



**BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Egmore, Chennai – 600 008**

[Under the Real Estate (Regulation and Development) Act, 2016]

C.No.37/2023

29th day of January, 2024

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson
Er. S. Manohar, Member
Adv. V. Jeyakumar, Member**

1) Thiru Gurumoorthy Nagarajan]
2) Tmt. Vijayalakshmi Ravi] Complainants
Represented by its Power of Attorney]
Thiru B. Padmagiri]

Versus

M/s. Artha Real Estate Corporation Limited]
A Subsidiary of Bennett Property Holdings] Respondent
Company Ltd.]
Represented by its Authorised Signatory]

The above Complaint came up for final hearing before this Authority in the presence of M/s. S. Sivakumar - Counsel for Complainants and of M/s. Tatva Legal Chennai - Counsel for Respondent Promoter. This Authority passes the following order.

FINAL ORDER

The Complainants booked a Villa No.117 in the Project "Chennai One World" promoted by the Respondent Promoter situated at Pudupakkam Village, Chengalpattu Taluk and District.

2. The Complainant has further submitted that the total price has been fixed as Rs.1,56,00,000/- as sale consideration and the Complainants have paid a sum of Rs.1,27,24,000/- as on date. However the possession of Villa has not been handed over.

3. The Complainant has further submitted that the Respondent herein has executed the Construction Agreement, Tripartite Agreement and Agreement for sale in favour of the Complainants on 30.03.2016 (registered on 01.12.2016).

4. It is further submitted by the Complainant that as per Clause 4.1 of the terms and conditions, the Respondent herein agreed to handover the possession within a period of two years from the date of execution of the Construction Agreement with a grace period of six months i.e. upto July, 2019. Even after the grace period also the Respondent has failed to handover the possession.

5. The Complainant has further submitted that the Respondent has agreed/promised to pay a sum of Rs.95,000/- as per month Pre-EMI till the unit is handed over, whereas the Respondent has paid only from April, 2016 to November, 2019 and thereafter they failed to pay any amount as Pre-EMI/rent/return for the past 39 months from December, 2019.

6. It is also stated by the Complainant that the project would come under the definition of ongoing project since on the date of commencement of the Act and no completion certificate has been issued. The Complainant has also submitted that no application also has been filed by the Respondent Promoter for registration of the project within a period of three months of commencement of the Act. The said company is within the purview of enactment for the reasons that it consists of multifold complex and units, hence they are not exempted under the enactment.

7. The Complainants have prayed for the following reliefs in the complaint.

- i. To direct the Respondent herein to hand over the vacant possession in respect of Villa No.117, measuring about 3000 sq.ft. saleable area and 2400 sq.ft. undivided share including common areas to be constructed over the 'B' Schedule property which is more fully described in Schedule-C property to the Construction Agreement dated 30.03.2016 with all necessary documents within a reasonable time to be fixed by this Authority and pass such other further or others orders may deem fit and proper and thus render justice.
- ii. To direct the Respondent to pay sum of Rs.95,000/- per month as Pre-EMI/rent/monthly as has been agreed/promised by the Respondent till the handing over of the possession.

- iii. To pay cost or legal expenses to the tune of Rs.50,000/- incurred in preferring the petition (or) pass any such other orders as this Authority shall deem fit in the facts and circumstances of this case and thus render justice.

8. In the Counter Affidavit, the Respondent Promoter has submitted that the Complainants, despite knowing the fact that the delay in payment would affect the project in entirety, have not remitted the amount as agreed upon. Moreover, the possession charges and legal and document charges have not been remitted despite the fact that the Respondent has been ready to handover possession of the subject Villa as early as March, 2022. The Respondent has stated that the total outstanding amount for the subject Villa by the Complainants is Rs.38,48,521/-

9. The Respondent has submitted that even during such challenging conditions and financial crises, the Respondent extended its support to the Complainants by giving a one-time settlement offer of a lumpsum Rs.15,00,000/- against the earlier quantum of marketing offers and Pre-EMI settlement combined and accordingly, requested the Complainants to pay the balance outstanding amount after discounting the offered price of Rs.15,00,000/-. However, despite various requests from the Respondents, the Complainants failed to come forward to accept the offer and/or settle the outstanding dues.

10. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter, arguments and written submission of arguments carefully.

11. As per Clause-4.1 of the Construction Agreement dated 01.12.2016, the Promoter should have completed the construction of the Villa and delivered within 24 months with grace period of six months. Therefore, the Villa should have been handed over by 01.06.2019 even after taking into account the grace period of six months.

12. However, the Respondent Promoter has stated that the Villa has been ready to handover possession from March, 2022. Therefore, there is a clear delay of more than 2 years and 9 months.

13. As this Villa should have been completed before 01.06.2019, this Authority does not accept the contention of the Respondent Promoter citing lockdown due to Covid 19 pandemic for which automatic extension of 6 months was granted by this Authority for applicable real estate projects.

14. It is also seen from the written submission of arguments of the Respondent Promoter that the Complainant Allottee has paid Rs.1,26,46,019/- against the total consideration of Rs.1,56,75,000/- as stated the Respondent Promoter.

15. A sum of Rs.36,81,600/- is due only at the time of possession. Therefore, even according to the Respondent Promoter, a sum of Rs.78,421/- and legal and documentation charges of Rs.75,000/- are only supposed to be pending as due from the Complainant Allottee.

16. Considering the inordinate delay in completing the Villa, this Authority does not accept the contention of the Respondent Promoter citing the delayed payments as the reason for delayed construction.

17. Also the Respondent Promoter has promised Pre-EMI benefit stating that the Complainant Allottee need not pay the EMI till possession (page No.13 of the typed set of papers filed by the Complainant along with the Complaint).

18. The Complainant has stated that the Respondent Promoter has paid the Pre-EMI only from April, 2016 to November, 2019 and has failed to pay thereafter i.e. from December, 2019.

19. Therefore, this Authority directs the Respondent Promoter to adjust the Pre-EMI payment from December, 2019 to February, 2022 (the month prior to March 2022 the date when the Respondent Promoter has been ready to handover the possession of the Villa to the Complainant Allottee) from the balance sale consideration payable by the Complainant Allottee.

20. Both the Complainant Allottee and the Respondent Promoter are at liberty to file claim for interest on delayed construction and interest on delayed payments before the Hon'ble Single Member Bench of this Authority.

21. Therefore, this Authority directs the Respondent Promoter to handover the Villa completed in all respects strictly as per Construction Agreement to the Complainant Allottee before 31.03.2024 on receipt of balance sale consideration strictly as per the Construction Agreement after

adjusting the Pre-EMI payments committed by the Respondent Promoter for the period from December, 2019 to February, 2022.

22. This Authority also directs the Respondent Promoter to execute the sale deed in favour of the Complainant before 31.03.2024 as the issue of non release of Release Deed by the Registration Authorities to the land owner Mr. Ranveer Shah is not due to any fault of the Complainant Allottees and the Respondent Promoter is solely responsible to execute the sale deed in favour of the Complainant Allottees as General Power of Attorney holder.

23. With the above findings and directions, this Complaint is disposed of.

Sd/-...29.01.2024 Sd/-...29.01.2024 Sd/-...29.01.2024
MEMBER (M), TNRERA MEMBER (J), TNRERA CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N. Prasad
29/1/2024
LAW OFFICER, TNRERA

dy
29-1-24