



WEB COPY



W.P.No.23190 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.23190 of 2021

and

W.M.P.No.24495 of 2021

M/s.Puravankara Limited,
No.33, South Beach Avenue,
MRC Nagar, Raja Annamalai Puram,
Chennai – 600 028,
Represented by its Authorised Signatory,
Mr.M.D.Sudhakar

... Petitioner

Vs.

1.Tamil Nadu Real Estate Regulatory Authority,
Door No.1A, 1st Floor, Gandhi Irwin
Bridge Road, Egmore,
Chennai – 600 008.

2.I.Daisy Caroline,
Represented by
M/s.R.R.Legal Firm,
No.60, Sami Pandaram Street,
Chintradripet, Chennai – 600 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 25.06.2021 in C.C.P.No.59 of 2020 passed by the



W.P.No.23190 of 2021

Tamil Nadu Real Estate Regulatory Authority, Chennai, the first respondent herein as without jurisdiction and quash the same.

For Petitioner : Mr.R.Sathish Kumar

For Respondents : Mr.G.R.Hari [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records relating to the impugned order dated 25.06.2021 in C.C.P.No.59 of 2020 passed by the Tamil Nadu Real Estate Regulatory Authority, Chennai, the first respondent herein as without jurisdiction and quash the same.

2. The case of the petitioner is that, it is a Company incorporated under the Companies Act, 1956, engaged in the business of real estate development. The petitioner is one of the India's leading listed real estate company. One of the projects of the petitioner is "Purva Windermere", a residential apartment. The second respondent had booked a two-bedroom apartment bearing No.D17-705, 7th Floor, D Block in the said apartment. Subsequently, on 24.12.2013, a Sale Agreement and Construction Agreement was executed by the petitioner and the second respondent. The



W.P.No.23190 of 2021

total sale consideration of the flat was fixed at Rs.59,11,660/- (Rupees Fifty Nine Lakhs Eleven Thousand Six Hundred and Sixty only), out of which, the second respondent paid a sum of Rs.25,70,952/- (Rupees Twenty Five Lakhs Seventy Thousand Nine Hundred and Fifty Two only). Despite the several remainders, the second respondent failed to make the balance amount as agreed under the agreement. The said project was completed in its entirety in the year 2017 and application for completion certificate was made on 10.02.2017 and the Completion Certificates for the respective blocks in the Project were issued by the Chennai Metropolitan Development Authority (CMDA) on 10.06.2016, 08.09.2016 and 01.09.2017. The second respondent filed a complaint in C.C.P.No.59 of 2020 before the first respondent seeking for a sum of Rs.89,28,609/- from the petitioner towards amount paid for purchase of the apartment with interest, compensation and cost. The first respondent has passed the impugned order. Challenging the same, the petitioner has filed the above Writ Petition before this Court.

3. The learned counsel for the petitioner submits that the short issue involved in the present writ petition is whether the petitioner completed the



W.P.No.23190 of 2021

entire construction before the RERA Act came into force or not. He also submits that, admittedly, the petitioner entered into an agreement with the second respondent on 24.12.2013 and the second respondent, initially, paid a sum of Rs.25,70,952/- out of Rs.59,11,660/- and thereafter, the second respondent failed to pay the instalment, thereby, the petitioner not able to complete the entire construction within a period of six months as agreed in the agreement. However, the construction was completed belatedly after the Act came into force i.e., on 10.02.2017 and made application for completion certificate before the authority. Though the petitioner made application on 10.02.2017, however, the CMDA issued completion certificate only on 01.09.2017 and the same cannot be put against the petitioner. He further submits that the Act came into force on 01.05.2017, whereas, the petitioner completed the construction on 10.02.2017. Hence, the first respondent has no jurisdiction to pass order against the petitioner. Accordingly, he prays for allowing the writ petition.

4. The learned counsel appearing for the second respondent submits that, admittedly, the second respondent entered into an agreement on 24.12.2013 for two-bedroom apartment bearing No.D17-705, 7th Floor, D



W.P.No.23190 of 2021

Block and as per the agreement clauses, the petitioner was supposed to complete the construction within a period of six months. Though the second borrowed amount from the Nationalized Bank and paid a sum of Rs.25,70,952/- to the petitioner, however, the project was not completed by the petitioner as per the terms of the agreement. Without completing the construction, the petitioner made demand without any progress in the construction, hence, the second respondent refused to pay the amount. As the construction was completed only on 01.09.2017, almost four years from the date of entering into agreement, the second respondent approached the first respondent for refund of the amount paid and the first respondent, after elaborate discussion, passed an order for refund of the said amount, which cannot be interfered with. Accordingly, he prays for dismissal of this writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.



W.P.No.23190 of 2021

6. There is no dispute about the fact that the agreement was entered into between the petitioner and the second respondent as early as on 24.12.2013, with clear stipulation in the agreement that the construction would be completed within a period of six months. As a part of performance of his part of the agreement, the second respondent paid a sum of about Rs.25 Lakhs to the petitioner, which is not in dispute. It is the case of the petitioner even that the construction was completed only on 10.2.2017 and completion certificate was sought for, which was issued only on 1.9.2017.

7. From the above, it is clearly evident that the terms of the agreement have not been complied with by the petitioner. When there is a clear stipulation in the contract that the construction should be completed within a period of six months, the construction has taken more than four years to be completed, which is not disputed. It is the case of the petitioner that it had completed the construction and sought for completion certificate on 10.2.2017 and, therefore, the RERA Act, which came into force on 1.5.2017 cannot be pressed into service so as to confer jurisdiction on the first respondent to pass the order.



W.P.No.23190 of 2021

8. Though such a contention is advanced, it is evident from the materials available on record that mere filing of the application on 10.02.2017 would not suffice to hold that the construction had been completed. The process of inspection was followed and the certificate of completion was issued on 01.09.2017, before which period the RERA Act had come into force. That being the case, the contention of the petitioner that first respondent has no jurisdiction, as on the date when application was made, RERA Act had not come into force does not merit acceptance. Merely because an application has been filed by the petitioner seeking completion certificate would not absolve the petitioner from the clutches of RERA, as on the date when the completion certificate is issued would only be the basis for determining whether RERA has jurisdiction to take up the issue. Pending the issuance of completion certificate, RERA Act having come into force, definitely the first respondent has jurisdiction to entertain the petition.

9. Further, as pointed out above, the construction ought to have been completed within a period of six months from the date of entering into agreement. However, it is evidenced from the record that the construction,



W.P.No.23190 of 2021

even according to the petitioner, was completed only on 10.02.2017, which is beyond the period as accepted by the parties in the agreement. When the petitioner has not performed its part of the agreement and the second respondent had knocked the doors of the first respondent for refund of the amount paid by her, which had been held by the petitioner for too long, without either giving the completed flat or the money, the direction of the first respondent to the petitioner to refund the amount paid by the second respondent is just and reasonable and this Court finds no ground to interfere with the said order.

10. It is to be pointed out that the second respondent cannot be taken for a ride by the petitioner by holding the amount without completing the construction, as it is only the second respondent, who has to shell out the money to the petitioner for the construction as well as pay the amount towards the interest. The buyer cannot alone be put to all the inconveniences and losses, while the builder gains everything, including interest on belated payments, if any, made by the buyer. Of late, this has become the trend in the real estate market, which had prompted the enactment of the RERA Act. The buyer should also be compensated by the



W.P.No.23190 of 2021

builder for the loss suffered by him on account of the act of the builder.

Only in that view RERA Act has been enacted and in that backdrop, the order passed by first respondent can neither be said to be bad nor without jurisdiction.

11. For the reasons aforesaid, the writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

16.06.2023
(3/3)

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

Tamil Nadu Real Estate Regulatory Authority,
Door No.1A, 1st Floor, Gandhi Irwin,
Bridge Road, Egmore,
Chennai – 600 008.



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