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: 23.08.2023
Delivered on: 13.09.2023

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

Appeal No.50 of 2023
&
M.A.No. 154 of 2023

1. S.Natarajan
2. T.Gomala Geetha ... Appellants

- Vs -

M/s. Rajkham Infra Pvt.Ltd.,
Rep. by its Managing Director
M.Arumugam ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 05.06.2023 passed by the learned Adjudicating Officer, Tamil Nadu Real Estate Regulatory Authority in C.C.P.No.62 of 2022.

For Appellants : Mr.R.Ramasubramaniam Raja

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ORDER

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

1. The appellants were originally allotted an apartment in the real estate project by name "Silver Crest" promoted by the respondent, herein. Both the parties have entered into a construction agreement on 18.11.2020. From October 2020 to December 2020 the appellants have paid Rs.25,00,000/- towards the cost of construction and the value of UDS land. The total cost of construction as per the construction agreement is fixed at Rs.40,39,040/-. The value of undivided share of land, as per the sale agreement dated 18.11.2020, is fixed at Rs.6,60,960/-. As per Clause 10 of the construction agreement, the respondent agreed to hand over temporary possession of the apartment for conducting house warming pooja and for carrying out interior decoration works.

2. It is the case of the appellants that after informing the respondent/promoter, the appellants carried out interior works and pending works by incurring an expenditure of Rs.2,87,435/-. The respondent/promoter failed to get NOC from their creditor, namely, M/s.Shriram Housing Finance Limited. Therefore, the registration of sale deed could not be completed as proposed by the appellants during first week of February 2021. As the appellants insisted for the NOC issued by the creditor of the respondent, namely, M/s.Shriram Housing Finance Limited by clearing the dues, to circumvent the same the respondent sold the apartment to another person for higher value along with the interior

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decoration works carried out by the appellants. Hence, the appellant claimed compensation of Rs.2,87,435/- towards the cost of interior decoration works. That apart, the appellants also claimed rental loss. Seeking reimbursement of Rs.2,87,435/- and compensation, the appellants preferred a complaint before learned Adjudicating Officer, TNRERA in C.C.P.No.62/2022. The learned Adjudicating Officer dismissed the complaint vide impugned order dated 05.06.2023. Aggrieved over the same, the appellants have preferred this appeal before this Tribunal.

3. On the other hand, the respondent in his counter filed before the Adjudicating Officer in C.C.P. No. 62 of 2022, denied the allegations that the appellant carried out interior works and painting works at a cost of Rs.2,87,435/-. Further, it is the case of the respondent/promoter that out of total cost of Rs.42,00,000/-, the appellants have paid only a sum of Rs.25,00,000/-. According to the respondent, since the appellants have failed to pay the balance amount of Rs.17,00,000/- as agreed by them, the respondent cancelled the allotment and sold the apartment to another person.

4. Heard the learned counsel for the appellants.

5. It is an admitted fact that the Construction and the Sale Agreements were executed between the parties on 18.11.2020. It is also true that as per Clause 10 of the Construction Agreement, the respondent/promoter agreed to hand over temporary possession for conducting house warming pooja and for carrying out interior decoration works. The total cost of the apartment and the value of UDS land comes to Rs.42,00,000/-. Admittedly, out of the said amount, appellants have paid only a sum of Rs.25,00,000/- from October 2020 to December 2020.

Thereafter, the appellants have not paid any amount towards the balance cost of the apartment. The appellants have filed a separate complaint for refund with interest of the said advance amount of Rs.25,00,000/- before the learned Single Member, TNRERA. No other details were given in respect of the said complaint.

6. It is true that vide email dated 26.12.2020 the appellants intimated the respondent about their proposal to conduct 'House Warming' on 27.01.2021 and also the proposed date of registration of Sale Deed as 05.02.2021. In the same email, the appellants requested the respondent to complete all the pending works by 03.01.2021 and intimated about their proposal to commence the interior wood works from 04.01.2021 onwards. On the same day, the respondent, vide reply email dated 26.12.2020 asked the appellants to proceed with the 'House Warming' ceremony on 27.01.2021. Nothing has been mentioned in the said reply email about the granting or refusal of permission for the appellants to carry out interior decoration works. The receipts produced by the appellants to prove that they had carried out the interior wood works and painting works, etc., were dated 10.02.2021 and 23.03.2021 respectively. This itself shows that the interior wood works and painting works have not been carried out during January 2021, as proposed by the appellants.

7. To the shock and surprise of the appellants, they had received an email from M/s.Shriram Housing Finance Ltd., on 15.01.2021 regarding the requirement of NOC to be issued by the M/s.Shriram Housing Finance Ltd., forgetting the sale deed registered in favour of the appellants. Therefore, it is very clear that as early as on 15.01.2021, the appellants gained knowledge that the NOC to be issued by the M/s.Shriram Housing

Finance Ltd., is necessary for completing the registration of Sale Deed. In all the email correspondences, the appellants insisted the respondents to get the NOC before completing the registration of Sale Deed. On the other hand, the appellants were proceeding with the interior works without getting any specific assurance from the respondent/promoter in writing with regard to carrying out the interior wood works and painting works. Thus, the appellants put themselves in juxtaposition. The appellants very well knew that they were carrying out the interior wood works and painting works, at their own risk and costs. Unless and until there is a specific authorization or any commitment on the part of the respondent in respect of carrying out the interior decoration works by the appellants, they cannot be made liable for the costs allegedly incurred by the appellants in carrying out the interior decoration works and painting works. In the above facts and circumstances, the principle of estoppel cannot be applied against the respondent.

8. Further, the appellants also claimed Rs.1,50,000/- as compensation for the alleged rental loss suffered by them. In this regard, the appellants have produced copy of bank statement for the period from February 2021 to January 2022. Though the appellants claimed rental compensation to the tune of Rs.1,50,000/- in their complaint, they have not pleaded the details of the demised premises and the monthly rent paid. The appellants have merely stated in their complaint as follows: "The complainants are in a rental accommodation and are incurring rental expenses too." Except this vague statement, no other details have been given by the appellants with regard to the rental premises allegedly occupied by them. It is well settled law that without pleadings evidence

should not be relied upon. The bank statement produced by the appellants cannot be relied upon for want of pleadings. The copy of rental agreement was also not produced to establish their claim. Therefore, the appellants are not entitled for any rental loss as alleged by them. Therefore, the appeal is liable to be dismissed.

9. In the result, the appeal is dismissed at the admission stage itself. Connected Miscellaneous application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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