

BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI

Quorum : Hon'ble Tmt. N. Uma Maheswari, M.A., M.L.,
Adjudicating Officer

S.R.No.41 of 2024

In

Unnumbered CCP /2024

M. Marudhachalam

.... Complainant

Vs.

M/s. Harish Builders

Rep. by its Proprietor A.S. Venkateswaran

.... Respondent

Complainant : Rep. by M/s. R. Manickavel, Advocates.

Heard on : 04.09.2024

Delivered on : 25.09.2024

ORDER

This complaint is presented by the complainant *u/s 31 r/w Section 71 of the Real Estate (Regulation and Development) Act, 2016* (hereinafter referred to as RERA Act) praying this Forum to direct the respondent/developer to pay Rs.25,00,000/- as damages for the hardship, harassment and mental agony and Rs.1,00,000/- for litigation expenses.

The complainant has stated that he is the absolute owner of Flat No.13-B in "Uthra Flats", Madipakkam, Chennai. The total extent of the area is 4800 sq.ft. The complainant's extent of built-up area is 555 sq.ft. together with 575 sq.ft. of UDS. The apartment became very old and all the apartment owners decided to demolish the existing residential building and put up a new construction through a

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common builder by way of a joint venture scheme. Thereby the respondent become the builder/developer with an understanding and fixing the ratio as 60% share to the existing owners and 40% share to the respondent. But without the consent and approval from the flat owners, the respondent entered into a Joint Development Agreement with a ratio of 56% : 44%.

This complainant was originally allotted with a Flat No.S3 with a built-up area of 666 sq.ft. together with 273 sq.ft. of UDS land. As he has given a larger extent of 302 sq.ft., he requested the respondent to allot additional built-up area. He paid Rs.10,80,000/- towards sale consideration for additional built-up area of 180 sq.ft. and UDS of land on 10.02.2021. But the respondent did not commence the construction work from December 2019 – the time he received the apartment for work. The respondent submitted the necessary applications very belatedly. To expedite the work, all the flat owners executed a deed of General Power of Attorney in favour of the respondent on 03.07.2021. The construction work is very slow. The failure of the respondent to complete the flat and handover the same is unethical and of unfair trade practice. This caused mental agony, harassment and hardship to the complainant and this complaint is presented before this Forum.

Since joint venture is in existence, this Forum posted the matter for hearing the complainant towards maintainability of this complaint. The complainant side also represented that since he has paid additional amount for additional accommodation, the complaint is maintainable.

Upon perusing the averments of the complaint and hearing to the representation of the complainant side, this Forum raises up the following question to decide the maintainability of this complaint before this Forum. The first obligation is that to invoke any relief under this Act, it describes the necessary extent to be dealt with by this Forum.

Coming to the next important point that, how far this complaint is maintainable? Since there is a joint venture arrangement in between all the flat owners including the complainant and the respondent, before going to the merits of the complaint, the provisions of the Act are to be looked into.

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Section 3: Prior registration of real estate project with Real Estate Regulatory Authority

(1) ...

(2) *Notwithstanding anything contained in Sub-Section (1), no registration of the real estate project shall be required-*

(a) *Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:*

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

500 sq.mt. is equivalent to 5381.96 sq.ft. In this case, the total extent is only 4800 sq.ft. which needs no registration.

Further as per Section 2:

(zk) *"Promoter" means, -*

(i) *A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

(ii) to (vi) ...

(zn) *"real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

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But in this case the respondent is only a developer to construct the flat in "Uthra Flats". Here, the respondent is not a promoter but acted as builder only for the consideration payable by him to the land owner instead of paying sale consideration, he paid the consideration as apartments, which are to be constructed at the own cost of the developer. Hence as per Section 2(zk)" the respondent is not a promoter at all".

Likewise, reconstruction of "Uthra Flats" does not come under the definition of the Real Estate project as per Section 2(zn), the Act clearly states that the development of apartment should be for the purpose of selling. Hence the "Uthra Flats" cannot be treated as a Real Estate project.

Under these circumstances, the complaint is not maintainable under Section 31 of the Act as the complainant is not an allottee or home buyer but a party only to the joint venture arrangement.

Hence the complaint is rejected.

Dictated by me to the Stenographer directly and typed by her in the computer, corrected and pronounced by me in the open court on this 25th Day of September 2024.

Sd/- 25.09.2024
N. UMA MAHESWARI
ADJUDICATING OFFICER
TNRERA, CHENNAI.

CERTIFIED TO BE TRUE COPY
N. Uma Maheswari
25/9/2024
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY