

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**

**QUORUM : HON'BLE MR. G. SARAVANAN, M.A.,B.L., ADJUDICATING OFFICER,**

**SR No. 0152 of 2019**

**in**

**Unnumbered CCP of 2018**

M/s. Aswini Foundations

Rep. by its Partner Ms. Aarti Raze

..... Appellant

**Vs.**

Mr. Ravi and 16 Others  
(Unregistered Project)

..... Respondents

Appellant : Represented by M/s. T.M. Naidu & Co., Advocates

Heard on : 23.04.2019

Delivered on : 02.05.2019

**ORDER**

The complaint filed by the above named appellant u/s 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) seeking direction to the respondents to pay Rs.72,96,00,000/- as compensation together with costs.

**2. Averments of the complaint in brief as follows :**

The appellant firm represented by one of the partners is the developer / promoter. Respondents 1 to 16 are land owners. Agreements were entered between them on 31.05.2010 and subsequently for development of the land for construction of residential flats. The 17<sup>th</sup> respondent is the association of flat / home purchasers. On the basis of supplemental agreement, Mr. Sivagurunathan, one of the partners of the appellant firm along with

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land owners opened and operated bank account. The appellant agitated misappropriation of funds. The appellant was assured of proper accounts and compensation and completion of the project. MOU was entered on 10.01.2018. Subsequently, on a police complaint, the appellant was asked to quit from the partnership. Aggrieved, the appellant filed OP No.1162 of 2018 for arbitration before the Hon'ble High Court, Madras and also obtained an order of injunction in A.No.1132 of 2018 on 10.12.2018. The respondents and other partners of the Asvini Foundations filed complaint No.162 of 2018 before the TNRERA in which the land owners represented as they got planning permission for the project and proposed to become the developers. The partnership firm has interest in the project by way of properties and receivables from the respondents. The appellant filed OS No.32 of 2019 before the Sub Court, Tambaram for various reliefs against other partners of the firm, land owners and others. The appellant is entitled to 57% share in the apartment complex. Revenue toward 57% share has not been realized by the appellant. The same could be realized only on sale of 94 flats to third parties. The appellant issued individual notices dated 02.02.2019 demanding balance amounts from them payable towards the cost of the flats they purchased. They refused to make any payment. As allottee of the 94 flats, the appellant is entitled for compensation under the RERA Act. Hence the complaint.

3. Regarding the maintainability of the complaint, the Counsel for appellant was heard.

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4. The point that arises for consideration is:

Whether the complaint is maintainable?

5. **Answer to Point**: The learned counsel for the appellant submitted that the appellant is well covered under section 18 and 19 of the RERA Act to prefer the complaints before the Adjudicating Officer and the appellant is an allottee under section 2(d) and the rights and duties of allottees as envisaged under section 19 of the Act is applicable to the complainant and therefore the complaint is maintainable under the RERA Act.

6. The appellant is a partnership firm represented by one of its partners. The complaint is filed against the respondents 1 to 16 who are the land owners and respondent 17, the association of the flat purchasers of the project, namely, 'Akila Heights'. As per the original development agreement dated 31.05.2010 entered between the partnership firm and the land owners, the property on the proposed is to be developed in joint venture basis for residential flats by the developer for developing 364 apartments on the basis of ratio of shares of 43:57 between the land owners and the developers. Admittedly, subsequently there was dispute with respect to accounts pertaining to the partnership firm between the partners and the appellant filed OP No.162 of 2018 before the Hon'ble High Court for appointment of Arbitrator for solving the dispute and has also got an order of injunction as stated in the complaint. Thereafter, the appellant filed OS No.32 of 2019 before Sub Court, Tambaram, for various reliefs such as for declaration as the development agreement dated 31.05.2010 was binding

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on all the parties therein. In the meanwhile, the construction activities came to a standstill and the 17<sup>th</sup> respondent filed complaint before the TNRERA and the planning permission was obtained by the land owners who became the new promoter of the project. The other partners of the appellant firm had not objected the same. The terms of the development agreement also provides for such takeover of the project by the land owners.

7. In the above circumstances, the complaint is filed in the name of the partnership firm represented by the partner, who initiated other legal proceedings against the other partners as well as the land owners and the association of flat buyers. It is the contention of the appellant that the appellant was reduced mere allottee within the meaning of Section 19 of the RERA Act and on the basis of development agreement. The definition of allottee under section 2(d) reads as follows:

*“allottee”* in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

8. As per the Section, *“allottee”* means a person to whom a plot , apartment or building has been allotted, sold by a promoter and includes any person, who subsequently acquires the property but does not include a person to whom such flat, apartment or building is given on rent. The

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appellant claims to be an allottee under the RERA Act on the basis of share allotted to the partnership firm under the development agreement. The appellant, who claims to be an allottee was not at all allotted or sold any plot, apartment or building under any agreements of sale and construction by any of the respondents. Hence, the appellant is not at all falling under the definition "*allottee*" under section 2(d) of the RERA Act.

9. The appellant also claims to be covered under section 18 and 19 of the RERA Act. Section 18 deals about the return of amount and compensation by the promoter to the allottee, if the promoter fails to complete or unable to give possession of the apartment for the reasons stated in the section. Section 19 deals with the rights and duties of such allottees. When the appellant is not allotted or sold any plot, apartment, or building as required under Sec 2(d) definition, in pursuance of agreements of sale or construction as contemplated under sections 18 and 19, the appellant cannot be said to be covered under section 18 and 19 of the RERA Act. In the said circumstances, the complaint is not at all maintainable. Thus the point is answered accordingly.

10. In the result, the complaint is rejected as not maintainable.

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**G.SARAVANAN**  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

  
ADMINISTRATIVE OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY

  
02/05/2019