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: 25.08.2023

Delivered on: 20.09.2023

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

Appeal No.35 of 2023

1. Project Director,
   Army Welfare Housing Organization
   rep. by its Authorized Signatory
   Col.Muralidharan
   Coimbatore - 641 049.

2. Army Welfare Housing Organization,
   rep. by its Authorized Signatory,
   Col. Muralidharan
   New Delhi - 110 011. ... Appellants

- Vs -

Col R Ganesan ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order passed by the learned Single Member, Tamil Nadu Real Estate Regulatory Authority in C.C.P.No.95 of 2020 dated 05.07.2022.

For Appellants : Mr. N. Zahid Ahmed for M/s.AAV Partners,

For Respondent : Mr. K.R. Samratt

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ORDER

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

1. The appellant, Army Welfare Housing Organization, is an autonomous private entity and registered as a society under the Registration of Societies Act, 1860. The appellant is the promoter of a real estate project namely "Raman Vihar" situated at Anna Nagar, Chinnavedampatti, Coimbatore. The respondent/Complainant is an allottee of the said project and was allotted a luxury apartment in the said project vide booking letter dated 31.07.2012. As per clause 8 of the said booking letter, the appellant/promoter tentatively fixed the period of handing over of possession of the apartment during December 2014. According to the respondent/allottee, the apartment was handed over to him on 29.05.2018, with a delay of 3 years and 5 months. The respondent/allottee claimed interest for the delayed delivery on the amount paid by him towards the cost of construction. It is also the case of the respondent/allottee that charging of Rs.5,81,377/- towards car parking is not proper as only stilt car parking was allotted, which is a common area. The respondent/complainant also claimed compensation for rental loss and for mental agony.

2. It is the case of the appellant/promoter that as per the Clause 74 of the Master Brochure, no compensation is payable by the appellant to the allottee in case of any delay in handing over the apartment for the reasons beyond their control. According to the learned counsel for the appellant, in as much as there is no Construction Agreement between the parties and as mentioned in the booking letter

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dated 31.07.2012, the respondent/allottee is bound by the terms and conditions contained in the Master Brochure. According to the learned counsel for the appellant, it has been specifically mentioned in the booking letter itself that car parking charges will be levied separately. The learned counsel for the appellant contended that the appellant/promoter is entitled to charge the cost of car parking space proportionate to the carpet area of the apartment and therefore, the appellant need not refund the car parking charges of Rs.5,81,377/- to the respondent/allottee with interest.

3. The learned Single Member, TNRERA, after hearing both sides, awarded interest at 10.05% from December 2014 till the date of handing over of possession, on the amount paid by the respondent/ allottee. Further, the appellant/promoter was directed to refund the car parking charges of Rs.5,81,377/- only to the respondent/allottee and also to pay a sum of Rs.25,000/- towards litigation expenses. Aggrieved over the same the appellant/promoter has preferred this appeal before this Tribunal.

4. Heard both sides.

5. Admittedly, in the booking letter issued in favour of the respondent/allottee on 31.07.2012, it is clearly mentioned that the apartment is expected to be ready for handing over by December 2014. But, the apartment was actually handed over to the respondent/allottee only on 29.05.2018 with a delay of 3 years and 5 months. No valid reason was stated by the appellant/promoter for the delay in handing over of the apartment. The only reason stated by the appellant/promoter was due to delay in registering the project. In fact, the dispute with regard to

registration of the project surfaced after passing of the order by TNRERA, in C.No.45/2018 dated 08.11.2018. Admittedly, the apartment was handed over to the respondent/allottee on 29.05.2018 itself. Therefore, the reasons stated by the appellant/promoter for the delay in handing over of possession cannot be accepted.

6. Coming to the next aspect with regard to charging the costs for the stilt car parking, the learned counsel for the respondent contended that stilt car parking area being a common area, the appellant/promoter is not entitled to charge any amount separately for the allotment of stilt car parking. However, as per the definition under Section 3(o) of the Apartment Ownership Act, 1994, those common areas and facilities reserved for certain apartment or apartments to the exclusion of the other apartments is defined as limited common areas and facilities. Section 3(o) of the Apartment Ownership Act 1994, is reproduced hereunder for ready reference:

> *3. (o) "limited common areas and facilities" means those common areas and facilities designated in the Deed of Apartment as reserved for certain apartment or apartments to the exclusion of the other apartments"*

As per the above said definition, there could be common areas reserved for certain apartment or apartments to the exclusion of the other apartments. So the stilt car parking, though provided in a common area, is the reserved common area for certain apartment or apartments to the exclusion of the other apartments. Common area and limited common area are not one and the same. While "common area" is common for all the allottees, the "limited common area" is reserved for an allottee or allottees to the exclusion of other allottees. Therefore, the

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contention of the learned counsel for the respondent/allottee cannot be accepted.

7. In so far as the question of levying of car parking charges, Hon'ble Supreme Court in "Nahalchand Laloochand Pvt. Ltd. Vs Panchali Co-operative Housing Society Ltd" judgment reported in (2010) 9 SCC 536, in paragraphs 60 and 61 has held as follows:

> *"60. We have now come to the last question namely-- what are the rights of a promoter vis-`-vis society (of flat purchasers) in respect of stilt parking space/s. It was argued that the right of the promoter to dispose of the stilt parking space is a matter falling within the domain of the promoter's contractual, legal and fundamental right and such right is not affected. This argument is founded on the premise, firstly, that stilt parking space is a `flat' by itself within the meaning of Section 2(a-1) and in the alternative that it is not part of `common areas'. But we have already held that `stilt parking space' is not covered by the term `garage' much less a `flat' and that it is part of `common areas'.*
>
> *61. As a necessary corollary to the answers given by us to question nos. (i) to (iii), it must be held that stilt parking space/s being part of `common areas' of the building developed by the promoter,* ***the only right that the promoter has, is to charge the cost thereof in proportion to the carpet area of the flat from each flat purchaser****. Such stilt parking space being neither `flat' under Section 2(a-1) nor `garage' within the meaning of that provision is not sellable at all."*

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8. In view of the judgment of the Hon'ble Supreme Court cited supra, we hold that the promoter is entitled to charge for the car parking proportionate to the carpet area of the flat. Therefore, the contention of the learned counsel for the appellant that the appellant/promoter has got every right to charge for car parking is accepted. In these circumstances the order passed by the learned Single Member, TNRERA with regard to the refund of car parking charges of Rs.5,81,377/- is liable to be set aside.

9. In so far as the awarding of interest for the delayed handing over of possession is concerned, the order of the learned Single Member, TNRERA is confirmed and in so far as the order directing refund of car parking charges of Rs.5,81,377/-is concerned the order of learned Single Member, TNRERA is set aside. In other aspects the impugned order remains intact.

10. In the result, the appeal is partly allowed. Connected Miscellaneous applications pending, if any, are closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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