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C.M.S.A.No.45 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 19.11.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU**  
and  
**THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

C.M.S.A.No.45 of 2022

1.C.Venugopal  
2.Radha Venugopal

... Appellants

Vs.

M/s.Ozone Projects Private Limited  
rep.by Sr.DGM Mr.K.Krishnan  
New No.63, Old No.32, G.N.Chetty Road,  
T.Nagar, Chennai 600 017.

... Respondent

**Prayer:** The Civil Miscellaneous Second Appeal is filed under Section 58 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 22.10.2021 passed in Appeal No.30 of 2021 on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) and confirm the order dated 31.12.2020 passed in C.C.P.No.265 of 2019 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA).

For Appellant : Mr.S.S.Swaminathan

For Respondent : Mr.G.Thangavel



C.M.S.A.No.45 of 2022

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### **JUDGMENT**

*(Judgment of the Court was delivered by **J. Nisha Banu, J**)*

This Civil Miscellaneous Second Appeal is preferred as against the order passed in Appeal No.30 of 2021 on the file of the Tamil Nadu Real Estate Appellate Tribunal (TNREAT) whereby, the order dated 31.12.2020 passed in C.C.P.No.265 of 2019 on the file of the Tamil Nadu Real Estate Regulatory Authority (TNRERA), has been confirmed. The order of the Tribunal is that the project of the appellants comes under the purview of Section 3 of the RERA Act.

2. The Appellant is a complainant and the respondent is the developer. They entered into construction agreement dated 30.09.2016 for constructing a residential unit of 2062 sq.ft bearing F-502, Tower-F, 5<sup>th</sup> Floor, Metro Zone, No.44, Pillayar Koil Street, Off Jawaharlal Nehru Road, Anna Nagar, Chennai 600 040, for a total sale consideration of Rs.2,22,24,415/-; initially the appellants paid a sum of Rs.1,07,17,925/-.

3. As per the terms of the agreement, it was agreed to handover the said



*C.M.S.A.No.45 of 2022*

residential unit to the appellants within two months with a grace period of three months i.e, 08.04.2018 and as per Clause 5(b)(3)(ii) of the Construction Agreement, interest on delay period is provided at the rate specified in the Tamil Nadu Real Estate Regulatory Authority (TNRERA) Rules, for every month of delay till the handing over of the possession of the apartment.

4. The developer has delayed completion of the apartment and handed over the possession of the apartment to the appellants only on 01.07.2019. On 25.06.2019, the appellant has also paid the balance sale consideration of Rs.50,99,548/-.

5. Since the possession of the residential unit was not delivered in time, the appellants filed complaint before the Tamil Nadu Real Estate Regulatory Authority (TNRERA) vide CCP No.265 of 2019 claiming compensation for the delay in handing over the possession of the apartment.

6. The Tamil Nadu Real Estate Regulatory Authority (TNRERA) ruled in favor of the appellants / complainants vide its order dated 31.12.2020, directing the respondent/developer to pay 7% of the total sale consideration



*C.M.S.A.No.45 of 2022*

of the apartment as delay compensation; Rs.1,00,000/- towards mental agony and inconvenience and also a sum of Rs.25,000/- towards litigation expenses.

7. Challenging the said order passed by the Regulatory Authority, the respondent/developer filed appeal before the Real Estate Appellate Tribunal (TNREAT) in Appeal No.30 of 2021.

8. The Appellate Authority after considering the entire facts, found that the appellant/complainant was provided with an alternate accommodation in June 2018 and the respondent / developer paid rent on behalf of the appellants / complainants. In that regard, the appellate authority has relied on Section 72 of the Real Estate (Regulations and Development) Act, 2016 and held that admittedly there is delay of 15 months and the alternative accommodation was provided to the home buyer from June 2018, however, the appellant claimed interest from April 2018 to June 2019 (15 months). Out of 15 months, for 13 months alternative accommodation has been provided by the respondent / developer. Only for the month of April and May 2018, the appellant / complainant paid rent from their pocket. Therefore, the developer had suitably compensated the loss by providing alternative accommodation



*C.M.S.A.No.45 of 2022*

and there is no repeated default by the developer.

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9. Challenging the said order passed by the Real Estate Appellate Tribunal, the appellants have filed this Civil Miscellaneous Second Appeal.

10. The learned counsel for the appellants would state that both the parties mutually entered into a Construction Agreement, in which there is a specific clause under the head “breach of terms and its remedy” in Clause 5 for payment of compensation in case of delay in handing over the possession of the apartment.

11. The Tribunal has wrongly relied on Section 72(b)(c) of the Real Estate (Regulation and Development) Act, 2016 even when the respondent have agreed for delay compensation under Clause 5(b)(3)(ii) of the Construction Agreement dated 09.11.2017. The Tribunal reducing/modifying the delay compensation caused serious prejudice to the rights of the appellants as provided for under the Construction Agreement dated 09.11.2017.



*C.M.S.A.No.45 of 2022*

12. Learned counsel for the appellants further stated that the appellants in order to pay the sale consideration, sold his only residential apartment and therefore, the appellants having no home to stay, preferred mails seeking accommodation and the developer, as a temporary arrangement, allotted a 2.5 BHK apartment to the appellant / complainant.

13. It is further stated by the counsel for the appellant that the residential unit was supposed to be handed over to the appellant in August 2017 (with a grace period of 6 months), this was further extended to January 2018 (with a grace period of 3 months) and finally the apartment was handed over only in July 2019. The said fact clearly illustrates the repetitive nature of the default of the respondent in handing over the residential unit to the appellant. Therefore, the learned Tribunal erred in misinterpreting Section 72(b)(c) and (d) of the Real Estate (Regulations and Development) Act, 2016.

14. Per contra, learned counsel for the respondent would submit that out of total sale price of Rs.2.16 crores, the complainant paid only Rs.1.71 crores and a sum of Rs.45,00,000/- was due and payable for more than two



*C.M.S.A.No.45 of 2022*

years. The appellant paid the balance amount only on 27.06.2019 and thereafter the possession was handed over. It is stated that the respondent took all the efforts to hand over the apartment by the date fixed under the agreement, due to several reasons beyond the control of the respondent, there was delay in execution of the project. Under the TNRERA Rules, the appellants are not entitled to any compensation on their failure to make payment as per the terms of the agreement. Further alternate accommodation was provided by the respondent to the appellants. When the appellant accepted the alternative accommodation in lieu of interest/compensation, they are not entitled for compensation. Therefore, the respondent had suitably compensated the loss by providing alternative accommodation and there is no repeated default of the respondent / developer. The Tribunal having found that the appellant enjoyed the alternative accommodation on free of cost in lieu of interest, set aside the awarding of 7% interest on total sale consideration as compensation and also set aside the compensation granted for mental agony and inconvenience and rightly modified the order of the learned Regulatory Authority, which does not require any interference of this Court.



C.M.S.A.No.45 of 2022

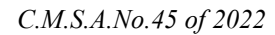
15. Upon hearing both the counsel for the Appellants as well the Respondent and perusing the materials available on record, this court framed the following substantial questions of law while admitting the present CMSA.

*(i) whether the Tribunal is right in law in modifying the delay compensation allowed by the authority in view of Clause 5(b)(3)(ii) of the Construction Agreement, which mandates that the allottee is entitled for interest at the rate specified in the rules for every month till the handing over the possession of the apartment?*

*(ii) Whether the Tribunal is right in law in invoking Section 72(b)(c) and (d) of the Real Estate (Regulation and Development) Act, 2016, in view of the specific clause that allows compensation in the event of delay of handing over of the apartment?*

16. Heard both sides and we have carefully weighed the rival submissions.

17. The point that has been found by the Adjudicating Authority and the Tribunal is that the developer has not acted in essence with the agreement



18. The respondent/developer, as a corporate entity, has not acted in good faith or with transparency in accordance with RERA Act, 2016 and the Rules, 2017. The adjudicating authority concluded that the developer had intentionally caused mental agony to the complainant and awarded compensation. However, the Tribunal concluded that the appellant enjoyed the alternative accommodation on free of cost in lieu of interest, and set aside the awarding of 7% interest on total sale consideration and compensation granted for mental agony and inconvenience.

19. The Appellate Tribunal has given finding that the home buyers/appellants suffered a loss by way of paying 2 months rent from their pocket; for that period certainly they are entitled for compensation by way of interest as per the agreement dated 09.11.2017, Ex.A.2. The Tribunal held that the home buyers are entitled to Rs.2,80,770/- only; for the remaining period, the home buyers were compensated by way of alternative accommodation. It is also observed that it is not the case of the home buyers



C.M.S.A.No.45 of 2022

that the developer prevented them from using their own furniture, therefore, the claim of the home buyers as loss by way of rent is not sustainable. Therefore, as per the agreement dated 09.11.2017, home buyers are entitled to compensation by way of interest only for two months.

20. On such findings, the Appellate Tribunal modified the order of the Adjudicating Officer and allowed the appeal filed by the Developer/respondent herein in part and thereby partly modified and confirmed the compensation by setting aside the compensation towards mental agony and inconvenience and ordered delay compensation only to a sum of Rs.2,80,770/- and further confirmed the litigation expenses.

21. The finding given by the Tribunal, is just and proper and we do not finding any error to interfere with the order passed by the Appellate Tribunal. Accordingly, the substantial questions of law are answered against the appellant and the CMSA is dismissed. No costs.

**(J.N.B., J.) (R.S.V., J.)**  
**19.11.2024**

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*C.M.S.A.No.45 of 2022*

To

- 1.The Tamil Nadu Real Estate Appellate Tribunal (TNREAT)
2. The Tamil Nadu Real Estate Regulatory Authority (TNRERA).



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*C.M.S.A.No.45 of 2022*

**J. NISHA BANU, J.**  
and  
**R.SAKTHIVEL, J.**

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**C.M.S.A.No.45 of 2022**

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