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 26.06.2023

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

Appeal No.34 of 2023

M/s.Newry Properties Pvt. Ltd.,
rep. by its Director, Sanjeev Gopalakrishnan ... Appellant

- Vs -

1. K.Ganesan
2. V.Mahalakshmi ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to allow the appeal, to set aside the order 29.03.2023 passed by the Adjudicating Officer attached to the TNRERA in C.C.P.No.50 of 2022 and to dismiss the complaint.

For Appellant : Dr.S.Padma

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ORDER

Challenging the order passed by the Adjudicating Officer, TNRERA in C.C.P.No.50 of 2022 dated 29.03.2023, the Builder has filed the above appeal.

2. The respondents filed a complaint before the Adjudicating Officer claiming compensation on the ground of rectification of defects in the apartment purchased by them. The complainants jointly purchased the Flat in the project of the respondent, viz., "Newry Shanmita" at Jelandianpettai Village, Kancheepuram District in January 2020. Thereafter, the respondents noticed various defects in the construction put up by the appellant, hence, they had given a letter dated 28.07.2020 pointing out the various defects noticed by them. Since the appellant failed to rectify the defects to the satisfaction of the respondents, the respondents were forced to file a complaint before the Adjudicating Officer, claiming compensation. The Adjudicating Officer, after taking into consideration the evidences of C.W.1 and R.W.1 and also taking into consideration the documentary evidences produced by the complainants and the appellant, estimated the compensation in respect of the works to be attended at Rs.4,50,000/-, a sum of Rs.50,000/- as compensation towards mental agony and hardship suffered by the complainants and also a sum of Rs.25,000/- towards litigation expenses. While arriving at the compensation, the Adjudicating Officer took into consideration Ex.A.12 Engineer's Report dated 02.11.2020, wherein the Engineer has categorically pointed out all the defects noticed by him in the Flat purchased by the complainants. The Engineer has also quantified the expenditure for the works to be attended at Rs.4,50,000/-. The appellant

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contended that they had rectified all the defects, hence, the award of compensation by the Adjudicating Officer is erroneous.

3. It is pertinent to note that the possession of the Flat was handed over to the respondents in the month of January 2020 and even at the earliest point of time (i.e.) on 28.07.2020, the respondents sent a letter to the appellant asking them to rectify all the defects. The report filed by the Engineer on 02.11.2020 correlate with the letter given by the complainants. From the report of the Engineer, it is clear that the appellant failed to rectify the defects even subsequent to their letter dated 28.07.2020 marked as Ex.A.9. After taking into consideration the oral and documentary evidences let in by the parties, more particularly Ex.A.12 Engineer's Report, the Adjudicating Officer has rightly awarded a total compensation of Rs.5,25,000/-. We do not find any reason to interfere with the award of compensation by the Adjudicating Officer.

4. Dr.S.Padma, learned counsel appearing for the appellant mainly contended that the complaint filed by the respondents is not maintainable for the reason that the complainants have prayed for refund as well as compensation in the same complaint. The learned counsel submitted that in view of the settled principle of law, praying for compensation and refund in the same complaint is not maintainable.

5. But on a perusal of the complaint filed by the complainants, it is clear that they have only prayed for compensation and not for refund. That apart, the Adjudicating Officer, while passing the order, has only awarded compensation and not refund. In such circumstances, the submission made by the learned counsel for the appellant is liable to be rejected. Accordingly, the same is rejected.

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6. For the reasons stated above, we do not find any ground to interfere with the order passed by the Adjudicating Officer. The appeal is devoid of merits and the same is liable to be dismissed. Accordingly, the Appeal is dismissed. Consequently, the connected Miscellaneous Applications are closed.

Sd/-xxxx
CHAIRPERSON

Sd/-xxxx
ADMINISTRATIVE MEMBER

Sd/-xxxx
JUDICIAL MEMBER

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