

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**S.R. No.0278/2018**  
**UN CCP No. of 2019**

Dr. Vandana Parvez ... **COMPLAINANT**  
**Vs.**  
M/s. IVR Hotels & Resorts Pvt Ltd and 7 Others ... **RESPONDENTS**

**Appearance:**

Complainant : In Person  
Respondent No.1 : Rep. by Mr. Thriyambak J. Kannan, Advocate  
Respondent Nos.3 to 5 : Rep. by Mr. N. Ramakrishnan, Advocate  
Respondent Nos.2, 6 to 8 : Remained absent

**Heard on : 27.11.2019**

**Delivered on : 10.12.2019**

**ORDER**

Heard the complainant and the counsels for the respondents. Perused the documents. On the points of the maintainability of the complaint as against the respondent nos. 3 to 5 and also respondents 6 to 8, and as to whether the project is an ongoing project and the disputed property was taken possession, the complaint was returned.

2. The complainant represented and submitted that respondent nos. 2 to 5 are promoting shareholders in the Aavisa Golf Township Project and they are also necessary parties to the complaint.

3. However, learned counsel for the respondent no.1 submitted that the first respondent is the promoter of the project and they obtained approval for the layout and sold the plot for several purchasers including the complainant and since the plot was sold already prior to the commencement of the Act, the project will not fall under the purview of the RERA Act and it is not an ongoing project as per Rule 2

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of the RERA Rules and subsequently villa was constructed by the respondent on an agreement for construction and the completed villa was already handed over to the complainant and therefore the complainant is liable to be dismissed. The counsel relied on the order of the TNRERA dated 11.10.2018 in Veeti Kat Somasekar Vs. IVR Hotels & Resorts Limited and another wherein the Authority dismissed the complaint for lack of jurisdiction.

4. The learned counsel for the respondents 3, 4 and 5 submitted that the 3<sup>rd</sup> respondent has nothing to do that the transactions alleged by the complainant with the first respondent and they are not a party of any agreement signed by the first respondent with home buyers and the third respondent is not at all a share holder in the first respondent company.

5. The learned counsel further submitted that respondents the 5<sup>th</sup> respondent is only a financial investor in the project and no way involved with the implementation of the project in any manner and there is no privity of contract between the complainant and respondents 3 to 5 and they are not necessary parties to the complaint.

6. As per the section 31 of the TNRERA Act, for any violation or contravention of the provisions of the RERA Act, a complaint can be filed against the promoter, allottee or real estate agent. The complainant, as an allottee filed this complaint on the basis agreement of sale, sale deed for purchase of plot of land and construction agreement for construction of the villa with the first respondent.

7. Admittedly, respondents 3, 4 and 5 are not parties to the above documents. The response of the complainant is that as per the financial report of the company the respondents 2 to 5 are the

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promoting share holders of the project. As per section 2(zk), definition of a '**promoter**' covers only a person who constructs building for sale and also the person who develops land into a project by constructing structures. As per the definition except the first respondent who is a legal entity, other respondents are not at all coming under the definition of a promoter. In the above circumstances, it is held that the complaint is maintainable as such only against the first respondent company, a legal person to be represented by his managing director or any directors carrying on business of the company and not against any other respondents.

8. So far as the preliminary objections of the first respondent that the plot was already sold and the construction of the villa completed and handed over and the project is not an ongoing project are concerned, even if the project is completed the first respondent as promoter, will be liable for defect liability for a period of 5 years from the date of construction and handing over of the villa. So it cannot be decided at the stage of maintainability of the complaint. The first respondent is at liberty to raise all the defences available to them as promoter under the RERA Act after the complaint is entertained by the Forum.

9. Considering all the above circumstances, the complaint is ordered to be returned to the complainant for proper presentation of the complaint in the prescribed Form 'N' with only necessary party as respondent and relevant averments for decision by this Forum within 10 days from this order falling which this complaint stands rejected.

Sd/-10.12.2019  
**ADJUDICATING OFFICER**  
**TNRERA**

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*N. Prasad*  
60/12-13  
**Administrative Officer**