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 : 08.11.2023

Delivered on : 06.12.2023

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

Appeal No.74 of 2023

1 A.Kantharuby
2. K.Ayyanarappan ... Appellants

- Vs -

1. M/s. Sylvanus Builders and Developers Ltd.,
   rep. by its Director, Sansil Ramesh Chandani

2. M/s. Pacifica (Chennai Project)
   Infrastructure Co. Pvt. Ltd.
   rep. by its Managing Director, Rocky Israni ... Respondents

Prayer: The appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to allow the appeal and for the following relief(s) in addition to the relief ordered by the Learned Single Member, TNRERA in C.C.P.No.139 of 2021 dated 20.01.2023:

(i) to award compensation for the delayed delivery of the possession of the Villa to the appellants i.e., interest on Rs.1,06,65,635/- at the rate of 9.3 percent for the period from 01.01.2016 to 22.05.2019;

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(ii) to award compensation for mental agony suffered by the appellants for the delayed delivery of possession of Villa for a period of 41 months and that too with several defects and deficiencies;

(iii) to award interest at the rate of 9.3 percent on "compensation awarded" with effect from the date of filing of Complaint till date of payment of compensation.

For Appellants : Mr.M.Radhakrishnan

For Respondents : Mr. K.Venkatasubban

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, namely, "Pacifica Aurum" promoted by the Respondents. They entered into an Agreement for Sale and Construction Agreement on 31.05.2013. The cost of construction and the cost of UDS land was fixed at Rs.96,47,270/-. As per the Construction Agreement, the Respondents/ Promoters agreed to hand over the apartment before 31.12.2015 including the grace period of 6 months. But, the apartment was delivered on 22.05.2019, with a delay of 41 months. It is the case of the Appellants/Allottees that because of the inordinate delay in handing over of possession of the apartment, they have suffered mental agony.

2. The Appellants/Allottees have preferred a complaint in C.C.P.No.139 of 2021 claiming interest for the delayed delivery of possession on the amount paid by them and compensation for mental

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agony suffered by them and for other reliefs. The present appeal has been filed by the Appellants/Allottees only in respect of non awarding of interest for the delayed delivery of possession and non awarding of compensation for mental agony.

3. It is the case of the Respondents/Promoters that the TNRERA has no jurisdiction to entertain the complaint and the same is liable to be dismissed. However, no appeal has been preferred by the Respondents/Promoters against the grant of certain other reliefs.

4. The Appellants/Allottees have initially preferred the complaint before the learned Adjudicating Officer in C.C.P.No.139 of 2021. Subsequent to the judgment of the Hon'ble Supreme Court in M/s.Newtech Promoters and Developers Pvt. Ltd. Vs State of UP and others reported in 2021 SCC Online SC 1044, the complaint was transferred to the file of the learned Single Member, TNRERA for disposal.

5. After hearing both sides, the learned Single Member, TNRERA did not award interest for the delayed handing over of possession and directed the Appellants/Allottees to move before the Adjudicating Officer for compensation towards mental agony. Aggrieved over the same, the Appellants/Allottees have preferred the present appeal before this Tribunal.

6. Heard both sides.

7. The Appellants/Allottees have filed this appeal with a limited prayer only with regard to non awarding of interest for the delayed delivery of possession and non awarding of compensation for mental agony.

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8. We have carefully perused the order passed by the learned Single Member, TNRERA. The learned Single Member had come to a conclusion that there was delay in handing over the apartment from 31.12.2015 to 22.05.2019. Further, the learned Single Member had also observed that the Appellants/Allottees are entitled for interest for the said delay period. However, while granting the reliefs, the learned Single Member omitted to grant the relief of interest for the delayed period.

9. As per Section 18 of the Real Estate (Regulation and Development) Act, 2016, where an Allottee does not intend to withdraw from the project he shall be paid, by the Promoter, interest for every month of delay till the handing over of possession, at such rate as may be prescribed. As per the terms of the Construction Agreement in clause 6, the Respondents/Promoters agreed to hand over possession by 30.06.2015 with a grace period of 6 months. Further, in the case of any delay, the Respondents/Promoters also agreed to pay damages. By incorporating such terms in the Construction Agreement, the time has been made as the essence of the contract. Further, the Respondents/Promoters have not explained any reasons for the delay of 41 months in handing over of the possession of the apartment.

10. Therefore, as stipulated under Section 18 of the Real Estate (Regulation and Development) Act, 2016, the Appellants/Allottees are entitled to interest for the delayed period. Hence, by modifying the order passed by the learned Single Member, we are inclined to award

interest on the amount paid by the Appellants/Allottees at 9.30% per annum to be calculated from the date of respective payments till the Respondents/ Promoters make payment.

11. For the reasons stated above, we modify the order passed by the learned Single Member, TNRERA in C.C.P.No.139 of 2021 dated 20.01.2023 by directing the Respondents/Promoters to pay interest at 9.30% per annum on the amount paid by the Appellants/Allottees from the date of respective payments made by them till the date of actual payment made by the Respondents/Promoters. In other aspects, the order shall remain unaltered. It is open to the Appellants/Allottees to file appropriate petition before the learned Adjudicating Officer for compensation towards mental agony in accordance with law.

12. In the result, with the above modification, the appeal is partly allowed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to :

1. M/s. Sylvanus Builders and Developers Ltd.,
   rep. by its Director, Sansil Ramesh Chandani
   33, Amarplash Bungalows, Behind Fun Republic,
   Ramdev Nagar, Ahmedabad - 380 015.

2. M/s. Pacifica (Chennai Project) Infrastructure Co. Pvt. Ltd.
   rep. by its Managing Director, Rocky Israni
   Pacifica House,
   4/5, Sigma, B/H Rajpath Club,
   Near Mann Party Plot,
   Bodakdev, Ahmedabad - 380 059.

3. The learned Single Member, TNRERA.

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