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 : 04.10.2023

Delivered on : 13.10.2023

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

Appeal No.59 of 2022

Thamizh Chelvan ... Appellant

- Vs -

1. M/s. Puravankara Limited
   (Formerly M/s. Puravankara Projects Limited),
   rep. by its Managing Director
2. M/s. Provident Housing Ltd.,
   rep. by its Director
3. Cosmo City Residents Welfare Association (CCRWA)
   rep. by its Secretary ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the impugned order dated 22.08.2022 passed in C.No.243/2021 by TNRERA only in respect of the following reliefs prayed in the complaint in C.No.243/2021

(b) to direct the respondents/developers to allot car parks only to the purchasers those who are entitled for the same as per the parking standards stipulated in Schedule II of the Development Control Regulations for Mamallapuram Local Planning Area (G.O.Ms.No.130, Housing and Urban Development (UD 4-1) Department dated 14.06.2010)

and subsequently extended by G.O.Ms.No.153, Housing and Urban Development (UD 4-(1)) dated 20.06.2013;

(c) to direct the respondents/developers to restore the width of the driveway to 7.2 mtrs and 9 mtrs as per the original approved plan dated 22.05.2009 in Approval No.13/2009 so as to ensure safety for children, women, elderly people residing in the project and further enable safe commutation of emergency vehicles and free flow of traffic;

(d) to direct the respondents to refund the amount of Rs.60,000/- collected by the respondents/developers for the car park promised to the complainant;

(e) to direct the respondents/developers to provide and earmark the car park space free of cost as per the Development Control Regulation, adjacent to Block D3 i.e., the complainant's flat;

(f) to recommend the Member Secretary, the Tamil Nadu Pollution Control Board to take appropriate action against the respondents/developers, as per the recommendations of the Ministry of Environment Forest and Climate Change in their meeting dated 15-16 January 2018;

(g) to impose penalty on the respondents/developers for adopting unfair practice by promoting the sale and development of the real estate project without the required mandatory Environment Clearance;

(h) to direct the respondents to transfer the land measuring 3.5 acres, purchased out of the funds collected from the allottees in favour of the 3rd respondent Association;

(i) to restrain the respondents/developers from marketing or selling any more residential units in the project "Provident Cosmo City" without obtaining the required mandatory Environment Clearance; and

(k) to direct the respondents 1 to 3 to charge monthly maintenance on the complainant only from the date of executing the Maintenance Agreement with the complainant;

and consequently to allow the present appeal as prayed for.

For Appellant : Mr.Ralph V. Manohar
For Respondents 1 & 2 : Mr. Kirubakar M.A
For 3rd Respondent : Mr. A.R. Sakthivel

ORDER

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

1. The Appellant is an Allottee of the real estate project by name "Provident Cosmo City" situated at Pudupakkam Village, Thiruporur Taluk. The 2nd Respondent is a wholly owned subsidiary Company of the 1st Respondent Company. Both the Respondents 1 and 2 are the Promoters of the said real estate project. The Appellant/Allottee booked Flat No.D3-104 on 12.06.2009. A Construction Agreement and a Sale Agreement were executed between the parties on 26.06.2009. The Appellant paid the entire amount of Rs.20,84,673/-, inclusive of service tax and car parking charges, as per the payment schedule stipulated in the Construction Agreement. The Appellant made his final payment on 26.11.2011.The Respondents 1 & 2 executed a Registered Sale Deed in favour of the Appellant on 09.12.2011. As per the Construction Agreement, the Respondents 1 & 2 bound to hand over possession before August 2011 with a grace period of 6 months. Even after the payment of the entire amount the Respondents 1 & 2 failed to complete the project and hand over possession till date. The Appellant is yet to pay a sum of Rs.50,000/- towards electricity connection charges, advance maintenance

and corpus fund. The Appellant is ready to pay this amount at the time of handing over possession of the Flat.

2. Earlier the Respondents 1 & 2/Promoters have obtained Environment Clearance Certificate dated 24.07.2008 for the construction of 1184 flats. However, the Respondents 1 & 2/Promoters obtained planning permission, vide Approval No.13/2009, dated 22.05.2009, for construction of 2174 flats. This is a clear violation of Environment Clearance Certificate. The Planning Permission issued in violation of the Environment Clearance Certificate is not valid. Upon the recommendations of the SEIAA, vide their letter, dated 23.05.2014, the Tamil Nadu Pollution Control Board issued a show cause notice dated 10.09.2014 to the Respondents 1 & 2. The Ministry of Environment New Delhi also delisted the real estate project on 02.10.2020. Till date, no Environment Clearance Certificate has been obtained by the Respondents 1 & 2/Promoters for the increased number of flats. Therefore, the project is considered to be an ongoing project.

3. Further, the car parking area being the common area, the Respondents 1 & 2/Promoters have no right to sell the car parking. As such, they are liable to refund a sum of Rs.60,000/- to the Appellant/ Allottee.

4. Further, it is the case of the Appellant/Allottee that he is not liable to pay monthly maintenance charges until the flat is handed over to him after obtaining the proper Environment Clearance Certificate.

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According to the Appellant/Allottee, the impugned order directing the Appellant/Allottee to pay the monthly maintenance charges to the 3rd Respondent Association is not correct and liable to be set aside.

5. It is the case of the Respondents 1 & 2/Promoters that they initially applied for Environment Clearance Certificate for 1184 units and the same was issued on 24.07.2008. Subsequently, due to change in the FSI norms, the Respondents 1 & 2/Promoters proposed to increase the number of units from 1184 to 2174 units. According to the Respondents 1 & 2/Promoters, they immediately applied for the expansion of the Environment Clearance Certificate for 2174 units on 06.02.2009 itself. The said application was neither granted nor rejected till date. However, the planning permission for 2174 units from the DTCP was issued on 26.02.2009. In anticipation of the expanded Environment Clearance Certificate, the Respondents 1 & 2/Promoters have continued with the construction of the project to overcome the loss. Out of 2174 units, nearly 2097 apartments have been handed over to the respective allottees in the year 2017.

6. It is the case of the Respondents 1 & 2/Promoters that it is completely false to state that car parking was separately sold to the Appellant for a sum of Rs.60,000/-. In the brochure issued by the Respondents 1 & 2/Promoters, for the purpose of understanding, the split up details of the costs of the apartment and the cost of car parking was separately mentioned as Rs.60,000/-. The car parking was allotted for the

exclusive use of the Appellant/Allottee as per the Construction agreement. Therefore, the Respondents 1 & 2 are not liable to refund a sum of Rs.60,000/- to the Appellant.

7. Further, it is the case of the Respondents 1 & 2/Promoters that they have handed over the maintenance to the 3rd Respondent Association on and from 01.11.2017. Therefore, the Appellant/Allottee is liable to pay maintenance to the 3rd Respondent Association.

8. According to the learned Counsel for the 3rd Respondent Association, the Appellant/Allottee is liable to pay maintenance to the 3rd Respondent Association.

9. After hearing both sides, the TNRERA directed the Respondents 1 & 2/Promoters to register the project with TNRERA, though it was not prayed for by the Appellant/Allottee. The TNRERA directed the Respondents 1 & 2/Promoters to obtain fresh Environment Clearance Certificate for 2174 flats, and hand over the apartment to the Appellant/Allottee within a time frame. However, the TNRERA rejected the claim of refund of Rs.60,000/- paid by the Appellant/Allottee towards car parking and also directed the Appellant/Allottee to pay monthly maintenance charges to the 3rd Respondent Association by rejecting the claim of the Appellant/Allottee. Aggrieved over the disallowed portion, the Appellant has preferred the present appeal before this Tribunal.

10. Heard both sides.

11. Though the Appellant has prayed for many reliefs in the appeal, the learned counsel for the Appellant/Allottee restricted his submissions only to the following three issues:

i) Issue relating to Environment Clearance Certificate;

ii) Issue relating to refund of Rs.60,000/- towards car parking charges; and

iii) Issue relating to the liability of the Appellant to pay monthly maintenance charges to the 3rd Respondent Association.

12. In respect of the issue relating to Environment Clearance Certificate, the TNRERA has already directed the Respondents 1 & 2/ Promoters to obtain the necessary Environment Clearance Certificate for 2174 flats as early as possible. The learned counsel for the Respondents 1 & 2/Promoters submitted that they are taking steps to get the Environment Clearance Certificate at the earliest. Thus, the relief prayed for by the Appellant with regard to the Environment Clearance Certificate has already been granted by the TNRERA. Therefore, it is for the concerned authorities to issue the expanded Environment Clearance Certificate.

13. In so far as the issue relating to the refund of the car parking charges of Rs.60,000/- is concerned, the Promoters are entitled to charge for the car parking proportionate to the carpet area of the flat. In the judgment reported in (2010) 9 SCC 536 [Nahalchand Laloochand Pvt. Ltd.

Vs Panchali Co-operative Housing Society Ltd.], the Hon'ble Supreme Court, in paragraphs 60 and 61, has held as follows:

> "...
>
> *60. We have now come to the last question namely-- what are the rights of a promoter vis-`-vis society (of flat purchasers) in respect of stilt parking space/s. It was argued that the right of the promoter to dispose of the stilt parking space is a matter falling within the domain of the promoter's contractual, legal and fundamental right and such right is not affected. This argument is founded on the premise, firstly, that stilt parking space is a `flat' by itself within the meaning of Section 2(a-1) and in the alternative that it is not part of `common areas'. But we have already held that `stilt parking space' is not covered by the term `garage' much less a `flat' and that it is part of `common areas'.*
>
> *61. As a necessary corollary to the answers given by us to question nos. (i) to (iii), it must be held that stilt parking space/s being part of `common areas' of the building developed by the promoter, the only right that the promoter has, is to charge the cost thereof in proportion to the carpet area of the flat from each flat purchaser. Such stilt parking space being neither `flat' under Section 2(a-1) nor `garage' within the meaning of that provision is not sellable at all."*

In the light of the judgment of the Hon'ble Supreme Court cited supra, we hold that the Respondents 1 & 2/Promoters are entitled to charge for the car parking proportionate to the carpet area of the flat.

Therefore, the claim of the Appellant/Allottee with regard to the refund of car parking is rejected.

14. Coming to the issue of liability of the Appellant/Allottee to pay maintenance charges, it is an admitted fact that till date the Appellant/ Allottee has not taken possession of the Flat due to the reason that the Respondents 1 & 2/Promoters are not able to obtain the Environment Clearance Certificate for the construction of 2174 units. The Respondents 1 & 2/Promoters obtained Environment Clearance Certificate prior to the commencement of the construction of the project on 24.07.2008 for 1184 units. By taking advantage of the subsequent change in FSI norms, they have decided to increase the number of units from 1184 units from 2174 units. However, they are not able to get the expanded Environment Clearance Certificate for 2174 units till date. The learned counsel for the Respondents 1 & 2/Promoters contended that an application for expansion of Environment Clearance Certificate was submitted on 06.02.2009 and that the said application was neither granted nor rejected. The learned counsel for the Respondents 1 & 2/Promoters fairly conceded that the construction was completed without getting the expanded Environment Clearance Certificate. Citing this as the reason, the Appellant/Allottee is unwilling to take possession of his apartment, though he had paid the entire cost of construction and the apartment is ready for handing over. Unless and until the apartment is handed over to the Appellant/Allottee, he is not liable to pay the monthly maintenance.

On the other hand, it is for the Respondents 1 & 2/Promoters to pay the monthly maintenance charges as they would pay the monthly maintenance charges for the unsold flats.

15. For the reasons stated above, the order of the TNRERA directing the Appellant to pay monthly maintenance to the 3rd Respondent Association is alone set aside. The Respondents 1 & 2/Promoters are directed to pay the monthly maintenance charges to the 3rd Respondent till the possession of the flat is handed over to the Appellant/Allottee. In other aspects, the order of the TNRERA shall remain unaltered.

16. The appeal is partly allowed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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