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: 03.11.2023

Delivered on: 06.12.2023

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

Appeal No.41 of 2023
and
M.A.No.131 of 2023

Army Welfare Housing Organization (AWHO)
rep. by its Managing Director Maj Gen Vikal Sahni,
Now rep. by its Authorized Signatory
Havildar Viswanathan M
New Delhi - 110 011. ... Appellant

- Vs -

Lt. Col. Prem Abilash Chandran ... 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 Adjudicating Officer, TNRERA in C.C.P.No.234 of 2021 dated 18.01.2023.

For Appellant : Mr.P.H.Manoj Pandian

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 Army Welfare Housing Organization, a Society registered under the Societies Registration Act, is the Appellant/Promoter. The Appellant/Promoter promoted a housing scheme under the name "Raman Vihar" for the benefit of the retired/serving Army Personnel at Chinnavedampatti, Coimbatore District. On the application submitted by the Respondent/Allottee, during December 2010, he was allotted a row house having a carpet area of 1,440 ft. The total construction cost was fixed at Rs.43,60,000/-. Though, the house was expected to be delivered by December 2014, the same was delivered only during January 2019. The Respondent/Allottee preferred a complaint before the learned Adjudicating Officer claiming compensation for the shortage of carpet area and for the delay in handing over of possession.

2. It is the case of the Appellant/Promoter that the Army Welfare Housing Organization is a "No-Profit, No-Loss" Society, registered under the Societies Registration Act. According to the Appellant/ Promoter, the delay in delivery of possession was due to the cancellation of the first contract and another contractor was engaged for completing the project. The project was completed during May 2018. The delay was beyond the control of the Appellant/Promoter. As per the Master Brochure published by the Appellant/Promoter, they are not liable to pay any interest in the event of any delay in the

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delivery of possession for the reasons beyond the control of the Appellant/Promoter.

3. Further, it is the case of the Appellant/Promoter that the Respondent/Allottee has not paid the installments regularly as per the payment schedule fixed in the booking letter. As per the Master Brochure issued by the Appellant/Promoter, they are entitled to levy interest for the delayed payment. The learned counsel for the Appellant/Promoter submitted that the interest charged for the delayed payment has been refunded to the Respondent/Allottee, during February 2022. According to the learned counsel for the Appellant/Promoter, the order of the learned Adjudicating Officer awarding interest as compensation is liable to be set aside.

4. On the other hand, the learned counsel for the Respondent/ Allottee contended that as the Appellant/Promoter is collecting interest for the delayed payment, they are bound to pay interest as compensation for the delay in delivery of possession. According to the learned counsel for the Respondent/Allottee, the appeal is liable to be dismissed.

5. After hearing both sides, the learned Adjudicating Officer has awarded interest at 9.30% on the amount paid by the Respondent/ Allottee towards compensation for the delay in delivery of possession. The learned Adjudicating Officer rejected the claim of compensation for the alleged shortage in the carpet area. Aggrieved over the awarding of interest as compensation, the Appellant/Promoter has filed the present Appeal before this Tribunal.

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6. Heard both sides.

7. The Statement of Accounts as on 22.06.2018, prepared by the Appellant/Promoter, was communicated to the Respondent/Allottee along with the handing over intimation letter dated 25.06.2018. As found from the said Statement of Accounts, the Respondent/Allottee paid the installments with a delay of 4 years. Therefore, the Appellant/Promoter charged interest for the delayed payment amounting to Rs.9,02,633/-. Admittedly, this penal interest amount of Rs.9,02,633/- has been refunded to the Respondent/Allottee during February, 2022. The total amount refunded to the Respondent/Allottee during February, 2022 was Rs.9,07,180/-. The learned counsel for the Respondent/Allottee also admitted the receipt of this amount by way of refund.

8. With regard to the liability to pay compensation for the delay in delivery of possession, as per Clause 74 of the Master Brochure published by the Appellant/Promoter and as communicated to the Respondent/ Allottee along with the booking letter, no compensation will be paid by the Appellant/Promoter to the Allottee in the case of handing over dwelling units is delayed for the reasons beyond the control of the Appellant/Promoter.

9. Further, the Appellant/Promoter by letter dated 04.06.2015, gave an option to the Respondent/Allottee to withdraw from the project in view of the delay in completing the project. In the same letter, it was specifically mentioned that due to the process of selection of new contractors, there was some delay in completing the

project. However, the Respondent/Allottee did not opt to withdraw from the project. In fact, after the receipt of the said letter dated 04.06.2015, the Respondent/Allottee had paid the arrears of installment in the year 2016 and 2017 that was pending for 4 years,. This clearly shows that the Respondent/Allottee was satisfied with the reasons stated by the Appellant/Promoter for the delay in completing the project.

10. In this regard, the learned counsel for the Appellant/ Promoter relied upon a judgment of the Hon'ble Supreme Court reported in ***2007 (6) SCC 711 [Bangalore Development Authority Vs. Syndicate Bank]***, wherein the Hon'ble Supreme Court has held as follows:

> "...
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> *16. The more serious issue is whether the facts and circumstances warrant a finding of negligence and deficiency in service on the part of BDA necessitating award of compensation. The brochure relating to the BDA scheme did not mention any specific date for delivery of possession of the houses. No agreement was entered into between the parties stipulating any time for performance or delivery of houses. The only document on which reliance is placed by the respondent is a letter dated 22.8.1985 wherein BDA makes a reference to the expected date of completion of construction while intimating the revised cost of the HIG houses on account of escalation etc. The said letter stated that the total cost of 15 HIG houses would be Rs.7125000/- and after adjustment of Rs.1068750/-, the balance of Rs.6036250/- was payable in seven bi-monthly instalments from November, 1985 to December, 1986, (the first six instalments being Rs.862327/- and the last instalment being Rs.862288/-). It also incidentally stated that the houses would be ready for occupation in December, 1986. The instalments were not paid and respondent itself was the defaulter. Nevertheless, BDA allotted 15 houses as per intimation dated*

27.5.1987. In a self financing scheme, the instalments paid by the allottees are used for construction. If an allottee does not pay the instalments, he cannot obviously expect completion of construction. In this case, the payment was received by BDA (without charging any interest) by way of adjustment on 15.5.1989. Even if the reasonable period for construction is taken as two years, BDA had to explain the 'delay' only from 15.5.1991 and not from 1985 as assumed by the Commission. BDA delivered four houses in time, that is in 1989 and 1990. It did not deliver the remaining 11 houses, as its contractor delayed execution of the work. It may be mentioned that the project contemplated construction of 558 HIG houses and the work got stuck only in regard to 68 houses (including the 11 houses to be delivered to the Respondent). When the respondent wrote letters in 1989, 1990, 1993 and 1994 and also got in touch with BDA officers, seeking possession, BDA explained that the delay was on account of its contractor (M/s Khoday Engineering) stopping work and raising a dispute. BDA took necessary steps, and even sought government intervention, to persuade the contractor to proceed with the work. Having failed in its effort, it ultimately cancelled the contract with the contractor and got the work completed through an alternative agency and immediately after completion, delivered the houses in January/March, 1997.

17. We find that both parties - BDA as also the Respondent proceeded on the basis that time was not the essence of the contract. In a contract involving construction, time is not the essence of the contract unless specified. Even when the respondent wrote the letters dated 29.11.1989, 17.1.1990, 9.7.1993 and 11.1.1994, it did not make time for performance the essence of contract, nor fix any reasonable time for performance. The Respondent did not also choose to terminate the contract, obviously in view of the manifold increase in the value of the Houses. For the first time, by notice dated 11.7.1994, it purported to make the time the essence, but demanded delivery within an unreasonable period of one month and filed the complaint on 4.2.1995. Thus, it cannot be said that the Respondent made time the essence of contract, in a manner recognized in law. We also find that the development authority was constructing these houses under a self-financing scheme on 'No-Profit No-Loss basis' by using the installments/amounts paid by the allottees. The houses were

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delivered in 1997 at a price agreed in 1986. By 1997, the value had gone up many times (more than 10 times according to BDA). The Respondent had the benefit of such rise in value. The respondent also failed to prove any negligence on the part of BDA. In this factual background, we find it difficult to hold that there was 'deficiency in service' on the part of BDA entitling the respondent for any compensation by way of interest or otherwise. Consequently, the respondent is not entitled to any compensation."

11. In the case on hand also, no agreement was entered into between the parties, stipulating any time for delivery of houses. In a self financing scheme, the installments paid by the allottees are used for construction. The Respondent/Allottee, having committed default in paying the installments, cannot expect completion of construction within a time limit. Even in the booking letter dated 12.07.2012, under the head "Probable date of completion" in Clause 8, it has been stated as follows:

"8. As per existing plans your DU is expected to be ready for handing over by December 2014."

Therefore, in the light of the judgment of the Hon'ble Supreme Court cited supra and in the facts and circumstances of the present case, the Respondent/Allottee is not entitled for any compensation for the alleged delay in delivery of possession.

12. In the result, the appeal is allowed. The order of the learned Adjudicating Officer in C.C.P.No.234 of 2021 dated 18.01.2023 is set aside. The Appellant/Promoter is entitled to withdraw the amount deposited by them under Section 43(5) of the Real Estate (Regulation

and Development) Act, 2016, with accrued interest. Connected Miscellaneous Application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to :

1. Lt. Col. Prem Abilash Chandran
   288, Medium Regiment,
   C/o. 56 APO, Pin 926 288.

2. The Adjudicating Officer, TNRERA.

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