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 :16.08.2023
Delivered on :25.08.2023

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

Appeal Nos.55 to 58 of 2022

M/s. Lokaa Developers Private Limited
Represented by its Director/Authorized Person
P.Santhosh Sharma ... Appellant (in all appeals)

- Vs -

M/s. Monitor Commercial Private Limited,
Represented by its Authorized Signatory,
Shailendra Kumar Jain
... Respondent in A.Nos.55 of 2022

M/s. Monitor Commercial Private Limited,
Represented by its Authorized Signatory,
Shailendra Kumar Jain
... Respondent in A.No.56 of 2022

M/s. Bright Star Texim and Finvest Private Limited,
Represented by its Director,
Shailendra Kumar Jain
... Respondent in A.No.57 of 2022

M/s. Sriniwasa Road Carriers Private Limited,
Represented by its Director,
Shailendra Kumar Jain ... Respondent in A.No.58 of 2022

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Prayer: These appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, to set aside the common order passed by Tamil Nadu Real Estate Regulatory Authority in Complaint Nos.176 to 179 of 2021 dated 22.08.2022 and to dismiss all the Complaints.

For Appellant : Mr.S.S. Rajesh in all the appeals

For Respondent : Mr. Naresh Vassudhev in all the appeals

COMMON ORDER

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

1. It is the case of the appellant that a real estate project by name "M-One" is being developed by the appellant/promoter since January 2017. During 2016, upon gaining knowledge through advertisements about the project, the common representative of the respondent companies, namely, Mr.Shailendra Kumar Jain approached the appellant during September 2016 with a proposal to funding the project at lower interest rate without any security. The appellant rejected the said proposal.

2. After few days, the above said Shailendra Kumar Jain again approached the appellant with a proposal to buy 12 flats in the said real estate project. The appellant accepted the proposal and necessary sale agreements and construction agreements for the 12 flats were executed on two different dates. Eight construction agreements were executed on 27.10.2016 and four construction

agreements were executed on 21.04.2018 as detailed below in the tabular format:

Sl.No	Date	Allottee Name	Flat No.	Extent (in Sq. ft.)	Sale Amount (in Rs.)	Amount Paid (in Rs.)
1	27.10.2016	Shailendra Kumar Jain	1307	1277	26,43,390	24,18,430
2	27.10.2016	Srinivasa Road Carriers Private Limited	1312	1565	32,39,550	24,48,100
3	27.10.2016	Shailendra Kumar Jain	1407	1277	26,43,390	24,18,430
4	27.10.2016	Srinivasa Road Carriers Private Limited	1611	1639	33,92,730	30,07,110
5	27.10.2016	Apex Dealcomm Carriers Private Limited	1709	1758	36,39,060	32,01,995
6	27.10.2016	Bright Star Trexim&Finvest Private Limited	1710	1767	36,57,690	32,09,205
7	27.10.2016	Monitor Commercial Private Limited	1804	1938	40,11,660	34,45,565
8	27.10.2016	Monitor Commercial Private Limited	2004	1938	40,11,660	34,45,565
9	21.04.2018	Apex Dealcomm Carriers Private Limited	2107	2363	38,61,918	35,00,000
10	21.04.2018	Apex Dealcomm Carriers Private Limited	1909	1758	28,73,137	25,65,647
11	21.04.2018	Apex Dealcomm Carriers Private Limited	1701	1574	25,72,434	22,41,034
12	21.04.2018	Apex Dealcomm Carriers Private Limited	1308	1859	30,38,219	26,93,319
Total					3,95,84,838	3,49,94,400
Balance to be paid					45,90,438	

3. It is the case of the appellant that the respondent/allottee, instead of paying the balance amount of Rs.45,90,438/-, asked the

appellant to treat the balance amount as rebate for bulk purchase. The appellant refused and insisted for the balance payment. As a counterblast, the respondent/allottee wanted to withdraw from the project and cancel all the 12 construction agreements. The respondent/allottee required the appellant to refund the entire amounts paid by them under the 12 construction agreements with interest. The appellant also agreed to cancel all the 12 construction agreements and to repay the entire amount with interest. So far, the appellant repaid a sum of Rs.2,03,25,175/- on various dates in respect of seven construction agreements. But the respondent/allottee so far has executed only three registered cancellation deeds in respect of three construction agreements and failed to execute cancellation deeds in respect of the remaining four. Suspecting some foul play, the appellant has not repaid any amounts in respect of the remaining five construction agreements.

4. Further, it is the case of the appellant by taking advantage of the non-cancellation of the four agreements, the four respondent companies/allottees, being represented by the same person by name Shailendra Kumar Jain, have filed four separate complaints before the TNRERA by suppressing the true facts. Therefore, the respondents/allottees are not entitled to any relief as prayed for by them in the complaints. With this, the learned counsel for the appellants prayed to allow the appeals and to set aside the impugned common order passed by the TNRERA.

5. On the other hand, the learned counsel for the respondent / allottee refuted the claim of the appellant that he had repaid the

advance amounts paid under the four agreements along with interest. The learned counsel for the respondent prayed to dismiss the appeals.

6. Heard both sides.

7. Admittedly, all the respondent companies/allottees are being represented by the same person Shailendra Kumar Jain. There were 12 registered construction agreements towards the purchase of 12 apartments in the real estate project "M-ONE" developed by the appellant. Out of the total 12 construction agreements, 3 were mutually cancelled by executing 3 separate registered cancellation deeds. Out of the remaining 9 construction agreements, the respondents/allottees preferred 4 complaints on the basis of four construction agreements standing in their favour. So far, no action was taken by either parties in respect of the remaining 5 construction agreements.

8. The booking / cancellation / present status of the 12 construction agreements are tabulated hereunder for ready reference.

Sl. No	Date	Allottee Name	Flat No.	Carpet area (in Sq. ft.)	Sale Amount (in Rs.)	Amount Paid (in Rs.)	Status
1	27.10.2016	Shailendra Kumar Jain	1307	1277	26,43,390	24,18,430	Pending
2	27.10.2016	Srinivasa Road Carriers Private Limited	1312	1565	32,39,550	24,48,100	Complaint filed C.No.179/2021
3	27.10.2016	Shailendra Kumar Jain	1407	1277	26,43,390	24,18,430	Agreement cancelled
4	27.10.2016	Srinivasa Road Carriers Private Limited	1611	1639	33,92,730	30,07,110	Agreement cancelled
5	27.10.2016	Apex Dealcomm	1709	1758	36,39,060	32,01,995	Pending

		Carriers Private Limited					
6	27.10.2016	Bright Star Trexim&Finvest Private Limited	1710	1767	36,57,690	32,09,205	Complaint filed C.No.178/2021
7	27.10.2016	Monitor Commercial Private Limited	1804	1938	40,11,660	34,45,565	Complaint filed C.No.177/2021
8	27.10.2016	Monitor Commercial Private Limited	2004	1938	40,11,660	34,45,565	Complaint filed C.No.176/2021
9	21.04.2018	Apex Dealcomm Carriers Private Limited	2107	2363	38,61,918	35,00,000	Pending
10	21.04.2018	Apex Dealcomm Carriers Private Limited	1909	1758	28,73,137	25,65,647	Pending
11	21.04.2018	Apex Dealcomm Carriers Private Limited	1701	1574	25,72,434	22,41,034	Pending
12	21.04.2018	Apex Dealcomm Carriers Private Limited	1308	1859	30,38,219	26,93,319	Pending
	Total				3,95,84,838	3,49,94,400	
	Balance amount to be paid					45,90,438	

9. Admittedly, out of the total 12 construction agreements, 5 construction agreements (Sl.Nos. 1,5,10,11,12) are pending without any action. 3 construction agreements (Sl. Nos. 3,4,9,) were mutually cancelled between the parties. The remaining 4 construction agreements (Sl.Nos. 2,6,7,8) have reached the TNRERA by way of 4 complaints.

10. It is the specific case of the appellant that the representative of all the 12 companies/allottees, namely Shailendra Kumar Jain, wanted to withdraw from the project in entirety. The appellant

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contended that he had returned the amount along with interest in respect of 7 construction agreements. Further, it is the admitted case of the appellant that suspecting some foul play, the appellant has not yet returned the amounts in respect of the remaining 5 construction agreements.The learned counsel for the appellant would contend that having received back the entire amount along with interest in respect of 7 construction agreements, the said Shailendra Kumar Jain came forward to execute only three cancellation deeds and failed to co-operate in executing the remaining four cancellation deeds. According to the learned counsel for the appellant, the four complaints have been filed on the basis of the four discharged construction agreements by taking advantage of their non cancellation.

11. The appellant, in his memorandum of appeal at page 7 Clause 3, had stated that he had paid Rs.1,00,00,000/- (one crore) to M/s.Monitor Commercial (P) Limited through RTGS mode of fund transfer. Out of the said Rs.1,00,00,000/-, a sum of Rs.26,00,000/- was adjusted towards the repayment in respect of item No.3 (flat No.1407) and cancellation deed was also executed in respect of item No.3 (flat No.1407). After deducting Rs.26,00,000/-, a sum of Rs.74,00,000/- is only available as balance. Further, a total sum of Rs.38,18,065/- is said to have been paid to Shailendra Kumar Jain and to three of his relatives on 21.11.2019 through RTGS mode of fund transfer. Including this amount, a sum of Rs.1,12,18,065/- is said to have been paid to the respondent companies/allottees.

12. The aggregate amount involved in all these 4 complaints (items nos.2,6,7 and 8 in the above table) comes to Rs.1,29,48,435/-

excluding interest. Therefore, the claim of the appellant that he had repaid the entire amount with interest in respect of the 4 construction agreements involved in these 4 cases, cannot be accepted because excluding interest, still there is a balance of Rs.17,30,370/- payable by the appellant. Therefore, the appellants claim that he had fully discharged his liability in respect of 7 construction agreements cannot be accepted. It is settled law that a person who pleads discharge of a debt must prove the same. The burden of discharge is only on the appellant. Viewing from any angle, the appellant failed to prove his case of discharge. Therefore, he cannot expect the respondent companies/allottees to come forward to execute cancellation deeds in respect of the 4 construction agreements involved in this case.

13. Further, the appellant issued a reply letter dated 06.02.2020 for the letter dated 31.01.2020 issued by the M/s.Monitor Commercial (P) Limited (Respondent in A.No. 55 of 2023 and in A.No.56 of 2023). In the said reply letter dated 06.02.2020, the appellant/promoter informed the M/s.Monitor Commercial (P) Limited (Respondent in A.No. 55 of 2023 and in A.No.56 of 2023) that the internal plumbing, electrical and laying of tile work is going on, in respect of flat Nos.1804 and 2004 (item Nos.7 and 8) and that the flats will be handed over by December 2020 to the fullest satisfaction of the respondents/allottees. The said reply letter dated 06.02.2020 runs contrary to the case of the appellant that the advance amount with interest has been fully repaid on 10.08.2019 itself, in respect of those flat Nos.1804 and 2004 (item Nos.7 and 8) and that the respondents/allottees failed to cancel the construction agreements. If

it is so, then there is no necessity for the appellant to send such a reply letter on 06.02.2020 to the M/s.Monitor Commercial (P) Limited (Respondent in A.No. 55 of 2023 and in A.No.56 of 2023) in respect of flat Nos.1804 and 2004 (item Nos.7 and 8). This reply letter dated 06.02.2020 itself is sufficient to reject the case of the appellant.

14. Therefore, the appellant is bound to hand over possession of the 4 flats as per the order of the TNRERA and shall execute necessary sale deeds in respect of the proportionate undivided share in the common area, after receiving the balance sale consideration if any payable by the respondents/allottees. We do not find any ground to interfere with the impugned common order passed by TNRERA. Accordingly, the appeal is liable to be dismissed.

15. In the result, all the above appeals are dismissed. Connected Miscellaneous applications pending, if any, are closed.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
JUDICIAL MEMBER

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