



C.M.S.A.No.45 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	27.08.2024
PRONOUNCED ON	:	15.10.2024

CORAM:

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MRS. JUSTICE R.KALAIMATHI

C.M.S.A.No.45 of 2023
and C.M.P.No.21190 of 2023

Mr. Vishnukumar Balasubramanian
Rep by his sister and Power of Attorney Agent
Mrs. Subhashree 2/637-A River view Avenue
IAS/IPS Colony
Manapakkam
Chennai-600125

... Appellant

Vs.

M/s. CASA Granda Builder Private Limited
Rep by its Managing Director,
Mr. Arun MN
NPL Devi. 5th Floor
New No.111. Old No.59
LB Road, Thiruvanmiyur
Chennai-600041

... Respondent

PRAYER : Memorandum of Civil Miscellaneous Second Appeal filed



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under Section 58 of RERA Act, 2016 r/w section 100 of CPC, against the order dated 07.08.2023 in Appeal No.22 of 2022 on the file of Tamil Nadu Real Estate Appellate Tribunal confirming the order dated 31.03.2022 in C.C.P.No.1 of 2021 on the file of Tamil Nadu Real Estate Regulatory Authority, Chennai.

For Appellant : Mr. Muralikumaran, Senior Counsel
for Mrs. MCGAN Law Firm

For Respondents : Mr. Kuberan
for M/s. Ganesh & Ganesh

J U D G M E N T

(Judgment of the Court was made by **J.NISHA BANU, J.**)

The present Civil Miscellaneous Second Appeal has been filed against the order passed by the Tamil Nadu Real Estate Regulatory Appellate Authority (TNRERAT) dated 07.08.2023.

2. The appellant herein filed a petition u/s 31 of the Tamil Nadu Real Estate Regulatory Authority Act, 2016 for refund of the amount paid towards the purchase of an Apartment with interest and cost, and the same was disposed of by the Appellate Authority by framing and answering the



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following 2 questions:-

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(i) Whether the handing over of the flat is delayed warranting refund or not and what is the relevant date to decide the issue of delay?

(ii) What are reliefs the complainant is entitled to?

wherein, the Regulatory Authority, answered the 1st issue that the project was handed over to the complainant within the mutual agreed date and there was no delay. Hence, no refund could be ordered. The 2nd question was answered by giving liberty to move the adjudicating officer by claiming compensation.

3. The Appeal by the Appellant before the Appellate Authority was dismissed on 07.08.2023 holding that the Appellant has withdrawn his decision to cancel the booking by entering into an agreement dated 10.01.2020. Even after seeing the completion certificate by mail dated 20.09.2019, the Appellant did not come forward to pay the balance amount, therefore, the appellant is not entitled for refund.



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4. Heard Mr. N. Muralikumaran, learned Senior Counsel and the Mr. Kuberan, learned Counsel for the Respondent.

5. Both the Regulatory Authority as well as the Appellate Authority has rejected the claim of refund holding that the Appellant had entered into an agreement on 10.01.2020 with the Respondent. The Appellate Authority also had held that the completion certificate of the project completion was sent by email to the Appellant on 20.09.2019.

6. Both the Authorities have failed to take note of the violations committed by the respondent particularly that of collection 92% of sale consideration even without entering into an agreement, which is a blatant violation of section 13 of the RERA Act. Even assuming that the said violation stands waived off by entering into an agreement on 10.01.2020, there even, the date of delivery was accepted to be 30.01.2020 and therefore the appellant was well within his rights to seek refund of the amount by



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filing an application in the month of March, 2020. It was also not disputed by the respondent that there was no communication made as agreed in clause 4(b) of the agreement wherein it was agreed that the respondent would intimate the appellant in writing of the completion of the project and thereafter on paying the remaining sale consideration the Appellant is to take possession within 15 days thereof.

7. When the Authority has come to the conclusion that there was a delay in delivery of the flat and the Appellant is entitled for compensation, the Authorities should have ordered refund of the advance amount when admittedly the possession was not ready, even as on 10.01.2020 when 92% of the advance amount was received as early as 2018.

8. The so-called email communication dated 20.09.2019 cannot be a basis for denying refund to the Appellant, as the communication made on 20.09.2019 speaks only of the completion certification which is different from occupancy certificate. Moreover, as rightly pointed out by the Senior



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Counsel for the Appellant, if the apartment was in a habitable condition as early as 2019 there would not have been any need for the respondent to commit 31.01.2020 as the date to endeavour delivery of possession. The Act also contemplates only taking delivery of possession only on issuance of occupancy certificate u/s 19(10) of the “Act” and even otherwise, the Appellate Authority has erred grossly in observing that the Appellant ought to have made the balance amount and taken possession, when admittedly, there was not even a communication by the respondent as agreed upon in clause 4(b) of the agreement intimating the habitable condition of the apartment.

9. When in the very same project, the adjudicating authority has found violations of similar nature and violations of the conditions of the registration certificate by the Respondent, different treatment cannot be given to different buyers.

10. It is also unfortunate that in spite of section 13 of the “Act” contemplating stage wise completion of the project as mandatory, the



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Respondent was able to make the Appellant to enter into an agreement without any details of the stage wise completion and on the other hand was able to receive 92 % of the agreed sale consideration amounting to Rs.2,02,80,259/- as early as 2018. Therefore, the agreement being one sided, unfair and incomplete violation of the Act and Rules, as observed by the Hon'ble Apex Court in the case of ***Pioneer Urban Land & Infrastructure Ltd. Vs. GovindhanRaghavan [(2019) 5 SCC 725]*** cannot bind the Appellant.

11. The Hon'ble Supreme Court while considering the *parimateria* provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 has held that it is mandatory on the part of the promoter to obtain occupancy certificate. Even otherwise, there was no communication made by the respondent before filing of the complaint by the Appellant as agreed in the agreement dated 10.01.2020 in clause 4(b) .

12. Therefore, the Respondent having been defaulted many times with regard to the date of delivery, an one sided agreement in complete violation of the statute cannot be put against the Appellant to deny his right of refund.



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13. Therefore, the Appellant is entitled to refund of Rs.2,02,80,259/- with an interest of 10.25% per annum from the dates of respective payments till the repayment by the respondent. The Appellant is also entitled to a sum of Rs.5,00,000/- towards compensation for mental agony and inconvenience and a sum of Rs.1,00,000/- towards legal expenses. Accordingly, the Civil Miscellaneous Second Appeal stands allowed. No costs. Consequently, connected miscellaneous petition stands closed.

(J.N.B,J.) (R.K.M., J.)

15.10.2024

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Speaking Order / Non-Speaking order

Neutral citation: Yes/No

J.NISHA BANU, J.

and

R. KALAIMATHI, J.

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