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 : 16.10.2023

Delivered on : 03.11.2023

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

Appeal No.70 of 2023

1. D. Sivasankaran
2. N.Usha Kumari

... Appellants

- Vs -

M/s.Casa Grande Builder Pvt. Limited.
rep. by its Authorized Signatory,
G.Sethupathy

... 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 22.08.2023 in S.R.No.257 of 2022 passed by the learned Single Member, TNRERA and to direct the respondent to refund the entire loan amount of Rs.1,67,00,000/- with interest from the date of sanction of loan amount to the HDFC Bank i.e., 28.12.2018 along with a total sum of Rs.28,98,069/- paid towards loan interest and to refund entire advance

amount of Rs.19,00,000/- received from the complainants with 12% interest from the date of booking till the date of repayment.

For Appellants : Mr. V.K.Bhuvaneshwar
for Mr. M.Vijayakumar

For Respondent : Mr.O.L.V.Ganesan

ORDER

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

1. The first Appellant is the Husband of the second Appellant. The Appellants/Complainants are said to have booked a Flat A-1401 in the name of the 2nd Appellant/2nd Complainant in the year 2017 in the real estate project by name "CRESCENDO" promoted by the Respondent/Promoter. A sum of Rs.1,00,000/- was paid as booking amount through cheque dated 26.06.2017. Subsequently, a sum of Rs.18,00,000/- was paid towards the cost of construction by cheque dated 18.07.2018 from the savings account of the daughter of the Appellants/Complainants. Since the 2nd Appellant/2nd Complainant is a home-maker and also a senior citizen, upon the instructions of the HDFC bank, a housing loan was obtained in the name of M/s.Reliable Cashew Company Private Limited, in which the 1st Appellant/1st Complainant was working as a Manager.

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2. It is the case of the Appellants/Complainants that one R.Gowthaman was one of the Directors of the said M/s.Reliable Cashew Company Private Limited. The said R.Gowthaman, with the consent of other Directors of the Company, had come forward to help the Appellants/Complainants in availing the housing loan from the HDFC bank in the name of the said Company. For the said purpose, R.Gowthaman signed the loan papers as the Director of the Company and also the Construction Agreement dated 15.09.2018 in respect of the flat No.A1401 proposed to be purchased by the Appellants/Complainants. As per the Construction Agreement, the flat has to be handed over during November 2020. The total construction cost of the Apartment is Rs.1,79,34,180/-. The HDFC bank, which sanctioned the loan, released the stage-wise payments from the loan account, without any default to and in favour of the Respondent/Promoter.

3. It is the case of the Appellants/Complainants that the said R.Gowthaman passed away on 13.05.2021 at Singapore. Thereafter, the other Directors of the Company were not interested in continuing the business. The Appellants/Complainants have repaid a sum of Rs.28,98,069/- towards interest for the loan amount and service tax. Inspite of the fact that the Appellants/Complainants are willing to get the Construction Agreement transferred in their name, the Respondent/ Promoter was not cooperating for the same. Alternatively, the Appellants/Complainants were also ready to withdraw from the project

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and requested the Respondent/Promoter to refund the advance amount to the Appellants/Complainants and to refund the entire payment made by the HDFC bank directly to the bank. Even for this alternative solution, the Respondent/Promoter was not agreeable.

4. The Appellants/Complainants issued a legal notice to the Respondent/Promoter on 23.03.2022 in this regard. Though the Respondent/Promoter received the notice, no reply has been sent so far. Hence, the Appellants/Complainants preferred a Complaint seeking refund of Rs.1,67,00,000/-, being the loan amount to the HDFC bank and also to refund a sum of Rs.47,98,069/- to the Appellants/Complainants paid by them towards advance amount, interest paid to the bank and service tax.

5. The learned Single Member, TNRERA rejected the Complaint at the SR stage itself by order dated 22.08.2023. Aggrieved over the same, the Appellants/Complainants have preferred the above Appeal before this Tribunal.

6. Heard the learned counsel for the Appellants. Perused the materials available on record.

7. Admittedly, the Construction Agreement dated 15.09.2018 was executed between M/s.Reliable Cashew Company Private Limited represented by its Director R.Gowthaman and the Respondent/Promoter. No Construction Agreement or Agreement for Sale was executed between the Appellants/Complainants and the Respondent/Promoter. Accordingly,

there is no privity of contract between the Appellants and the Respondent.

8. The actual allottee in respect of the Flat No.A-1401, as per the Agreement for Sale and the Construction Agreement was R.Gowthaman, who is said to have passed away. There is no whisper in the complaint about the wife and children of the said R.Gowthaman. The wife of the deceased R.Gowthaman was also a Director of the above mentioned Company. Admittedly, the Appellants/Complainants are neither the Directors of the said Company nor the legal representatives of the deceased R.Gowthaman. They are absolutely third parties to the Agreement for Sale and the Construction Agreement.

9. In the absence of any agreement in favour of the Appellants/ Complainants, mere payment of booking amount by the 2nd Appellant/2nd Complainant in respect of the same flat No.A-1401 will not entitle them to claim as an Allottee within the provisions of the Real Estate (Regulation and Development) Act, 2016. Therefore, the Appellants/ Complainants, by no stretch of imagination, can be called as Allottees. As such, there is no Allottee - Promoter relationship between the Appellants/Complainants and the Respondent/Promoter.

10. However, it is open to the Appellants/Complainants to take appropriate legal action before appropriate forum to recover the booking amount allegedly paid by the 2nd Appellant/2nd Complainant in accordance with law. We do not find any ground to interfere with the

order passed by the learned Single Member, TNRERA and the Appeal is liable to be dismissed.

11. In the result, the Appeal is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to:

1. M/s.Casa Grande Builder Pvt. Limited.
   rep. by its Authorized Signatory,
   G.Sethupathy
   Having its Registered Office at
   5th Floor, NPL, Devi,
   New No.11, Old No.59, L.B.Road,
   Thiruvanmiyoor,
   Chennai - 600 041.

2. The Single Member, TNRERA.

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