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: 03.11.2023

Delivered on: 06.12.2023

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

Appeal No.75 of 2023

Gorantla Geosynthetics Private Limited,
rep. by Praveen Kumar.G ... Appellant

- Vs -

1. M/s. Akshaya Signature Homes Pvt. Ltd.,
   rep. by its Director, J.Ravi
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 of the Tamil Nadu Real Estate Regulatory Authority dated 20.07.2023 in C.No.111 of 2022 in so far as it has restricted the relief only to Rs.2,00,000/- as penalty as against the First respondent and grant appropriate reliefs as prayed for in the original complaint made by the Appellant.

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For Appellant : Ms.T.Hemalatha
For 1st Respondent : Mr. Mani Sundargopal
Respondents 2 & 3 : None appeared (Admission Stage)

ORDER

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

1. The 1st Respondent 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 parks and 8 floors. The Respondents 2 & 3 are the Allottees, who have booked an apartment during April 2018 along with a covered car park at the lower basement. After few months, the Appellant/Complainant entered into a registered Agreement for Sale and Construction Agreement on 08.09.2018 in respect of Flat No.401 in the 4th floor. The total sale consideration was fixed at Rs.3,82,60,000/- and the Appellant/Complainant made the payments as per the payment schedule.

2. It is the case of the Appellant/Complainant that during the promotion campaign, the representatives of the 1st Respondent/ Promoter suggested the Appellant to take 2 car parks along with the adjacent lumber room available in the lower basement area. According to the Appellant/Complainant, they trusted the assurance given by the

representatives of the 1st Respondent/Promoter and agreed to purchase Flat No.401 with 2 car parks along with the lumber room at the lower basement level. It is the case of the Appellant/Complainant that the lumber room and the adjacent car parking area are clearly demarcated in the plan attached to the Construction Agreement dated 08.09.2018.

3. Further, it is the case of the Appellant/Complainant that when the construction of the project was about to be completed, they took steps to lay tiles to the lumber room purchased by them, but the project team of the 1st Respondent/Promoter prevented them from laying the tiles. Upon enquiry, the Appellant/Complainant came to know that the very same car park allotted to them was already allotted to the Respondents 2 & 3/Allottees. The Appellant/ Complainant contended that the 1st Respondent/Promoter deliberately and with intention to defraud them, allotted the 2 car parks which had already been allotted to another Allottee.

4. As per the terms of the Construction Agreement, the 1st Respondent/Promoter is liable to hand over the possession of the car park or must pay compensation for the loss caused to the Complainant. The Appellant/Complainant also prayed for interest on the amount paid by him from the date of payment till the car parking adjacent to the lumber room was handed over to him.

5. It is the case of the 1st Respondent/Promoter that the Respondents 2 & 3/Allottees executed the Construction Agreement during April 2018. When the Flat No.206 was allotted to them along with covered car park at the lower basement level, the construction

was at the beginning stage and there was no vicinity of any 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.

6. Later, the Appellant/Complainant booked 2 apartments and 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 Appellant/ Complainant was in need of the lumber room at the lower basement, the same was sold to them. As the Appellant/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 was allotted to the Appellant/Complainant as per their request.

7. It is the case of the 1st Respondent/Promoter that when the construction reached the final stage, it was noticed that the car park adjacent to the lumber room was already allotted to the Respondents 2 & 3/Allottees. The same car park lying adjacent to the lumber room at the lower basement was allotted to the Respondents 2 & 3/Allottees and as well as to the Appellant/Complainant by mistake. The mistake was committed purely due to oversight and the communication gap among the employees of the 1st Respondent/Promoter. The attempts made by the 1st Respondent/Promoter to compromise the issue between the Appellant/Complainant and the Respondents 2 & 3/ Allottees, by exchanging their car parks, failed as the Respondents 2 & 3/Allottees were not willing to take any other alternative car park, even in the upper basement.

8. It is the case of the Respondents 2 & 3/Allottees that they have first entered into an Agreement for Sale and a Construction Agreement on 27.04.2018 in respect of Flat No. 206 in the 2nd floor along with 2 covered car parks at the lower basement. According to the Respondents 2 & 3/Allottees, they are the first purchasers and it is the duty of the Appellant/Complainant to verify and peruse the documents and the plan provided by the 1st Respondent/Promoter before purchasing the Flat No.401 along with amenities. It is the case of the Respondents 2 & 3/Allottees that as per the approved plan, the lumber room was not allotted to Flat Nos. 401 and 501 purchased by the Appellant/Complainant.

9. After hearing both sides, the TNRERA by holding the 1st Respondent/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). No compensation and no interest was awarded in favour of the Appellant/Complainant as prayed for by them. Aggrieved over the same, the Appellant/Complainant has filed the present Appeal before this Tribunal.

10. Heard the learned counsel for the Appellant/Complainant and the 1st Respondent/Promoter. Perused the materials available on record.

11. Admittedly, at the first instance, the disputed car park was allotted to the Respondents 2 & 3/Allottees. In fact, the Appellant/ Complainant purchased two flats bearing Flat Nos.401 and 501 having internal access. As per two separate Construction Agreements evenly dated 08.09.2018, the Appellant/Complainant was allotted 4 covered

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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. As the Appellant/Complainant was in need of the lumber room at the lower basement, the same was sold to them with an assurance to allot the 2 car parks at the lower basement, adjacent to the lumber room. Admittedly, as per the terms of the Construction Agreement, the 2 car parks adjacent to the said lumber room was allotted to the Appellant/ Complainant.

12. As the construction reached the final stage, it was noticed that the car park that was already allotted to the Respondents 2 & 3/ Allottees at the lower basement, was found lying adjacent to the lumber room. As a result, the two car parks lying adjacent to the lumber room could not be given possession to the Appellant/ Complainant. The 1st Respondent/Promoter admitted that the mistake had occurred purely due to oversight and the communication gap among their employees.

13. The TNRERA, by holding that the 1st Respondent/Promoter is liable for misrepresentation of the facts with regard to the car park adjacent to the lumber room at the lower basement, had imposed a penalty of Rs.2,00,000/- against the 1st Respondent/Promoter vide impugned order dated 20.07.2023. The appeal filed by the 1st Respondent/Promoter as against the imposition of penalty in A.No.73/2023 was already dismissed by this Tribunal at the admission stage itself on 03.11.2023.

14. Aggrieved over the non-awarding of interest and compensation as prayed for by them, the present appeal has been filed

subsequently by the Appellant/Complainant. Admittedly, the Appellant/Complainant was allotted 4 car parks and one lumber room. The grievance of the Appellant/Complainant was that out of the 4 car parks allotted to them, the 2 car parks lying adjacent to the lumber room was not allotted to them as mentioned in the Construction Agreement. The Appellant/Complainant neither disputed the allotment of 4 car parks nor disputed the allotment of lumber room. Only the location of the 2 car parks at the lower basement is in dispute. There is absolutely no proof to show that the Appellant/Complainant had suffered any loss due to the mistake in the allotment of the car parks. Unless the Appellant/Complainant is able to prove that they had suffered loss due to the change in location of the car parks, they are not entitled to any compensation or interest. In these circumstances, we do not find any ground to interfere with the order passed by the TNRERA. Hence the appeal is liable to be dismissed.

15. Accordingly, the appeal is dismissed.

Sd/- xxxx
CHAIRPERSON

Sd/- xxxx
JUDICIAL MEMBER

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Copy to :

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   rep. by its Director, J.Ravi
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2. Seshadri.S.
   S/o.Srimulu
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   New No.53, Old No.54,
   Sterling Road,
   Nungambakkam, Chennai - 600 034.

3. Chandrika.S
   W/o.Seshadri
   New No.53, Old No.54,
   Sterling Road,
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4. The TNRERA.

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