

**BEFORE THE HON'BLE ADJUDICATING OFFICER,
TNRERA, CHENNAI**

I.A. No. 105 / 2019

In

C.C.P. No. 261 of 2019

Santhakumari

... Petitioner/Complainant

-Vs-

1. Crescentz Homes & Infrastructure Private Limited
Rep. by Director Mr. Zubair Ahmed Thajudeen

2. Altimiz Infrastructure Limited
Rep. by Director Mr. Zubair Ahmed Thajudeen

...Respondents/Respondents

3. M/s. Crescentz Square
Rep. by Partner Mr. Jalal Ahamed

... Proposed Respondent No.3

4. M/s. Medhika Infrastructures
Rep. its Sole Proprietor Mrs. S. Tamilselvi

... Proposed Respondent No.4

Heard on : 12.03.2020
Delivered on :20.03.2020

The above petition filed by the complainant praying to implead the proposed parties as respondents in the main complaint came up for hearing on 12.03.2020 and after hearing both sides and having perused the documents, this Forum passes the following:-

ORDER

2. The petition averments in brief as follows:-

(a) The Petitioner is the complainant. The affidavit of the petitioner is filed in support of this petition. The petitioner filed the above complaint claiming refund of the amounts paid towards the purchase of a flat with interest, compensation and costs from the respondents 1 and 2. Initially

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the complainant booked two flats in the project marketed by the first respondent at Vandalur and paid the advance amounts and subsequently opted to transfer of the flat in another project at Coimbatore by the respondents 1 and 2. The second respondent has transferred the project to proposed 3rd respondent. The project is registered also with TNRERA. The due date for completion of the project also lapsed. The petitioner came to know that the 4th respondent was authorized to take over the completion of the project by order of the TNRERA. Therefore, the proposed 3rd and 4th respondents are necessary parties to the complaint. Hence the petition.

3. The counsel for petitioner filed a memo stating that the petition as against R1 and R2 is not pressed. The 3rd respondent refused to receive the notice. The 4th respondent filed counter.

4. Counter averments of the 4th respondent in brief as follows:-

The petition is not maintainable as against the 4th respondent. There is no privity of contract between the petitioner and this respondent. The petitioner took advantage of the order passed by the TNRERA on 21.11.2019 in C.Nos.370/2019 and other petitions. The allottees referred in the order are only the 33 allottees stipulated in the tripartite agreements.

5. This respondent was approached to complete the remaining construction work in the stalled project. Therefore, tripartite agreement was entered with respect to the allottees who were complainants in the order of the TNRERA. This respondent has no liability with respect to the claim of the petitioner. This respondent is not a necessary party to the complaint. If the this respondent is impleaded in the above complaint, it may be against the essence order passed by the TNRERA referred above. Hence this respondent prays for dismissal of the petition with cost.

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6. The point which arises for determination is:-

Whether the petition for impleading the proposed respondents no.3 and no.4 as necessary parties is to be allowed?

7. Answer for point:

a) The learned counsel for the petitioner / complainant submitted that the project, namely, 'Crescentz Square' was initially promoted by the 1st and 2nd respondents and the petitioner was allotted a flat in the project by way of transfer of fund and payment of additional funds and subsequently the project was transferred to 3rd respondent and thereafter to the 4th respondent and the project was registered by 3rd respondent before the TNRERA and the obligations and duties of the 1st and 2nd respondents transferred to 3rd respondent and then stands transferred to the 4th respondent herein and therefore they are necessary parties to the complaint and the petition is to be allowed.

b) The learned counsel for the 4th respondent submitted that the 4th respondent is not at all a necessary party in the complaint and the 4th respondent was inducted as a new promoter by the order of the Authority dated 21.11.2019 on the basis of complaints made by 33 allottees in the project and the 4th respondent is not liable to pay any amount whatsoever to any person apart from the said 33 allottees who entered into tripartite agreement with the 3rd and 4th respondents and therefore the petition is liable to be dismissed.

c) Perusal of the documents reveals that the petitioner was allotted flat no.F-16 in 'A Block in the project in dispute by allotment letter of the 3rd respondent dated 13.04.2016. It is also seen that by acknowledgement dated 08.06.2016, the 3rd respondent also received the amounts from the petitioner towards additional sale consideration of the flat. Admittedly, the

project was registered as ongoing project with TNRERA and subsequently by order of the Authority and on execution of tripartite agreement, 4th respondent undertook to complete the project with respect to 33 allottees with whom the tripartite agreements were entered by the 4th respondent.

d) It is seen that by the order of the Authority in C.Nos.372 to 391/2019 and other cases dated 21.11.2019, the 4th respondent was inducted as a new promoter of the project. The order also reads that the 4th respondent as the new promoter is required to independently comply with all the pending obligations under the provisions of the Act, rules and regulations and pending obligations as per the agreement for sale entered into by erstwhile promoter with the allottees.

e) It is the contention as the 4th respondent that there is no privity of contract with the petitioner. Even though there is no agreement between entered the petitioner and the 4th respondent, both of them have legal interest in the project. Therefore, the question as to whether the 4th respondent along with the other respondents is liable for the reliefs claimed by the petitioner in the complaint will have to be decided after giving an opportunity of being heard to both sides and on the merits of the case. In the above circumstances, it is held that the proposed respondent no.3 and 4 are necessary parties to the complaint for effective adjudication of the claims of the complainant and the petition is to be allowed. Thus the point is answered accordingly.

In the result, the petition is allowed.

Sd/-20.03.2020

G.SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI

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N. Anand
20/3/2020
Administrative Officer