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 : 18.08.2023
Delivered on : 08.09.2023

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

Appeal Nos.67 to 72 of 2022

V. Ratna Sababathy ... Appellant in A.No.67 of 2022

G.Panduranga Rao ... Appellant in A.No.68 of 2022

Manoharan K.A ... Appellant in A.No.69 of 2022

Swaminathan.K ... Appellant in A.No.70 of 2022

Shyamadhar Ram ... Appellant in A.No.71 of 2022

Meyyappan.S ... Appellant in A.No.72 of 2022

- Vs -

The Managing Director,
Indian Railway Welfare Organization (IRWO),
New Delhi - 110 001. ... Respondent (in all appeals)

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Prayer: The above six appeals have been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, in respect of the disallowed portion of the common order passed in C.Nos.248/2021, 249/2021, 250/2021, 251/2021, 252/2021 and 264/2021 dated 29.09.2022 on the file of Tamil Nadu Real Estate Regulatory Authority.

For Appellants : Mr.V.G. Suresh kumar in all the appeals

For Respondent : Mr.G.Prakash in all the appeals

COMMON ORDER

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

1. The appellants are the allottees of separate dwelling units constructed by the respondent /Promoter. The respondent is a welfare society registered under the Societies Registration Act. The project site is situated at Ambattur, Chennai. The project land was purchased in the year 2004 and bookings were opened in the year 2006. At the time of booking, the allottees were called upon to submit a letter of acceptance and undertaking. Except the booking letter, no construction agreement or agreement for sale of land was executed between the parties. Period for completion of the construction has not been specified anywhere. The project land was originally classified as "industrial" land. The process of changing the classification of the land to "residential" land took seven years, from the date of purchase (i.e.,) till 2011. Thereafter, planning permission was obtained and construction work was commenced. Due to escalation of construction cost over a period of 12 years, additional construction costs were

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levied upon the allottees. Finally, possession was delivered to the allottees in the year 2018.

2. It is the case of the appellants that in spite of delivery of the dwelling units, the respondent/promoter has not come forward to register the sale deeds in favour of the allottees. According to the appellants, certain amenities are yet to be completed in the project. Therefore, the appellants approached the TNRERA with a direction to refund the escalated cost of construction collected from the appellants/allottees and to direct the respondent to bear the additional stamp duty and registration charges due to the escalation of cost in registering the Sale Deed and the Construction Agreement.

3. It is the case of the respondent that the cost of the dwelling units fixed at the time of delivery, includes the balance GST payable and the interest for the delayed payment, maintenance fund, depreciation reserve fund and additional maintenance fund. According to the respondent, an extent of 11.88 acres of land was purchased on 12.03.2004 itself for a sum of Rs.7,16,36,308/- from and out of the revenues of the respondent society. The bookings were opened in the year 2006. Out of 223 members, only 140 members have paid the booking money. Booking money represented the net of commitment money and part cost of land mentioned in the Annexure-II of brochure issued in the year 2006. The remaining 83 members have not paid the part cost of land and they were not considered for allotment. Therefore, it is not correct to say that the respondent had collected the entire land cost from the allottees. The part cost of land collected from the 140 members was just 10% of the total cost of the land.

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4. The respondent made all efforts to complete the dwelling units as expeditiously as possible. The delay was caused mainly in the process of changing the classification of land from industrial to residential and the delay caused by the civic authorities in providing services such as electricity, water supply, sewerage, etc. That apart, some of the allottees referred the dispute for Arbitration and stalled the progress for few years. The respondent had updated the allottees about the status of the project through various letters dated 28.02.2008, 28.04.2008 and 25.08.2008. The respondent had also given option to the allottees for withdrawing from the project due to the delay caused vide letter dated 08.10.2009 and it was also informed that the amount paid by the allottees will be refunded with interest.

5. As per the terms and conditions mentioned in the brochure, with regard to cost escalation and delay in construction, the allottees have to bear all the costs towards registration of sale deed in respect of the land with the dwelling unit. The respondent is ready and willing to execute sale deeds in favour of the allottees, provided the allottees are ready to bear the entire cost of registration, including stamp duty. Therefore, the learned counsel for the respondent prayed for dismissal of the appeals.

6. Heard both sides.

7. It is pertinent to note that except brochure, admittedly there is no Construction Agreement or any other agreement between the parties. As per the brochure issued in the year 2006 and another brochure issued in the year 2008, following the arbitration award, it

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has been clearly mentioned at paragraph 5.6 which is reproduced hereunder:

"5.6. Cost of apartment:

Approximate cost of each type of house is indicated in Table-1

Table-1

TYPE	APPROXIMATE SUPER AREA IN SQ. M.	APPROXIMATE COST (RS. IN LAKHS)
A	53	12.20
B	71	15.60
C	132	21.60
D	167	26.80

Notes: (i) Omitted

(ii) Types, areas, costs as mentioned above and specifications in Table-2 are tentative and subject to revision depending upon changes during approval of plans by the competent Civil Authority, accepted cost of tender for works, escalation of labour and material costs, alterations in design and specifications, or any other unforeseen reasons and delays beyond the control of IRWO.

(iii) The above cost does not include the cost of geysers, cupboard/loft covers, fans, light fixures, lamp fixures, lamps, etc which will not be provided by IRWO. It also does not include charges such as stamp duty, registration charges, etc., required under the local bye-laws at the time of registration of dwelling units.

8. Further, the appellants/allottees had also submitted letter of acceptance and undertaking in the year 2006. By the said letter of acceptance and undertaking, it is clear that the appellants had knowledge that the estimated cost is subject to revision and that they have to pay the same including escalation and other charges, if any, as

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demanded by the IRWO. The relevant portion of the letter of acceptance and undertaking is reproduced hereunder:

"(i) omitted

(ii) omitted

(iii) I understand that estimated cost is subject to revision and I shall pay the same including escalation and other charges, if any, as demanded by the IRWO"

(iv) to (xii) omitted

9. In view of the above terms and conditions mentioned in the brochure as well as in the letter of acceptance and undertaking, the respondent/promoter cannot be directed to refund the additional costs of the dwelling units. Moreover, the respondent/promoter have already informed about their readiness and willingness to execute the sale deed in favour of the allottees vide letter dated 25.04.2019. Therefore, it is for the appellants/allottees to get the Sale Deed registered by paying the necessary stamp duty and registration charges. When the respondent/promoter is ready and willing to execute the Sale Deed in favour of the allottees, the question of directing the respondent/promoter does not arise. Admittedly, the possession of the dwelling units was handed over to the appellants in the year 2018. Inspite of the fact that 5 years expired since the handing over of possession, the appellants are not ready and willing to bear the cost of registration and stamp duty, for which the respondent cannot be blamed.

10. That apart, as early as on 08.10.2009, the respondent/promoter sent a letter to all the allottees explaining in detail about the delay in commencing the project. In the same letter,

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it has been clearly mentioned that in case any member desires to withdraw from the scheme, the amount paid will be refunded with interest. By letter dated 08.10.2009, the respondent/promoter gave an option to the allottees to withdraw from the scheme, even at the earliest point of time, in case they were not satisfied with the reasons stated in the said letter for the delay and that the respondent/promoter was ready to refund the amount with interest. However, the appellants did not opt for withdrawal from the project. The fact that none of the appellants herein have opted to withdraw from the scheme, clearly shows that the appellants were satisfied with the reasons mentioned in the said letter for the delay caused.

11. It is brought to the notice of this Tribunal that, one Ramakrishnan who is also an allottee of the very same project namely "Rail Vihar" filed complaint in C.No.82/2020 before TNRERA against the Indian Railway Welfare Organization, the respondent herein, seeking for directions to provide all the amenities and for other reliefs. After taking into consideration the case of both sides, TNRERA by order dated 10.06.2021 disposed of the complaint in C.No.82/2020 with the following directions:

> *"12. This Authority has examined the Complaint, the Counter Affidavit of the Respondent Promoter and the Rejoinder filed by the Complainant and the written submission of arguments by both sides carefully.*
>
> *13. As far as the prayer to direct the Respondent to give Completion Certificate is concerned, the Authority accepts the submission of the Respondent Promoter that the Great Chennai Corporation has stated that as per the latest order, being individual houses only in each plot this building does not require Completion Certificate.*

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14. Regarding direction to the Respondent to give building Structural Stability Certificate, this Authority directs the Respondent Promoter to provide a copy of structural stability certificate issued by the Structural Consultant who had provided the structural design for the dwelling unit of the Allottee Complainant before 30.09.2021.

15. Regarding the prayer to individual Metro Water connection, the Authority accepts the explanation given by the Respondent Promoter that water supply to all the dwelling units will be provided by connection from a common underground sump through Hydro-Pneumatic system and accordingly approval has been obtained from CMWSSB and water supply is arranged to all the 140 dwelling units. The Authority also notes that CMWSSB would issue separate notice under Section 34 and 35 of CMWSSB Act for water supply and sewerage.

16. Regarding provision of common amenities, the Authority notes the statement of the Promoter that all the amenities are in existence and directs that the Respondent Promoter shall ensure that all common amenities promised in the Brochure are provided before 30.09.2021, if not done already.

17. Regarding registration of dwelling units, the Authority notes that the Respondent has already sent the draft Deed of Conveyance to the Allottee. Therefore, it is for the Complainant to deposit the stamp charges and get the registration done.

18. Regarding direction to the Respondent Promoter to give accounts of the project to the Registrar of Societies, the Complainant Allottee is at liberty to move the Registrar of Societies for the same.

19. Regarding the prayer for the interest as mentioned in para-2(h), this relief sought for is not in consonance with the Act.

20. Regarding payment of GST and refund, if any, the Authority directs the Respondent Promoter to ensure collection of only the actual GST paid to the GST Authorities from the concerned Allottee.

21. Regarding furnishing copies of drawings/documents related to the project, the Promoter has stated that they have been enclosed along with the sale deed.

22. Regarding handing over of maintenance charges collected, refunding of additional maintenance charges, etc., the Authority notes the undertaking of the Respondent Promoter that it will hand over the corpus fund only to the registered Association as per the By-Law of IRWO. The Authority directs the Respondent Promoter to enable formation of Association of Allottees as per Section-11(4)(e) of the Act and shall do so before 30.09.2021, if not done already, and hand over the corpus fund to the registered Association of Allottees before 31.12.2021.

23. With the above findings and directions, this Complaint is disposed of."

12. Subsequently, the appellants herein, filed the present complaints, which are under challenge in the above appeals, in C.Nos.248 to 252 and 264 of 2021 in respect of the same real estate project "Rail Vihar" seeking for various reliefs as stated above, including the provision of amenities. It is not in dispute that the order passed in C.No.82/2020 dated 10.06.2021 has become final. The learned counsel for the appellants contended that, though the appellants were not parties in C.No.82/2020, since the real estate project in C.No.82/2020 and C.Nos.248 to 252 and 264 of 2021 is one and the same and that the amenities are common to all the allottees, the respondent should have complied with the directions made by the TNRERA in C.No.82/2020. The learned counsel appearing for the appellants submitted that the respondent had not complied with the directions in C.No.82/2020 so far. As rightly submitted by the learned counsel for the appellants, since the real estate project namely "Rail

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Vihar" is common in both the complaints and while disposing of the complaints in C.Nos.248 to 252 and 264 of 2021, TNRERA observed that the Authority had already given directions in its order dated 10.06.2021 in C.No.82/2020 that all common amenities promised in the brochure shall be provided before 30.09.2021, if not done already. Since the appellants are contending that the respondent had not complied with the directions given in C.No.82/2020 it would be appropriate to give the following directions as directed in C.No.82/2020. Accordingly the respondent is directed,

> *"1. To provide a copy of structural stability certificate issued by the Structural Consultant who had provided the structural design for the dwelling unit of the allottee/complainant on or before 30.11.2023.*
>
> *2. To ensure that all common amenities promised in the brochure are provided before 30.11.2023, if not done already.*
>
> *3. To obtain necessary approval from CMWSSB and to arrange for drinking water supply to all the 140 dwelling units on or before 30.11.2023, if not done already.*
>
> *4. To collect the actual GST amount remitted to the GST Authorities, from the allottee.*
>
> *5. To hand over the documents relating to the project to the allottees at the time of registration of the sale deed.*
>
> *6. To hand over the corpus fund to the registered Association as per the Bye-Law of IRWO. This Tribunal further directs the respondent/promoter to enable formation of Association of Allottees as per Section-11(4)(e) of the Act and shall do so before 30.11.2023, if not done already, and hand over the corpus fund to the registered Association of Allottees on or before 30.11.2023."*

13. The prayer in respect of the additional stamp duty and registration charges due to the escalation of land costs in registering

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the sale deed and construction agreement stand rejected. The respondent is directed to comply with the above directions on or before 30.11.2023.

14. With these observations, the appeals are partly allowed. Connected miscellaneous applications pending, if any, are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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