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: 28.08.2023

Delivered on: 27.09.2023

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

Appeal No.63 of 2022

M/s.Casa Grand Smart Town Buyers & Owners Association,
Now represented by its Secretary R.Viswanathan ... Appellant

- Vs -

1. M/s. Casa Grande Civil Engineering Private Limited
   By its Directors Arun Manivannan Namachivayan and Anerudan
   Represented by its Power Agent
   M/s. Grace Gated Community LLP.

2. M/s. Grace Gated Community LLP,
   Rep. by its Partners
   Arun Manivannan Namachivayan and Anerudan. ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 in respect of the disallowed reliefs vide order passed in C.No.222 of 2021 by TNRERA, dated 22.08.2022.

For Appellant : Mr.R.Sankarakutralingam

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

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ORDER

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

1. The appellant is the Association of Allottees of the real estate project promoted by the respondents namely, "Casagrand Smart Town" situated at Thazhambur Village, Thiruporur Taluk, Kancheepuram District. The Appellant/Complainant, in their complaint filed before TNRERA have sought for reliefs with regard to,

I. Registering the Sale deeds after clearing the dispute over the title of the project land and indemnifying all the allottees,

II. Providing of permanent electricity supply through TANGEDCO,

III. Restoration of the number of Car Parking and two wheeler parking as per the approved plan,

IV. Refund of car parking charges to the allottees,

V. Rectifying the defects in the quality of construction,

VI. Providing of certain amenities with regard to rain water harvesting,

VII. Providing Solar power system

VIII. Improvement of Sewage Treatment Plant,

IX. Refund of penal interest collected from the allottees for the delayed payment,

X. Providing Environmental clearance Certificate,

XI. Providing No Objection Certificate issued by the project creditor M/s L & T Financial Services and

XII. Awarding cost of litigation.

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2. On the other hand the Respondents/Promoters contended that Registration of the Sale deeds, would be done after clearing the dispute over the title of the project land and indemnifying all the allottees, in respect of the project land comprised in Survey No.161/1, Thazhambur Village, Thiruporur Taluk, Kancheepuram District. As against the the Government order in G.O. Ms. No.164, Revenue Department dated 23.03.2000, cancelling the patta issued in the name of Mrs. Samyuktha Paramahamsam, the original owner of the project land, her family members filed Writ Petitions in W.P.Nos.6165, 6525 and 7346 of 2000 before the Hon'ble High Court of Madras. All those Writ Petitions were allowed by order dated 13.05.2003 and the title of the original owner was confirmed. The State Government has preferred Writ Appeals in W.A.Nos.2785 to 2787 of 2003, which were dismissed by Hon'ble High Court, confirming the order of the Hon'ble Single Judge vide order dated 27.04.2004.

3. According to the learned Counsel for he Respondents/Promoters, after a lapse of 15 years, a 3rd party by name, S.Raja filed a fresh Writ Petition in W.P.No.11156 of 2018 challenging the patta granted in favour of the family members of the original owner. In the said Writ Petition the Tamil Nadu Government submitted that it had proposed to constitute a committee with the District Collector as the Chairman for conducting a discrete enquiry. Recording the submission of the State Government, the said Writ Petition was disposed of with certain directions. As against the said order, both the State Government and the Respondents/Promoters have preferred Special Leave Petitions before Hon'ble Supreme Court and the same are pending.

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4. The learned Counsel for the Respondents/Promoters submitted that, subsequently the Tamil Nadu Government has banned the registration of documents in respect of Survey No.161/2, Thazhambur Village, Thiruporur Taluk. The Survey No.161/1 was also included in the list of blocked survey numbers. Challenging the order banning the registration the Respondents/Promoters filed another Writ Petition in W.P.No.9850 of 2020 and the same is pending. The Respondents/ Promoters are ready to indemnify the allottees until the cloud in the title of the project land is cleared.

5. With regard to the refund of the Electricity Charges for the electricity provided through alternative sources, the learned Counsel for the Respondents/ Promoters contended that, the allottees undertook to pay Rs.1000/- per month for 1 BHK and Rs.2000/- per month for 2 BHK for supply of electricity through alternative source.

6. With regard to the restoration of Car parking and two wheeler parking as per the approved plan, the learned Counsel for the Respondents/Promoters submitted that the Respondents/ Promoters already submitted a revised plan for approval with the concerned local body in respect of the car parking issue.

7. With regard to the refund of Car parking charges, it is the case of the Respondents/Promoters that as per the terms of the Construction Agreement, the cost of the apartment includes one covered car parking and that no car parking charge was collected separately from any allottee.

8. With regard to the refund of Penal interest for the delayed payment allegedly collected from the allottees, it is the case of the Respondents/Promoters, that as per the terms of Construction agreement

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and as per the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, the Respondents/Promoters are entitled to charge interest for the delayed payment @ 2% over and above the State Bank of India, Marginal Cost of Lending Rate of interest.

9. After hearing both sides, the TNRERA has passed the impugned order. Aggrieved over the same, the complainant Association has preferred the above Appeal.

10. Heard both sides.

11. The Appellant Association had sought for the following reliefs in the Memorandum of Appeal:

I. To complete and handover the project named "Casagrand Smart Town" in Survey No.161/1, situated at Thazhambur Village, Thiruporur Taluk, Chengelpattu District (erstwhile Kancheepuram District) as advertised, committed, promised and assured by the Respondents.

II. To refund the amount collected from the buyers to provide supply of electricity through an alternative source.

III. To allot car parking and two-wheeler parking as per approved plan and not to collect money for both the approved and unapproved car parking and to refund the amount so collected to the buyers.

IV. To refund the exorbitant penal interest collected by the respondents from buyers and to stop collecting the penal interest for delay in making payment, as the respondents had not completed the project within the agreed time frame and further legal issues are also yet to be cleared.

V. To award litigation costs of Rs.1,00,000/- and to compensate for the consequential costs with Rs.1,00,000/-.

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12. With regard to Registration of the Sale Deeds, after clearing the dispute over the title of the project land and indemnifying all the allottees, the TNRERA had issued necessary directions.

13. With regard to the relief of refund of the amount collected from the allottees to provide electricity through alternative source, the Appellant/Complainant Association themselves, in their complaint before TNRERA, have specifically admitted that the allottees undertook to pay Rs.1000/- per month for 1 BHK and Rs.2000/- per month for 2 BHK for supply of electricity through alternative source. Having agreed and undertook to pay electricity charges as stated above, the allottees are estopped from claiming refund of the said amount. Hence, the said prayer is rejected.

14. With regard to the violation of approved plan, the Respondents/Promoters, violating the approved plan, have allotted 351 covered car parking and 10 open car parking as against the 169 covered car parking as per the approved plan. The Respondents/Promoters should restrict the number of car parking and two-wheeler parking strictly as per the approved plan. If any alterations are proposed to be carried out by the Respondents/Promoters, to increase the number of car parking, such alterations should be carried out only after getting the prior written consent of atleast two-thirds of the allottees as per Section 14(2)(ii) of the Real Estate (Regulation and Development) Act, 2016.

15. With regard to the relief of refund of car parking charges allegedly collected from the allottees is concerned, the cost of construction includes one covered car parking as mentioned in the Construction Agreement. No separate charges have been collected from the allottees in respect of the car parking. The Appellant/Complainant

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Association have also not specifically stated as to the quantum of car parking charges collected from each allottee. In these circumstances, the prayer with regard to the refund of car parking charges allegedly collected from the allottees cannot be granted.

16. With regard to the relief of refund of interest allegedly collected from the allottees is concerned, as per clause 5(a)(5) of the Construction Agreement, if the payment, as agreed and as provided in the agreement remains unpaid, the allottee undertook to pay interest at the State Bank of India, Highest Marginal Cost of Lending Rate plus 2% as prescribed under the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. Further, the Appellant Association has not provided any other details regarding the levy of penal interest by the Respondents/Promoters. Therefore, the prayer with regard to refund of penal interest is rejected.

17. In respect of awarding litigation costs, it is the discretion of the TNRERA to award costs. The Respondents/Promoters are also taking steps to clear the cloud over the title of the project land by prosecuting legal proceedings before the Hon'ble High Court and Hon'ble Supreme Court and incurred litigation expenses. In these circumstances, awarding of no cost cannot be challenged in this Appeal.

18. In the result, with the above directions the appeal is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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