

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
Execution Petition Nos. 16, 17, 18, 19 and 35 of 2020

- | | | | | | |
|---|---|---|---------------|----|-----------------|
| 1 | S. Saritha Shree | : | EP No.16/2020 | in | CCP No.145/2018 |
| 2 | Neeraja Viswanath | : | EP No.17/2020 | In | CCP No.150/2018 |
| 3 | ParavastuSamavedam
Veeraraghava
Appangar Swamy,
Rep by POA T.Raman | : | EP No.18/2020 | in | CCP No. 29/2018 |
| 4 | Mohan Rajarathinam
and Mohan
Valarmathi Rep by
POA Chandra Mohan | : | EP No.19/2020 | in | CCP No.151/2018 |
| 5 | Vidyut Jatia | : | EP No.35/2020 | in | CCP No.39/2018 |

...PETITIONERS

Vs.

M/s. Marg Properties Ltd.
Rep. by Director, G.R.K. Reddy

...RESPONDENT

(Regn. No.TN/01/Building/0055/2018)

Petitioners	:	Rep. by Mr. C.P. Raghavan, Advocate.
Respondent	:	Rep. by Dr. S Padma, Advocate.

Heard on : 15.04.2021
Delivered on : 09.07.2021

**ORDER FOR RECOVERY UNDER SECTION 40(2) OF RERA ACT READ
WITH RULE 27 OF THE TNRERA RULES FOR NON-COMPLIANCE
OF THE ORDERS IN THE ABOVE CCPs DATED 29.03.2019, 30.11.2018, and
14.12.2018**

The above petitioners filed the petitions for execution contending that the respondent has not complied with the order passed in the respective CCPs filed by them.

TRUE COPY

9/7/21

2. The respondent filed reply stating that the execution petitions are liable to be dismissed on the ground that the entire land of the project is mortgaged with various financial institutions and different buyers have booked apartments in different blocks and some of the apartments has been already sold and section 40(2) read with Rule 27 of the TNRERA Rules cannot be invoked and the rate of interest under the Tamil Nadu Revenue Recovery Act, 1864 is only 6% per annum and the petitions are liable to be dismissed and the civil court only has power to execute orders of decree.

3. Heard both sides. Admittedly the respondent has not preferred any appeals against the orders in the above CCPs and has not also settled any amount towards the claim of the petitioners as per the orders made by this Forum in the above CCPs.

4. In Pioneer Urban Land and Infrastructure Limited and Ors. Vs. Union of India (UOI) and Ors. reported in MANU/SC/1071/2019, the Hon'ble Supreme Court held that home buyers/allottees are also financial creditors like banks. Compensation, in the legal sense, constitutes actual loss and other losses, both pecuniary and non-pecuniary in nature and includes purchase money, which is actual loss.

5. So far as the other points relating to interest under the Tamil Nadu Revenue Recovery Act is concerned, it is suffice to add that the orders in the CCPs were passed by this Forum under the provisions of RERA Act and rules of TNRERA Rules framed under the Act.

6. Regarding the contentions of the respondent that this Forum has not taken in to consideration all the points raised in the main case and the delay was not on the part of the respondent in delivery of the apartment and other contention are concerned, the respondent cannot go beyond the orders passed

TRUE COPY

9/7/24

by this Forum raising various contentions which can be raised only before an appellate Forum. Therefore all the above contentions are liable to be rejected.

7. However, the learned counsel for the respondent relied on the decision of Haryana RERA and also this Forum of TNRERA reported in newspaper to contend that refund may not be allowed if the project is 40% complete and also TNRERA directed buyers and developers to clear their dues in a decision. First of all, any executing court cannot go beyond the decree or order. Before the executing Forum or courts, such contentions of the counsel for respondent are not sustainable. Each case depends on its own facts and circumstances. Therefore, the decision relied by the learned counsel cannot be made applicable in the EP's at the stage. Therefore, the above contentions are not acceptable.

8. The learned counsel for the petitioners / complainants submitted that the petitioners are seeking transfer of the order of the Forum to the Civil Court concerned under section 40(2) of the RERA Act read with Rule 27 of the TNRERA Rules and this Forum is to issue precept for attachment of properties under section 46 of the civil procedure code. As per rule 27 of the TNRERA Rules, the order passed by this Forum can be enforced in the same manner as if it were a decree or order made by the Civil Court in a suit and in the event of inability to execute the order by this Forum, the orders can be sent to Civil Court for execution. Since there is no sufficient infrastructure or separate establishment in the Authority for execution of the orders passed in the complaints by this Forum, this Forum is not able to execute the orders passed in the complaints. Therefore, it is just to send orders for the Civil Court concerned for execution.

9. However, regarding the contention of the learned counsel for issue of precept is concerned, section 46 of CPC provides for issue of precept of

TRUE COPY

9/1/21

attachment to ensure for two months or pending transfer of decree and application for execution. The object of a precept is to enable decree holder to obtain an interim attachment where there is ground to apprehend that he may otherwise be deprived of the fruits of his decree. No such attachment, however, can continue for more than two months except in the circumstances mentioned in the section. Therefore, the question of issue of precept does not arise, since the execution petition itself is forwarded to the Civil Court for execution.

10. Since the amounts due to the petitioners under the orders are to be recovered through execution proceedings, it is just and necessary to send the Execution Petitions under section 40(2) of the RERA Act read with rule 27 of TNRERA Rules to civil court concerned for execution. The EPs are disposed accordingly.

In the result, it is ordered as follows:-

To send the above execution petitions to the Principle District Court, Kancheepuram for execution of the orders passed in the above CCPs in favour of the above complainants.

CERTIFIED TO BE TRUE COPY

sd: 09.07.2021
G. SARAVANAN,
ADJUDICATING OFFICER,
TNRERA, CHENNAI.


9.7.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY