

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**

**S.R. No. 0636 of 2019**

**in**

**UN CCP No. of 2019**

Yasmin Bhagat

.... Complainant

**Vs.**

1. M/s. Touch Sky Foundations (P) Limited
2. Mr. Kuresh Alihussain Kapadia
3. Aliakbar Badruddin Lehry
4. Akbar Shk. Yusufbhai Marfatya
5. Noman Hatimbhai Millwala

**(PROJECT NOT REGISTERED)**

.... Respondents

Complainant : Rep. by Mr. R. Ramasubramaniam Raja, Advocate

Respondents : Rep. by Mr. Yusuf S.Q., Advocate - R2, R3

**Heard on : 11.02.2020**

**Delivered on: 20.02.2020**

**ORDER**

The above complaint by the complainant claiming the refund of the amounts paid to the respondents towards the purchase of flat with interest, compensation and costs is filed under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. In the complaint, the complainant stated that she booked a flat in the project of the respondents in 2011 and paid a sum of Rs.37,80,000/- and subsequently the project came to be a standstill and due to the internal disputes among directors who are the respondents 2 to 5 of the first respondent company, the complainant was not delivered the completed flat and she filed the complaint.

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3. On scrutiny of the complaint, this Forum returned the complaint as to how the complaint is maintainable in view of rule 2(h) of the TNRERA Rules 2017 and also as to how the subject matter falls within the jurisdiction of this Forum under section 3 of the RERA Act. For which the complainant have submitted that the respondents have not obtained completion certificate for the project and section 3(2)(a) is not applicable and the complaint is maintainable and this Forum has jurisdiction.

4. This Forum issued notice to the respondents on the question of maintainability of the complaint. On receipt of the notice, respondents 2 and 3 appeared before this Forum and other respondents remained absent. The respondents 2 and 3 filed counter objecting the maintainability of the complaint.

5. In the counter filed by the 3<sup>rd</sup> respondent, adopted of the 2<sup>nd</sup> respondent, it is stated that the complaint is not maintainable and the project construction was completed on 14.02.2016 i.e., even before the commencement of the RERA Act and as early as 2014 the project building was assessed for tax and section 3 mandates prior registration of projects with Real Estate Regulatory Authority and the project does not fall within the purview of RERA Act and the complaint is barred by limitation.

6. The point for determination is as follows:

Whether the complaint is maintainable?

7. The learned counsel for the complainant submitted that the rule 2(h)(ii) of the TNRERA Rules excludes registration of the project for which application for completion certificate has been filed with CMDA on the date of commencement of section 3 of the RERA Act and no application has been filed before the CMDA for completion certificate by the respondents and section 3(2)

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has no application on section 18 of the Act and there is no bar for filing the complaint and the Act is applicable for the projects which are not registered with RERA also and therefore the complaint is maintainable.

8. The learned counsel for the respondents contended that the project was completed in the year 2014 i.e., even prior to the commencement of the Act and section 3 of the RERA Act mandates prior registration of Real Estate project for the purpose of jurisdiction and the complaint is also barred by limitation and also filed photos of the project as documents.

9. Section 3 of the RERA Act requires the promoter to make application to the Authority for registration of the project that are ongoing on the commencement of the Act and for which the completion certificate has not been issued. Rule 2(h)(ii) of the TNRERA Rules also excludes registration of the projects for which application for completion certificate has been filed with the CMDA on the date to coming into force of sub section 1 of 3 of the RERA Act. Nowhere, in the RERA Act, it is specified that the Act is applicable only for registered projects. The projects which are taken out of requirement of registration under section 3 of the Act, are not taken out of the purview of the other provision of the Act. Therefore, at the stage of numbering the complaint, the question as to whether the project is a completed one and the provisions are not applicable cannot be decided.

10. So far as the question of limitation is concerned, the obligations undertaken by the respective parties for the purpose of agreement and other obligations and developments to be taken into consideration on evidence of both sides. Therefore the question of limitation cannot be decided at the present stage of the case.

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11. Considering the circumstances of the case, it is held that the complaint is ordered to be numbered and the liberty is given to the respondents to raise all the legal pleas in their objections.

**In the result, the complaint filed before this Forum by the complainant is ordered to be numbered, if otherwise proper in all respects.**

Sd/-20.02.2020  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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*N. Arumugam*  
Administrative Officer