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: 21.07.2023

Delivered on: 31.07.2023

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

Appeal Nos.18 and 19 of 2023

A.No.18 of 2023

Vijay Shankar Venugopal
rep. by his P.O.A. Holder
S.K.Balasubramanian ... Appellant

- Vs -

1. M/s.RGE Constructions and Development Pvt. Ltd.,
   rep. by its Directors
   a) Srinivasan Vasudevan
   b) Pradeep Nenumal Lala
   c) Jagadeesh Babu Ramanathan

2. Niranjana Ramakrishnan
   Authorized Signatory of M/s.RGE Constructions
   and Development Pvt. Ltd. ... Respondents

&

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A.No.19 of 2023

S.K.Balasubramanian ... Appellant

- Vs -

1. M/s.RGE Constructions and Development Pvt. Ltd.,
   Rep. by its Director
   a) Srinivasan Vasudevan
   b) Pradeep Nenumal Lala
   c) Jagadeesh Babu Ramanathan

2. Niranjana Ramakrishnan
   Authorized Signatory of M/s.RGE Constructions
   and Development Pvt. Ltd. ... Respondents

Prayer:

Appeals filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 against the common order of dismissal of the complaints in C.C.P.Nos.62 and 63 of 2020 dated 13.02.2023 on the file of the Single member, TNRERA and to grant the reliefs sought for in both the complaints by ordering refund of the advance amount with interest as prayed for.

For Appellants in both the appeals : Mr.R.Ramasubramaniam Raja

For Respondents in both the appeals: No appearance

COMMON ORDER

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

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1. In these two appeals the facts and circumstances are similar to each other and common questions are involved in these two appeals. Hence we decided to dispose both the appeals by a common order.

2. The appellant, Vijay Shankar Venugopal in A.No.18/2023 is the son-in-law of the appellant S.K.Balasubramanian in A.No.19/2023. In the year 2012 they booked two separate three bed room apartments, each one, in their individual name, in the residential project by name 'Embassy Residency' promoted by the 1st respondent/promoter. As per the construction agreement the respondents agreed to hand over possession within three years. Inspite of the expiry of seven years as of 2019 possession was not handed over to the appellants.

3. It is the case of the appellants that the respondents obtained partial completion certificate dated 13.04.2017 from the CMDA and invited the appellants for inspecting the apartments. The appellants inspected the apartments and found that the construction of apartments was not completed in full and that the apartments were not fit for habitation. According to the appellants the quality of construction was very poor. Expressing their concern over the poor construction quality the appellants sent various emails to the respondents. Several hundreds of emails were exchanged between the parties in this regard from April 2017 to April 2019.

4. To give a quietus to the dispute the appellants vide their email dated 27.04.2019 expressed their willingness to take possession "Under Protest". However, the respondents vide their email dated 03.05.2019 rejected the request of the appellants by stating that handing over of possession "Under Protest" was against their company's procedure. The appellants vexed with the adamant attitude of the respondent, decided

to cancel their booking on the ground of poor quality of construction and delay in handing over of the apartments. The appellants, vide registered letter dated 03.12.2019, conveyed their decision to cancel their booking and demanded refund of the entire amount paid by them with interest and compensation. For which the respondents sent a formal reply to the appellants on 11.12.2019 without saying anything on the demand of refund.

5. Left with no other option, the appellants preferred separate complaints before the Adjudicating Officer, TNRERA in C.C.P.Nos.62/ 2020 and 63 of 2020 with prayer to refund the amounts paid by them with interest and for compensation.The said complaints were originally tried by the Adjudicating Officer and later transferred to the Single Member of TNRERA in view of the judgment of the Hon'ble Supreme Court of India in Newtech Promoters and Developers Pvt. Ltd. Vs State of U.P. &Ors.

6. The Single Member, TNRERA, after hearing both sides, by his common order dated 13.02.2023 dismissed both the complaints by concluding that the appellants already took possession of the apartments in the year 2019 and therefore they are not entitled to ask for refund of the amount paid by them. Moreover, accepting the case of the respondents, the Single Member directed the appellant in A.No.18/2023 namely, Vijay Shankar Venugopal to pay a sum of Rs.1,32,139/- towards the balance amount due to the respondents,on account of improper calculation of interest. Likewise the Single Member, also directed the respondent to pay a sum of Rs.3,56,327/- due to the appellant in A.No.19/2023 namely S.K.Balasubramanian, on account of improper calculation of interest. Further, the Single

Member, TNRERA gave liberty to the appellants to move the Adjudicating Officer for compensation on the ground of delay in handing over of possession. Aggrieved over the common order passed by the Single Member, TNRERA the appellants have filed these appeals.

7. The notice ordered to Respondents in both the appeals were duly served on the Respondents through Registered post. As permitted the private notice sent by the counsel for the appellants was also served on the respondent. Inpsite of service of notice through both ways and inspite of sufficient time granted for entering appearance, the respondents failed to appear either in person or through their counsels.

8. Heard the counsel for the appellants. Records perused.We have carefully perused the impugned order.In paragraph No. 9(a) of the impugned order, the Single Member had observed as follows,

> *"It is very clearly in this two CCPs the date of delivery as per the construction agreement was 28.02.2015, whereas in both the CCPs the possession had been handed over on 2019 (as admitted by the complainants in the complaint at page 9 paragraph 16 in both the CCPs)"*

We have examined the complaint in this regard. The appellants nowhere in their complaints have admitted either directly or indirectly that they have taken possession of the apartments. The relevant portion in paragraph 16 of the complaint is extracted below.

> *"But the respondents have miserably failed to provide the facilities as mentioned in the*

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construction agreement and the respondents are forcing the applicant to take the possession of the apartment in the year 2019."

The Single Member of TNRERA completely misunderstood the above averments made by the appellants at page 9 paragraph 16 of their complaint. It is not even the case of the respondents, that they have handed over possession to the appellants at any point of time. Even in their reply letter dated 11.12.2019 (ExA8), issued by the respondents to the cancellation letter dt.03.12.2019 (ExA7) issued by the appellants, the respondents have not stated anything about the handing over of possession. The Single Member, TNRERA omitted to take note of these two letter correspondences marked as Ex.A7 and Ex.A8 on the side of the complainants in both the cases. Had these two letter correspondences were brought to the notice of the Single Member, he would have come to a different conclusion. Therefore the impugned order is liable to be set aside.

9. Let us now consider afresh, the entitlement of the appellants for refund of the amount paid by the appellants on various dates, along with interest from the date of respective dates of payments till date of actual refund. There is no dispute between the parties with regard to the execution of sale agreement and construction agreement on 18.04.2012 and subsequent registered sale deed with regard to UDS share on 13.07.2015. Admittedly the apartments though booked on 18.04.2012, were not handed over to the allottees even after the lapse of seven years till January 2020 i.e the month in which the complaints were preferred. Subsequent to the issuance of partial completion certificate by the CMDA on 13.04.2017, at the invitation of the respondents, the appellants

inspected the project premises. After such inspection the allottees have noticed some important defects to be rectified. In this regard several hundreds of email communications were exchanged between the parties from April 2017 to April 2019.

10. As there was no progress for two years and with a view to give a quietus to the dispute, the appellants who are at the receiving end, came forward to take possession of the apartments "Under Protest". This was evident from their email dated 27.04.2019. However, the respondents vide their email dated 03.05.2019 bluntly rejected the request of the appellants by stating that handing over of possession "Under Protest" was against their company's procedure.

11. Unable to take possession of the apartments, the appellants have cancelled their booking and demanded refund of the amounts paid by them with interest and compensation, vide their detailed letter dated 03.12.2019 (Ex.A7). In this letter the appellants have justified the cancellation by highlighting the inadequate capacity of water treatment and sewage treatment plan and also the improper water supply. Moreover, in the same letter the appellants have expressed their dissatisfaction over the structural stability of the building and raised their doubts over the quality of electrical wiring, fire-fighting equipment and the lifts installed in the building. Even after the receipt of the letter of cancellation from the appellants, the respondents sent a brief and vague reply letter on 11.12.2019. Though the reply letter reads that a detailed reply will be sent within 20 days, no such detailed reply letter was issued by the respondents.

12. As no detailed reply was received from the respondents, the appellants have set the law in motion and preferred separate complaints

before the Adjudicating Officer on 29.01.2020 which was later transferred to the Single Member, TNRERA. In a dispute between an allottee and the promoter the interest of the allottee is paramount. The Real Estate (Regulation and Development) Act, 2016 has been enacted with a view to protect the interest of the consumers in the real estate sector. As per Section 18 of the Act, 2016 if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms and agreements for sale, the promoter shall be liable on demand to the allottees , in case the allottees wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under the Act, 2016.

13. In the case on hand the respondents/promoters unable to give possession as per the construction agreement dated 18.04.2012 even after the expiry of seven years as of 2019. The failure to hand over possession for seven years without any reasons by the promoter gave the appellants/allottee the right to cancel the booking. Therefore the appellants are entitled for refund of the amount paid by them with interest.

14. Coming to the quantum of refund, as per the revised calculation statement (Ex.A12) filed by the appellant in A.No.18/2023 before the TNRERA (Refer Typed set Volume IV page 640 in A.No.18 of 2023) a sum of Rs.1,14,32,198/- inclusive of interest @9% p.a. upto 31.01.2020 was found due to Vijay Shankar Venugopal, the appellant in A.No.18/2023. Likewise, as per the revised calculation statement(Ex.A12)

filed by the appellant in A.No.19 of 2023 before the TNRERA (Refer Typed set Volume IV page 626 in A.No.19 of 2023) a sum of Rs.1,18,97,357/- inclusive of interest @9% p.a. upto 31.01.2020 was found due to S.K.Balasubramanian the appellant in A.No.19/2023. In both cases the respondents have not filed their statement of calculation or disputed the correctness of the statements of calculation filed by the appellants. Therefore, the respondents are liable to refund the amount as per the statement of calculations filed and marked as Ex.A12 in both cases.

15. In the result both the appeals are allowed with the following directions.

Appeal No.18 of 2023

In so far as the A.No. 18 of 2023 is concerned, we hereby direct the respondents to pay a sum of Rs.1,14,32,198/- (inclusive of interest at 9% upto 31.01.2020) to Vijay Shankar Venugopal the appellant in A.No.18/2023with future interest at 9% to be calculated on the principal amount from 01.02.2020 till the date of actual refund.

Appeal No.19 of 2023

In so far as the A.No. 19 of 2023 is concerned, we hereby direct that the respondents to pay a sum of Rs.1,18,97,357/-(inclusive of interest at 9% upto 31.01.2020) to S.K.Balasubramanian, the appellant in A.No.19/2023 with future interest at 9% to be calculated on the principal amount from 01.02.2020 till the date of actual refund.

Sd./- xxxx
CHAIRPERSON

Sd./- xxxx
JUDICIAL MEMBER

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