

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

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

**Memo. S.R.No. 0763 of 2019
in
CCP Nos. 139 of 2019**

Rani Vellammal

.... Petitioner

Vs.

(1) M/s. Green Avenue Homes

.... Respondent No.1

(2) Aartha Properties

.... Respondent No.2

(3) Bennat Property Holdings Co. Ltd.

.... Respondent No.3

Heard on : 08.01.2020

Delivered on : 23.01.2020

ORDER

The above memo is filed by the 2nd respondent seeking to strike off the name of 2nd respondent from the above complaint.

2. Averments in the memo filed by the 2nd respondent, in brief, as follows:

(a) The 2nd respondent is the marketing agent of the subject project of the 1st respondent in the complaint on the basis of marketing agreement dated 06.09.2012 entered with the 1st respondent. By an order dated 09.08.2018, passed by the National Company Law Tribunal, Mumbai, and the scheme of arrangement between the 2nd and 3rd respondents all the assets and liabilities, except RERA registered projects of the 2nd respondent got transferred to the 3rd respondent. Since the project is a non RERA project as on date of the order of the Tribunal, the books of accounts of relevant documents of the project was transferred by the 2nd respondent company to the 3rd respondent company. Hence it is necessary to strike out the name of the 2nd respondent as it is neither proper and necessary party to the subject proceedings. Hence, the memo.

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3. **Objections of the complainant in brief as follows:**

(a) The arrangement of transfer from the 2nd respondent to 3rd respondent is an internal technical arrangement. Still the 2nd respondent is an entity working separately and not dissolved totally. By order dated 20.06.2019 in CCP No.165/2018 the TNRERA directed the project to be registered with TNRERA. Hence, it is a project registered under the RERA Act as ongoing project.

(b) The 2nd respondent company misled and ill advised the complainant through incorrect commitments while marketing the project. The resulting liability will continue with 2nd respondent and the 3rd respondent will not take the liability. The responsibility or liability could not proceed based on the facts. Therefore, the memo is liable to be dismissed and the 2nd respondent is necessary party to the proceedings.

4. The 1st respondent has not filed any objection for the memo.

5. (a) Heard both sides. The learned counsel for the 2nd respondent elaborately argued on the point of striking off the name of the 2nd respondent from the complaint citing various provisions of Company Act with relevant documents such as order of scheme of arrangement approved by the NCLT, Mumbai and other documents to contend that all the assets and liabilities of the 2nd respondent was transferred to 3rd respondent in a lawful manner and therefore the 2nd responder is not a necessary party. However, the learned counsel for the complainant vehemently opposed the memo contending that the 2nd respondent as agent of the project of the 1st respondent played vital role and he is also a necessary party to the complaint.

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(b) As per the memo of the 2nd respondent, in pursuance of the order of the NCLT, all the assets and liabilities, except RERA registered projects of the 2nd respondent got transferred to the 3rd respondent, since the present project is a non-RERA registered project as on the date of the order i.e., 09.08.2018. It is not in dispute that by order dated 20.06.2019 in CCP No.165/2018, TNRERA found that the project is required to be registered with TNRERA and directed for the registration of the project with TNRERA.

(c) TNRERA has jurisdiction over all the projects which are eligible for registration under the RERA Act irrespective of the fact whether such projects are registered or not. Section 3 of the RERA Act, specifies real estate projects which required registration. Therefore, the question of whether a project is a non-RERA registered project or RERA registered project can be decided only at the time of trial with relevant facts and provisions of the RERA Act. It is also to be decided as to whether a project which is required to be registered under RERA Act, if not registered, can be deemed to be a registered project for the purpose of jurisdiction can be analysed only in the context of the evidence and provisions of the law. Therefore, the analogy of the 2nd respondent unilaterally that it is a non-RERA registered project and it is not a necessary party is unwarranted at the present stage of the case. Therefore, the memo is liable to be rejected.

(d) The 2nd respondent also raised a plea in the rejoinder that there is no proper cause title in the complaint and the 2nd respondent is mentioned as Artha Properties instead of Artha Real Estate Corporation Limited and such description is to be struck-off. There is no doubt as to the identity of the 2nd respondent. In the documents filed by the 2nd respondent in support of the memo, it is found that the logo "Artha" is found mentioned in the top right

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corner of the document. Therefore, on the ground also 2nd respondent cannot seek to strike-off the name of 2nd respondent in the complaint. In the above circumstances, the memo is found not maintainable.

In the result the memo is rejected.

Sd/-23.01.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY

N. [Signature]
23/1/2020
Administrative Officer