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: 03.11.2023

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

Appeal (SR) No.1099 of 2023

V.Sangeetha
rep. by Power of Attorney
S.Satheesh Kumar ... Appellant

- Vs -

M/s.Casa Grand Builder Private Limited
rep. by its M.D. Arun.M.N ... Respondent

Prayer: Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016

a) To pass order awarding interest component at the rate of SBI MCLR plus 2% GST upon the amount of Rs.11,62,300/- plus GST ordered vide E.P.No.14/2021 in C.No.436/2019 according to Rule 18 of the TNRERA Rules, 2017, in favour of the Appellant.

Verified RealEstate™

b) To issue Recovery Warrant under Section 40(1) of the RERA Act read with Rule 26 of the TNRERA Rules, to the District Collector of Chennai, against the Respondent, to collect a sum of Rs.11,62,300/- along with interest at the rate of SBI MCLR plus 2% plus GST under the orders passed in favour of the Appellant, immediately without any further delay.

c) To pass appropriate orders upon the District Collector of Chennai and concerned authorities, binding them upon the order/orders passed by the Hon'ble Tribunal in the present case, to execute the same without further notice or other process for the recovery of the ordered Amount Rs.11,62,300/- along with interest at the rate of SBI MCLR plus 2% plus GST under the orders passed in favour of the Appellant, immediately without any further delay.

d) To pass order against the respondent for the specific performance of the construction of overhead water tank; bore well with motor; septic tank; solar water heater; main gate and also to provide completion certificate of the said villa completed in all aspects, satisfying all compliances as issued from concerned authorities.

e) To execute all directions of the Authority in the order dated 27.02.2020 in C.No.436/2019 in the light of Rule 27 of the TNRERA Rules, 2017, by attaching all the movable and immovable properties of the Respondent and by arrest of the Key Managerial Personnel of the Respondent and detention in civil prison until the compliance of the final order of the Authority dated 27.02.2020 in C.No.436/2019.

f) The Appellant humbly prays the Hon'ble Tribunal to modify the Authority order based on *Actus curiae neminem gravabit*.

Appellant : Mrs. V.Sangeetha - party in person
rep. by Power of Attorney
S.Satheesh Kumar

ORDER

Challenging the order passed in E.P.No.14 of 2021 in C.No.436 of 2019 dated 02.06.2023 on the file of Tamil Nadu Real Estate Regulatory Authority, the Complainant, represented by her Power Agent, has filed the above appeal.

2. The Registry raised a query with regard to the maintainability of the appeal on the ground that Form-L is not in consonance with the prayer sought for in the Execution Petition.

3. Heard Mr.S.Satheesh Kumar, the Power of Attorney of the Appellant.

4. Mr.S.Satheesh Kumar, the Power of Attorney of the Appellant submitted that though the Execution Court had decided the matter in favour of the Appellant, it failed to award interest, hence, the appeal has been filed as against the order passed in the Execution Petition.

5. On a perusal of the original order passed in C.No.436 of 2019 dated 27.02.2020, it is clear that the Tamil Nadu Real Estate Regulatory Authority has not awarded any interest. The order passed in C.No.436 of 2019 has been challenged by the Respondent/Promoter by way of an appeal in C.M.S.A.No.87 of 2021 before the Hon'ble High Court.

6. It is pertinent to note that the Appellant herein has not preferred any appeal as against the non-awarding of interest in her favour. Therefore, non-awarding of interest has become final.

Verified RedEstate™

7. Pursuant to the order passed in C.No.436 of 2019, the Appellant preferred an Execution Petition in E.P.No.14 of 2021 and the Tamil Nadu Real Estate Regulatory Authority, by order dated 02.06.2023, disposed of the Execution Petition with the following directions:

> "19. Therefore, this Authority directs the Respondent Promoter to refund the excess payment of Rs.11,62,300/- plus GST to the Execution Petitioner without further loss of time.
>
> 20. For non compliance of directions of this Authority in this regard, this Authority under Section 63 of the Act imposes a penalty of Rs.5000/- (Rupees Five Thousand only) per day during which the default continues which may cumulatively extend upto Rs.3,00,000/- (Rupees Three Lakhs only).
>
> 21. This Authority also notes that the Respondent Promoter has not filed application with this Authority for registration of this project as a residential building project with common amenities.
>
> 22. Therefore, this Authority directs the Respondent Promoter to register this building project with this Authority without further loss of time."

8. The contention of the Appellant with regard to the awarding of interest, cannot be accepted for the reason that the Tamil Nadu Real Estate Regulatory Authority has not awarded any interest in the original order in C.No.436 of 2019. When the order passed in the Execution Petition is in consonance with the order passed in C.No.436 of 2019, absolutely there is no ground for filing the appeal as against the said order. Inspite of the same, the Appellant preferred the appeal.

9. Mr.S.Satheesh Kumar, the Power of Attorney of the Appellant submitted that the appeal has been filed to issue recovery warrant to the respondent. So far as the issuance of the recovery warrant to the respondent is concerned, it is for the Tamil Nadu Real Estate Regulatory Authority to issue the same in accordance with law. In such view of the matter, the appeal cannot be entertained for the purpose of issuing recovery warrant.

10. In these circumstances, the appeal preferred by the Execution Petitioner is not maintainable. Accordingly, the same is rejected.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to :

1. M/s.Casa Grand Builder Private Limited
   rep. by its M.D. Arun.M.N
   having its Head Office at
   NPL Devi, 5th Floor, New No.111, Old No.59,
   111/59, LB Road, Thiruvanmiyur,
   Chennai - 600 041.

2. The TNRERA.

Verified RealEstate™