 3/2022 in A.No.92/2021

M/s.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ... Review Petitioner/Appellant

-Vs-

1.Mr.Mohamed Yaseen
2.M/s. Shriram Properties Ltd.,
Rep. by its COO,
Mr.KAV Ramesh Kumar ...Respondents/Respondents

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R.P.No.4/2022 in A.No.93/2021

M/s. Shriram Properties Ltd.,
Rep. by its AVP – Finance & Accounts,
Mr.K.Manikanteswaran ... Review Petitioner/Appellant

-Vs-

1.Mr.Mohamed Yaseen
2.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ...Respondents/Respondents

R.P.No. 5/2022 in A.No.94/2021

M/s.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ... Review Petitioner/Appellant

-Vs-

1.Mr.Mohamed Thahir
2.M/s. Shriram Properties Ltd.,
Rep. by its COO,
Mr.KAV Ramesh Kumar ...Respondents/Respondents

R.P.No. 6/2022 in A.No.95/2021

M/s. Shriram Properties Ltd.,
Rep. by its AVP – Finance & Accounts,
Mr.K.Manikanteswaran ... Review Petitioner/Appellant

-Vs-

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1.Mr.Mohamed Thahir
2.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ...Respondents/Respondents

R.P.No. 7/2022 in A.No.96/2021

M/s. Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ... Review Petitioner/Appellant

-Vs-

1.Mr.K.M.Mohamed Rasik Ali
2.M/s. Shriram Properties Ltd.,
Rep. by its COO, Mr.KAV Ramesh Kumar ...Respondents/Respondents

R.P.No. 8/2022 in A.No.97/2021

M/s. Shriram Properites Ltd.,
Rep. by its AVP – Finance & Accounts,
Mr.K.Manikanteswaran ... Review Petitioner/Appellant

-Vs-

1.Mr.K.M.Mohammed Rasik Ali
2.Cybercity Mangadu Project (P) Ltd.,
Rep. by its Authorized Signatory,
Mr.R.Murugesan ...Respondents/Respondents

These Review Petitions have been preferred by the review petitioners/appellants to review the order passed by this Tribunal on 21.02.2022

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in A.Nos.92 to 97 of 2021. These Review Petitions were taken on file on 17.06.2022 and came up for final hearing on 06.07.2022 in the presence of the counsels for the review petitioners and respondent No.2, M/s. Aravind Raj, Karthik Sundaram and Pavan Kumar Gandhi and the 1st respondent in all the review petitions appeared through M/s. Genicon & Associates, T.V. Suresh Kumar, N.A.Srinivasan, R.Poovalingam, K.Balaganesh, D.Vignesh and S.Lakshmi Narayanan. Heard the arguments of both sides through video conferencing and this Tribunal delivered the following:

COMMON ORDER

1. Originally, the allottees preferred complaints before the Adjudicating Officer for the relief of refund of the entire amounts paid to the promoter along with interest. After contest the learned Adjudicating Officer allowed the complaints in part and allowed 5% of the amount paid by the complainant as cancellation charges with litigation costs. Aggrieved upon the same, the promoters preferred appeals before this Tribunal against the order of the Adjudicating Officer and after contest this Tribunal allowed the appeals in part and fixed the quantum of cancellation charges as booking amount only Rs.1,59,226/- without any interest or GST or any other charges. The review petitioners are not aggrieved by the ruling on the merits of the case on this issue but disputed the calculation of the booking amount. The appellants felt that an apparent error on the face of the record with regard to the determination of the booking amount and sought for interference by way of these review petitions. The parties are hereinafter called in these review

petitions as per their original rankings as allottees and promoters. The review petitioners came forward with these review petitions on the following main grounds:

- ***Determination of the booking amount constitutes an apparent error.***
- ***In terms of clause 8(a)(1) of the construction agreement, the GST charges for cancellation shall be to the account of the allottee and the same is to be recovered from the amounts payable to the allottee.***
- ***There is no clause in the construction agreement that prevents the review petitioners from passing on the GST to allotee and therefore GST on cancellation charges is always to the account of the allotees.***

2. The learned counsel for the review petitioners and 2nd respondent in all the review petitions would submit that the booking amount is defined as 9.9% of the total flat cost paid in installment or more paid or payable through the construction agreement and the agreement of sale. The above said facts were narrated in schedule 'D' to the construction agreement but unfortunately they have failed to specifically bring to the notice of this Tribunal. Therefore, the calculation of the booking amount was wrongly calculated. It amounts to apparent error on the face of the record. Further, the review petitioners have not aggrieved by the ruling on the merits of the case hence they have not preferred any appeal against the order of this Tribunal and came forward with these review petitions to rectify the apparent error in the calculation of booking amount. Therefore, the learned counsel sought for allowing these review petitions.

3. The learned counsel for the 1st respondent in all the review petitions would submit that the allottees Mohammed Thahir and Mohammed Rasik Ali have not signed in schedule 'D' of the construction agreement and Mohammed Yaseen alone has signed in schedule 'D' of the construction agreement. So, that portion of the agreement is not binding. Therefore, the booking amount calculated by this Tribunal and GST claim was also negatived by this Tribunal is correct and there is no apparent error on the face of the record and the review petitions have to be dismissed.

4. Point for consideration:-

Whether the review petitions are deserved to be allowed?

Point:

5. Heard and perused the both side contentions. The review petitioners have not questioned the merits of the order of this Tribunal. The only grievance focused by the review petitioners as miscalculation regarding booking amount which is defined in schedule 'D' last portion of the construction agreement which runs as follows:

> ***"The booking amount is defined as 9.9% of the total flat cost paid in installment or more paid or payable through this agreement and the agreement of sale."***

6. On the side of the allottees they have not denied the above said portion of the agreement but they have stated that two of the allottees have

not signed on the particular page only and they have not denied their signature in the remaining portions of the agreement.

7. The specific contention of the review petitioners is that the booking amount Rs.1,59,226/- mentioned in the indicative price sheet relied by this Tribunal is before the agreement entered between the parties hence it is not applicable and in September 2018 only they have entered into construction agreement. So the above said indicative price is not applicable and the only agreement between the parties alone to be followed.

8. How far these contentions are tenable have to be analyzed. On perusal of the typed set of the review petitioners at page No.2 it has been mentioned as follows:

> ***TERMS AND CONDITIONS:***
>
> ***A. This is an indicative price sheet only and not an offer for sale.***
>
> ***It is valid from 12th May 2018 till 27th May 2018 or for first 199 units only whichever is earlier.***

9. The above said terms and conditions clearly revealed that it was valid upto 27th May 2018. The review petitioners and the allottees entered into agreement in September 2018 (without date). So the above said terms and conditions stipulated in the indicative price sheet is certainly not applicable to the allottees concerned and both the parties are bound by the construction agreement and sale agreement entered between them. Therefore, the amount relied as booking amount in the order is not applicable to the parties

concerned. Hence, the agreement between the parties have to be applied for the cancellation of the agreement. Now let us see the relevant clause regarding cancellation of the agreement as per the construction agreement which was dealt under clause 8 of the construction agreement. The said clause 8 runs as follows:

> " ***8. BREACH OF TERMS AND ITS REMEDY:***
>
> ***(a) Allottee's COVENANT:***
>
> ***1. In the event of the ALLOTTEE failing to pay the aforesaid sums in the manner provided in Schedule D or cancel/withdraw from the Project except for the default of the PROMOTER, then the PROMOTER at their discretion after due notice of 15 days to the ALLOTTEE is entitled to cancel this Agreement and re-allot the Apartment, to another party and the ALLOTTEE shall thereafter have no right, interest or claim over the Apartment. Consequent to such termination, subject to deduction of the Booking Amount, the PROMOTER shall refund the monies collected from the ALLOTTEE executing 90 days of such cancellation without interest, simultaneous to the ALLOTTEE executing necessary cancellation and registration of the Agreement and/or sale deed by the ALLOTTEE. Further, the ALLOTTEE agrees to bear the registration expenses and charges for such cancellation. Alternatively, the PROMOTER shall be entitled to claim interest as per the prescribed rules from the ALLOTTEE for such delayed payment, subject to the PROMOTER having fulfilled their obligations with regard to the construction of the flat contracted by the ALLOTTEE herein. "***
>
> ***2. .. ..***
>
> ***3. .. ..***
>
> ***4. It is specifically agreed by the allottee that the allottee shall bear all statutory charges from the date of intimating the readiness of the apartment for handover by the Promoter. "***

10. As per the above clause 8(a)(1) consequent to termination there are three things necessary namely:

- Subject to deduction of the booking amount.
- Executing necessary cancellation and registration of the agreement.
- Allottee agrees to bear the registration expenses and charges for such cancellation.

11. The above said three pre conditions are enumerated specifically in clause 8(a)(1). The first condition regarding deduction of the booking amount. The word booking amount is defined at the end of schedule 'D' at the bottom.

> ***"The booking amount is defined as 9.9% of the total flat cost paid in installment or more paid or payable through this agreement and the agreement of sale."***

12. As per the above definition the allottees are entitled to the refund of the amount paid by the allottees subject to the deduction of the booking amount. The above said fact was not disputed by both sides. According to the definition, booking amount is, 9.9% of the total flat cost **paid in one or more installments <u>or</u> payable through the construction agreement and agreement of sale.** Hence under this agreement the promoter is entitled to deduct 9.9% of the cost **paid** by the allottees in installments towards the total flat cost at the time of cancellation. It is not 9.9% of the **total cost of the flat** (i.e., the amount payable to get possession of the flat). **Therefore, the promoter is only entitled to deduct 9.9% from the total amount paid as installment by the allottees as booking amount.** This amount alone is entitled to be deducted by the promoter as per the definition clause of the word 'booking amount' as emphasized by the review petitioners. Therefore, as per

the definition of the word booking amount and as per the arguments of the review petitioners the booking amount is 9.9% of the total flat cost paid in installment till the time of cancellation. Each allottee is entitled to get the refund after deduction of 9.9% of their total amount paid by way of installments till the time of cancellation. Therefore the refund amount will vary in accordance with the amounts paid by them.

13. The second condition is with regard to registration expenses and charges for such cancellation. In these agreements they have not registered the construction agreement and sale agreement hence cancellation does not arise. Therefore, registration by way of cancellation and charges thereon does not arise.

14. The third point is with regard to statutory charges namely GST. In clause 8(a)(4) the allottee shall bear statutory charges only at the time of intimation regarding readiness of the apartment for handover by the promoter. In these cases the stage for handing over had not yet reached and agreement is cancelled between the parties in the middle so payment of statutory charges namely GST does not arise. Further in clause 8 there is no specific provision for payment of GST by the allottee during cancellation of the agreement.

15. Therefore this Tribunal comes to a conclusion that the calculation of booking amount arrived as Rs.1,59,226/- is an apparent error and as per the definition clause contemplated in schedule D it has to be calculated individually as 9.9% of the total amount paid by the allottee in installments to the promoter

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at the time of cancellation. Hence this Tribunal is inclined to allow the review petitions.

16. In the result, the review petitions are allowed and as per the definition clause contemplated in schedule D it has to be calculated individually as 9.9% of the total amount paid by the allottee in installments to the promoter at the time of cancellation.

This Order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by me in the open court on 20th Day of July 2022.

Sd/-xxxx
ADMN. MEMBER

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