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 : 29.09.2023

Delivered on : 11.10.2023

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

Appeal No.67 of 2023

Dhivya R Kottapadi ... Appellant

- Vs -

M/s. Baashyaam Constructions Pvt. Ltd.,
Rep by its Managing Director
R.Yuvaraajann ... Respondent

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, praying (a) to set aside the order of dismissal of the complaint passed by TNRERA, in C.No.159 of 2022 dated 20.07.2023; (b) to declare that the termination letter dated 28.04.2022, the same communicated through E-mail dated 16.04.2022, is null and void; (c) to direct the respondent to honour the Construction Agreements dated 20.08.2021 and Sale Agreements dated 20.08.2021 relating to Flat Sig-A26, Sig-B26, Sig-A27, Sig-B27 and execute and register a Sale Deed in respect of the Schedule C and D mentioned properties in favour of the complainant, free from all encumbrances upon receiving the balance sale consideration as per the Sale Agreements and Construction Agreements dated 20.08.2021.

For Appellant : Mr. Prajeeth.P

ORDER

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

1. The Appellant was the Allottee of four apartments in the real estate project, namely, "Crown Residences" situated at Koyambedu, Chennai, developed by the Respondent/Promoter. The Appellant/ Allottee, by paying a booking advance of Rs.20,30,000/- on 18.11.2019, booked four apartments in the said project. The Respondent/Promoter confirmed the allotment of four apartments bearing Flat Nos.Sig-A26, Sig-A27, Sig-B26 and Sig-B27 vide letter dated 20.11.2019. Both the Appellant/Allottee and the Respondent/Promoter entered into four separate Construction Agreements on 20.08.2021. The total cost of the four apartments was fixed at Rs.11,36,09,420/-. Out of the said amount, the Appellant/Allottee paid Rs.2,20,30,000/- to the Respondent/ Promoter towards the cost of the four apartments.

2. According to the appellant, subsequent to the payment of Rs.50,00,000/- by the Appellant/Allottee on 18.08.2021, the officials of the Central Board of Indirect Taxes and Customs attached with the Department of Revenue, Government of India, conducted raids for GST violations at the Appellant/Allottee's sole proprietorship firm M/s.Koustubh Entertainment and also at the Corporate ventures of the Appellant/Allottee's husband. The bank accounts of both the Appellant/Allottee and her husband were frozen by the authorities. According to the Appellant/Allottee, because of this, she was not able to make further payments towards the cost of construction. The Appellant/ Allottee informed the Respondent/Promoter about her inability to pay

further payments due to the GST raid and sought further time for making the balance payment. However, the Respondent/Promoter issued a legal notice dated 10.03.2022, demanding payment of Rs.86,96,051/- with interest at 10.25% per annum for the period from 15.02.2021 to 06.03.2022.

3. The Appellant/Allottee sent an e-mail dated 08.11.2022 explaining the difficulties in making the payments as per the schedule of payment contained in the Construction Agreement dated 20.08.2021. Inspite of the fact that the Appellant/Allottee was ready and willing to make the payments along with interest, the Respondent/Promoter cancelled the Construction Agreements and informed the same to the Appellant/Allottee on 25.03.2022. Subsequent to the cancellation of the Agreements, the Respondent/Promoter had also refunded Rs.1,12,14,805/- to the Appellant/Allottee, after deducting a sum of Rs.1,08,15,195/- towards cancellation charges. According to the Appellant/Allottee, such deduction of Rs.1,08,15,195/- is against the terms of the Construction Agreement. The Appellant/Allottee deposited the said amount of Rs.1,12,14,805/-, which was refunded to her, back into the bank account of the Respondent/Promoter on 19.11.2022.

4. In this background, the Appellant/Allottee preferred a complainant before the TNRERA in C.No.159/2022 with a prayer to declare the cancellation of agreements as illegal and to direct the Respondent/Promoter to honour the Construction Agreements in respect of the four apartments allotted to the Appellant/Allottee and to execute & register the Sale Deeds, after receiving the balance sale consideration.

Verified RedEstate™

5. It is the case of the Respondent/Promoter, as found from the counter filed in C.No.159 of 2022, that after the execution of the Construction Agreements, the Respondent/Promoter made their 1st demand to pay the installment amounts vide separate e-mails dated 10.11.2021 and 07.12.2021. However, no payment was made by the Appellant/Allottee. After waiting for three months, the Respondent/ Promoter issued a legal notice on 10.03.2022. Even after the receipt of the legal notice, the Appellant did not pay the installment amounts to the Respondent. Subsequently, the Construction Agreements were cancelled by the Respondent/Promoter. The cancellation of the agreements was informed to the Appellant/Allottee vide e-mail dated 16.04.2022. The Respondent/Promoter had also refunded the amount to the Appellant/Allottee, after deducting 10% of the cost of construction towards cancellation charges as per the agreement. But for the reasons best known to the Appellant/Allottee, she had deposited the amount that was refunded to her, back into the bank account of the Respondent/Promoter. Having failed to pay the installment as per the Construction Agreements, the Appellant/Allottee has no right to ask for execution of Sale Deed in her favour.

6. After hearing both sides, the TNRERA had dismissed the complaint vide the impugned order. Aggrieved over the same, the Appellant/Allottee has preferred this appeal before this Tribunal.

7. Heard the learned counsel for the Appellant/Allottee.

8. It is an admitted fact that out of the total cost of construction of Rs.11,36,09,420/-, the Appellant/Allottee had paid a sum of Rs.2,20,30,000/- only. Admittedly, the last payment of Rs.50,00,000/-

Verified by RealEstate™

was made by the Appellant/Allottee on 18.08.2021. All the four Construction Agreements and Sale Agreements were executed on 20.08.2021. Therefore, it is clear that the Appellant/Allottee did not pay any amount to the Respondent/Promoter after the execution of the Construction Agreements. It is also an admitted fact that though the Respondent/Promoter demanded payments through e-mails dated 10.11.2021 and 07.12.2021, the Appellant/Allottee failed to make any payment. The Respondent/Promoter issued a legal notice dated 10.03.2022, demanding payments with interest. Inspite of the legal notice, the Appellant/Allottee failed to make any payment. In these circumstances, the Respondent/Promoter had no other option except to cancel the agreements. Hence, the Respondent/Promoter cancelled the agreements and informed the same to the Appellant/Allottee vide e-mail dated 16.04.2022. In the said e-mail, the Respondent/Promoter had also expressed their readiness and willingness to refund the balance amount, after deducting 10% of the cost of construction, to the Appellant/ Allottee.

9. There was no immediate response from the side of the Appellant/Allottee. The Appellant/Allottee forwarded the e-mail communications received from the Respondent/Promoter to her Advocate only on 19.11.2022. The Appellant/Allottee took nearly 7 months to forward the e-mail communications received from the Respondent/ Promoter to her Advocate. As the Appellant/Allottee refused to receive the four cheques issued by the Respondent/Promoter, the refund amount was credited into the account of the Appellant/Allottee. However, for

the reasons best known to her, admittedly, the Appellant/Allottee re-credited the amount into the account of the Respondent/Promoter.

10. The learned counsel for the Appellant/Allottee contended that as per Clause 9(1) of the Construction Agreement, in the event of the allottees failing to make the payments in the manner provided in Schedule-E, the Promoter, after issuing 15 days notice, is entitled to cancel the agreement. Further, after such cancellation, the Promoter is bound to refund the amount collected from the Allottees within 90 days of such cancellation **without interest,** subject to deduction of the booking amount. According to the learned counsel for the Appellant/Allottee, the said Clause 9(1) of the Construction Agreement also provides for an alternative option to the Promoter, (i.e.), instead of cancelling the agreement, alternatively, the Respondent/Promoter is entitled to claim interest at SBI Highest Marginal Cost of Lending Rate plus 2% interest per annum for such delayed payment by the allottee. According to the learned counsel for the Appellant/Allottee, the Respondent/Promoter, having chosen the option to demand interest for the delayed payment by issuing legal notice dated 10.03.2022, is not entitled to cancel the agreements.

11. It is pertinent to note that, the Respondent/Promoter demanded payment even during December 2021 itself by sending e-mails. However, the Appellant/Allottee failed to make any payment. After waiting for three months, the Respondent/Promoter issued a legal notice demanding payment with interest within a period of one week. The Appellant/Allottee failed to make any payment despite the receipt of legal notice. The Appellant/Allottee, who is at fault, is not entitled to

dictate terms to the Respondent/Promoter. As rightly observed by the TNRERA, the real estate project is a multi-storied apartment project and default committed by one Allottee will have cascading effect on the progress of the construction of other apartments booked by other Allottees in the same project.

12. The Appellant/Allottee failed to establish that her bank account was freezed by the Revenue Department following a raid by the GST officials. Even assuming that the said contention is true, the Appellant/Allottee is bound to honour the terms of the agreements entered with the Promoter. The Appellant/Allottee cannot evade payments on this ground. Having failed to make the payments within the time stipulated, she is not entitled to claim the flats from the Respondent/Promoter. There is no illegality in the order passed by the TNRERA. Hence, we do not find any ground to interfere with the order passed by the TNRERA. The Appeal is liable to be dismissed as devoid of merits. Accordingly, the Appeal is dismissed at the admission stage itself.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Verified RedEstate™