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: 18.10.2023

Delivered on: 03.11.2023

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

Appeal No.73 of 2023
and
M.A.No.218 of 2023

M/s. Akshaya Signature Homes Pvt. Ltd.,
rep. by its Director, Thiru J.Ravi ... Appellant

- Vs -

1. Gorantla Geosynthetics Pvt. Ltd.,
   rep. by Praveen Kumar
2. Seshadri.S
3. Chandrika.S ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order

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dated 20.07.2023 in C.No.111 of 2022 passed by the Tamil Nadu Real Estate Regulatory Authority and to dismiss the complaint.

For Appellant : Mr. Mani Sundargopal

ORDER

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

1. The Appellant is the Promoter of the real estate project by name "LEVEL UP" launched in the year 2016 with a proposal to construct 49 apartments in one block. The said project is situated at Sterling Road, Nungambakkam. The project contains two basement levels meant for car park and 8 floors above the ground level. The 1st Respondent/ Complainant entered into an Agreement for Sale and Construction Agreement on 08.09.2018 in respect of Flat No.401 in 4th floor and Flat No.501 in 5th floor with internal access. Earlier, the Respondents 2 & 3/ Respondents 2 & 3 have entered into an Agreement for Sale and a Construction Agreement on 27.04.2018 in respect of Flat No.206 situated in the 2nd floor.

2. It is the case of the Appellant/Promoter that initially one car park was allotted to the Respondents 2 & 3 at the lower basement level at the time of execution of the Construction Agreement during April 2018. When the construction was started, there was no proposal to construct a lumber room. As the construction progressed, the vacant

space beneath the ramp between the lower basement and the upper basement was converted into a lumber room.

3. Later, as the 1st Respondent/Complainant purchased 2 apartments, they were allotted 4 covered car parks during September 2018. Out of the 4 covered car parks, 2 were allotted in the lower basement and the remaining 2 were allotted in the upper basement. As the 1st Respondent/Complainant was in need of the lumber room at the lower basement, the same was sold to them. As the 1st Respondent/ Complainant wanted to have their 2 car parks at the lower basement adjacent to the lumber room purchased by them, the 2 car parks adjacent to the said lumber room were allotted to the 1st Respondent/ Complainant as per their request.

4. When the construction reached the final stage, it was noticed that the car park already allotted to the Respondents 2 & 3 at the lower basement fell adjacent to the lumber room and the said car park adjacent to the lumber room at the lower basement was allotted to both the 1st Respondent/Complainant and the Respondents 2 & 3 by mistake. The mistake was committed purely due to misconception of facts by the employees of the Appellant/Promoter. The attempts to compromise the issue between the 1st Respondent/Complainant and the Respondents 2 & 3, by exchanging their car parks, failed, as the Respondents 2 & 3 were not willing to take any other alternate car park even in the upper basement.

5. After hearing both sides, the TNRERA, by holding that the Appellant/Promoter was responsible for misrepresentation of the facts, imposed a penalty of Rs.2,00,000/- under Section 61 r/w Section 7(1)(A)(iii). Aggrieved over the same, the Appellant/Promoter has preferred the above Appeal before this Tribunal.

6. Heard the learned counsel for the Appellant. Perused the materials available on records.

7. Admittedly, one car park was allotted to the Respondents 2 & 3 at the lower basement at the time of execution of the Construction Agreement on 27.04.2018. Likewise, as per the Construction Agreement dated 08.09.2018, the 1st Respondent/Complainant was allotted 4 covered car parks. Out of the 4 covered car parks, 2 were allotted in the lower basement and the remaining 2 were allotted in the upper basement. In addition, the 1st Respondent/Complainant was in need of the proposed lumber room at the lower basement. Accordingly, the same was sold to them by the Appellant/Promoter with a promise to allot the 2 car parks at the lower basement adjacent to the lumber room purchased by them. Admittedly, as per the terms of the Construction Agreement, the 2 car parks adjacent to the said lumber room were allotted to the 1st Respondent/Complainant.

8. As the construction reached the final stage, it was noticed that the car park already allotted to the Respondents 2 & 3 at the lower basement was adjacent to the lumber room. As a result, the

Appellant/Promoter could not fulfill their promise to allot two car parks adjacent to the lumber room to the 1st Respondent/Complainant at the lower basement. Aggrieved over the same, the 1st Respondent/ Complainant preferred the complaint before the TNRERA.

9. The Appellant/Promoter admitted that the mistake was committed purely due to misconception of facts by their employees. The Appellant/Promoter, as the employer is responsible for the mistake committed by their employees. The 1st Respondent/Complainant purchased two apartments at a cost of Rs.8 Crores approximately. In all, 49 apartments were constructed at Nungambakkam, Chennai.

10. The contention of the learned Counsel for the Appellant/ Promoter that at the time of allotment of one car park to the Respondents 2 & 3, the construction was at the beginning stage and there was proposal to construct a lumber room and that the mistake was realized when the construction reached the final stage, cannot be accepted. Mere verification of the building plan will be sufficient to ascertain the facts regarding the locations of the ramp, lumber room and the car park adjacent to the lumber room.

11. Hence, the Appellant/Promoter is liable for misrepresentation of the facts with regard to the car park adjacent to the lumber room at the lower basement. In the facts and circumstances of this case, the penalty imposed by the TNRERA is just and proper. We do not find any

reason to interfere with the order passed by the TNRERA. The appeal is liable to be dismissed.

12. In the result, the appeal is dismissed at the admission stage. The Appellant/Promoter is directed to remit the entire penalty amount of Rs.2,00,000/- with the TNRERA forthwith, if not paid earlier. Upon production of valid proof for remittance of the entire penalty amount of Rs.2,00,000/- before the TNRERA, the Appellant/Promoter is entitled to withdraw the amount of Rs.60,000/- deposited by them before this Tribunal under Section 43(5) of the Real Estate (Regulation and Development) Act 2016. Connected Miscellaneous Application is closed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

Copy to:

1. Gorantla Geosynthetics Pvt. Ltd.,
   rep. by Praveen Kumar
   No.3, 1st Floor, Saraswathi Street, Mahalingapuram, Chennai - 34.
2. Seshadri.S
3. Chandrika.S
   Both residing at Apartment No.206,
   Akshaya Level UP, New No.53, Old No.54,
   Sterling Road, Nungambakkam, Chennai - 600 034.
4. The TNRERA.

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