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: 11.08.2023
Delivered on: 21.08.2023

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

Appeal No.48 of 2023

1. M. Shankar
2. C.S.Brindha ... Appellants

- Vs -

M/s.Casa Grande Shelter LLP,
Rep by its Founder & Managing Director Arun MN ... Respondent

Prayer: Appeal preferred by the complainant, under Section 44 of the Real Estate (Regulation and Development) Act, 2016 as against the disallowed portion of the order passed by the learned Single Member, TNRERA in CCP No.163/2021 dated 16.12.2022.

For Appellants : Mr. Gokula Rao.N
For Respondent : Mr.O.L.V.Ganesan

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ORDER

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

1. The appellants are the allottees in the real estate project by name "Casa Grand-Asta" promoted by the respondent / Promoter. Initially, the allottees booked a flat during February 2018. Construction Agreement and Agreement for Sale were executed on 12.02.2018. Flat No.F-109 was allotted to the appellants during March 2018. The respondent agreed to hand over the flat by August 2019. But the respondent failed to hand over possession as agreed by him. The appellants paid a sum of Rs.86,02,592/-on various dates from 28.09.2016 to 28.10.2020 towards the cost of UDS land and construction cost of the flat and other expenses. At the request of the appellants, the respondent re-allotted another flat in D-103 and that the appellants took possession of the same during December 2020. There is no dispute between the parties on this aspect.

2. However the appellant, in his complaint before TNRERA, claimed the following amounts from the respondents towards refund and compensation, under various heads. Firstly, a sum of Rs.3,01,600/- which was additionally demanded and collected by the respondent from the appellants towards preferred location charges. Secondly, a sum of Rs.5,31,412/- towards excess GST amount allegedly collected by the respondent. Thirdly, a sum of Rs.5,25,000/- towards rental loss. Fourthly, the appellants also claimed Rs.20,64,622/- towards compensation for the delayed handing over of possession. Fifthly, the appellants claimed

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compensation of Rs.5,00,000/- towards mental agony. Sixthly, the appellants also claimed refund of a sum of Rs.11,000/- collected by the respondent towards use of generator from December 2020 to March 2021 i.e till the E.B. connection was given.

3. After hearing both sides, the learned Single Member, TNRERA has directed the respondent to pay interest at the rate of 9.30% p.a. towards compensation for the delayed handing over of possession.The learned Single Member, TNRERA also directed the respondent to repay the sum of Rs.3,01,600/- collected from the appellants towards preferred location charges by terming it as illegal. Further, the learned Single Member, TNRERA rejected the reliefs prayed for by the appellants with regard to the refund of excess GST and also the refund of Rs.11,000/- collected towards use of generator. With regard to the compensation for the rental loss and for compensation for mental agony, the learned Single Member, TNRERA directed the appellants to approach the Adjudicating Officer by filing a separate complaint. The appellants have now preferred this appeal, only with regard to the above said two disallowed reliefs with regard to excess GST and generator charges.

4. It is the case of the respondent that in the GST council meeting held on 19.03.2019, the promoters in the real estate sector were given one time option to continue to pay GST at the old rates as new tax rates were proposed to be implemented with effect from 01.04.2019. The respondent exercised the option to collect GST at the old rate i.e., 12%. The copy of the option form has been produced and marked as Ex.B2 on the side of the respondent. It is the case of the respondent that they had collected GST@ 12% from the appellants as fixed by the GST council and

remitted the same to the Government. Therefore, according to the learned counsel for the respondent, the question of excess GST collected by the respondent does not arise. It is the further case of the respondent that the respondent has charged Rs 11,000/- towards the usage of generator for four months which cannot be repaid. The learned Counsel for the respondent prayed for the dismissal of the appeal.

5. Heard both sides.

6. The appeal has been filed as against the refusal to grant the following two reliefs by the learned Single Member, TNRERA (i) Refusal to order refund of Rs.5,31,412/- allegedly collected from the appellants towards excess GST and (ii) Refusal to order refund of Rs.11,000/- towards generator usage charges.

7. With regard to the refund of excess GST allegedly collected from the appellants, it is the case of the appellants that the respondent has charged 12% GST instead of 5%. According to the appellants, difference 7% of GST that was collected in excess, should be refunded to the appellants. In this regard, as per the decision taken by the GST council in the 34th meeting held on 19.03.2019 regarding GST rate on real estate sector, the respondent exercised the option to pay GST at the old rate i.e., at 12%. To prove their contentions, the respondent produced the copy of the option letter dated 08.05.2019 and marked as Ex.B2 on the side of the respondent during the course of enquiry before the learned Single Member, TNRERA. The said option letter would clearly prove that the rate of GST payable by the respondent was only 12%. Therefore, the GST was rightly collected at 12% from the appellants and there is nothing to be refunded.

8. With regard to the refund of Rs.11,000/- for the use of generator, it appears from the averments in the complaint that from December 2020 to March 2021 till the E.B. connection was given, the respondent used generators for providing electricity to the entire project area. In this connection, a sum of Rs.11,000/- was collected from the appellants towards the maintenance of generator for a period of 4 months. The appellants having used the generator and also utilized the electricity generated, they cannot expect the respondents to supply electricity for their usage free of cost. Hence, the learned Single Member, TNRERA has rightly rejected the prayer for reimbursement.

9. Therefore, refusal to grant these two reliefs by the learned Single Member, TNRERA is perfectly correct. We find no ground to interfere with the order passed by the learned Single Member, TNRERA. Hence the appeal is liable to be dismissed.

10. In the result, the appeal is dismissed.

Sd.XXXX
CHAIRPERSON

Sd.XXXX
JUDICIAL MEMBER

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