

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

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

**S.R. No.0795 of 2019
in
UN CCP No. of 2019**

Dr. Neela Kannan

.... Complainant

Vs.

1. M/s. Selene Estate Limited
Rep. by Authorized Signatory D. Murugesh
2. M/s. India Bulls Housing Finance Ltd.
Rep. by Director
(TN/01/Building/0021/2017)

.... Respondents

Complainant : Rep. by M/s. O.R. SANTHANAKRISHNAN, Advocate
Respondents : Rep. by M/s. BFS Legal, Advocate - R1
 Rep. by Mr. T. Saikrishnan, Advocate - R2

Heard on : 31.01.2020

Delivered on: 07.02.2020

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 the complaint for the same relief in CC No.140 of 2017 is pending on the file of the State Consumer Disputes Redressal Commission, Chennai and also undertook to withdraw the said complaint in the event of the present petition being allowed by this Forum.

3. On scrutiny of the complaint, this Forum returned the complaint as to how the complaint is maintainable under proviso to section 71 (1) of the RERA Act, when complaint is pending for the same reliefs before the State

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Consumer Commission. For which, the complainant submitted that the remedies available to the allottees under the Consumer Protection Act, 1986 and the RERA Act are concurrent remedies and also relied on the decision of the Hon'ble Supreme Court and resubmitted the complaint.

4. This Forum issued notice to the respondent on the question of maintainability of the complaint. On receipt of the notice, respondents appeared and the first respondent filed counter raising objections to the complaint. In the objections, the respondent stated that the present complaint is barred by virtue of section 71 of RERA Act and when, admittedly the complainant already preferred a complaint in CC No.140 of 2017 before the State Consumer Commission, Chennai and the same is pending on the stage of final arguments, without withdrawal of the same first, this present complaint is not maintainable and the complainant cannot maintain two parallel proceedings seeking same relief and the complaint is liable to be dismissed.

5. The point for determination is as follows:

Whether the complaint is maintainable in view of the pending complaint for the similar reliefs in CC No.140 of 2017 before the State Consumer Disputes Redressal Commission ?

6. The learned counsel for the complainant submitted that the complaint is maintainable even though a complaint of similar nature is pending before the State Consumer Commission and both the Consumer Protection Act and RERA Act provide concurrent remedies. The learned counsel also relied the following decisions in support of his contentions:-

1. *Pioneer Urban land and Infrastructure Limited and Ors. Vs. Union of India (UOI) and Ors. – MANU/SC/1071/2019*

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2. *Kalyani Packaging Industry Vs. Union of India and Another*
– (2004)6 SCC 719

3. *M3M India Pvt. Ltd. and Ors. Vs. Dinesh Sharma and Ors.* -
MANU/DE/2876/2019

7. However, the learned counsel for the respondents contended that the complaint is not maintainable, in view of the section 71 of the RERA Act and without withdrawal of the complaint of similar nature before the State Consumer Commission, the present complaint is liable to be dismissed and the decisions relied by the counsel for the complainant does not overrule section 71 or hold that permission from Consumer Forum need not be obtained before initiating the proceedings under the RERA Act and the undertaking made by the complainant is purely contingent up on success in the present complaint and it is an attempt of Forum shopping. The learned counsel also relied upon the following decisions in support of the contentions:-

1. *Union of India (UOI) and Ors. Vs. Cipla Ltd. and Ors.* –
MANU/SC/1345/2016

2. *Meghmala and Ors. Vs. G. Narasimha Reddy and ors.* –
MANU/SC/0608/2010

8. The proviso to section 71(1) of the RERA Act reads as follows:

Provided that any person whose complaint in respect of matters covered under sections 12,14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of

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such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

9. In the judgment in **Pioneer Urban land and Infrastructure Limited and Ors. Vs. Union of India (UOI) and Ors. (Supra)** relied by the learned counsel for the complainant, the Hon'ble Supreme Court held that the object of RERA Act is to see that real estate projects come to fruition within the stated period and to see that allottees of such projects are not left in the lurch and are finally able to realize their dream of a home, or be paid compensation if such dream is shattered, or at least get back monies that they had advanced towards the project with interest and further held as follows:-

29 That another parallel remedy is available is recognized by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA read with Section 88.....

10. In the judgment in **M3M Pvt. Ltd. and Ors. Vs. Dinesh Sharma and Ors. (Supra)**, the Hon'ble Delhi High Court elaborately analysed the above judgment of the Hon'ble Supreme Court and held as follows:-

While examining the operation of remedies under RERA and IBC, the Supreme Court has drawn on Section 71(1) as another illustration that the remedies under RERA were not intended to be exclusive, but to run parallel with other remedies. The use of Section 71(1) as an example of a

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parallel remedy, in this context, does not lead to the conclusion that the Court intended to reach a conclusion only with regard to pending CPA complaints, and not ones instituted in the future. If anything, paragraph 29 of the judgment demonstrates that the Court was very much alive to the effect of RERA provisions on proceedings under CPA.

The Hon'ble Delhi High Court held that the above judgment in Pioneer Urban Land Case (Supra) constitutes the law declared by the Supreme Court under Article 141 of the constitution and the remedies available to the allottees under Consumer Protection Act and RERA are concurrent and it cannot be said that the Supreme Court has expressed a casual opinion or that the issue was completely unconnected with the point arising in the case.

11. The judgment cited by the learned counsel for the respondent in **Meghmala and Ors. Vs. G. Narasimha Reddy and Ors. (Supra)** was a case where the Hon'ble Supreme Court held that two parallel proceedings before two Forums cannot be taken for the same relief under the Andhra Pradesh Land Grabbing (Prohibition) Act and where a litigant files a review petition before filing petition before the Supreme Court and it remains pending till the petition stands dismissed, the review petition deserves to be considered and if it is filed subsequent to dismissal of the petition, the filing of review application amounts to abuse of process of the court.

12. In another decision of the Supreme Court cited by the learned counsel for the respondent in **Union of India (UOI) and Ors. (Supra)**, the Hon'ble Supreme Court held that the classic example of Forum Shopping is when a litigant is approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief.

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13. When the case was pending for orders, the learned counsel for respondent filed two more decisions of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Mastan and Ors. in MANU/SC/2367/2005** and also in **Andhra Pradesh State Financial Corporation Vs. GAR Re-Rolling Mills and Ors. in MANU/SC/0454/1994**. In the first decision, claims for compensation were filed both under Workmen's Compensation Act, 1923 and Motor vehicles Act, 1988 and the Hon'ble Supreme Court held that Section 167 of the Motor Vehicle Act makes it clear that a claim could not be maintained under both the Acts and the doctrine of election is fully incorporated in Section 167 of the Motor Vehicle Act. In the second decision, the question was as to whether the financial corporation set up under State Financial Corporations Act, 1951 is entitled to remedy available under Section 29 even after having obtained order or decree under Section 31 of the Act. The Hon,ble Supreme Court held that the doctrine of election, as commonly understood, would not be attracted under the Act in view of the express phraseology.

14. In the Pioneer Urban Land Case (Supra), the Hon'ble Supreme Court examined the object of the RERA Act which protects the interest of the individual investor in real estate projects by requiring the promoter to strictly adhere its provisions and held that the remedies under CPA and RERA are concurrent remedies. Therefore all the decisions relied by the learned counsel for respondent are not applicable to the present complaint.

15. So far as this case is concerned, the complaint before the State Consumer Commission is admittedly not yet disposed. The complaint before the Consumer Commission and the present complaint before this Forum are under different enactments. Apart from the above, Section 88 of the RERA Act

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also makes it clear that the application of the provisions of the RERA Act are in addition to and not in derogation of other laws.

16. In view of the above circumstances and the decisions of the Hon'ble Supreme Court and Delhi High Court, it is held that the complaint filed before this Forum under the RERA Act is maintainable.

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

Sd/-07.02.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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Administrative Officer