

**BEFORE THE HON'BLE ADJUDICATING OFFICER,
TNRERA, CHENNAI**

I.A. No. 19 / 2020

In

C.C.P. No. 136 of 2019

M/s. Amarprakash Developers Pvt Ltd Petitioner/Respondent
-Vs-

1. ThirumalaiKumar 1st Respondent/Complainant

2. M/s. IIFL Home Loan Division ... 2nd Respondents/Proposed party

Heard on : 06.08.2020

Delivered on : 08.09.2020

The above petition filed by the petitioner/ respondent to implead the 2nd Respondent/proposed party in the main complaint came up for final hearing on 06.08.2020 and the 2nd respondent being called absent and after hearing both sides and having perused the documents, this Forum passes the following:-

ORDER

2. The petition averments in brief as follows:-

(a) The Petitioner is the respondent/builder in the main case. The affidavit of the Authorized signatory of the petitioner company is filed in support of this petition. The 1st respondent filed the complaint for refund of the entire amount paid by him towards purchase of the flat from the petitioner due to the delay in handing over possession of the flat.

(b) The 1st respondent has taken a home loan from the 2nd respondent/proposed party by deposit of title deeds to pay the petitioner for the purchase of the flat. The property is the subject matter of the complaint for which

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refund is sought by the 1st respondent. The 1st respondent suppressed the fact for making unjust enrichment.

(c) In the event of refund being ordered against the petitioner, the amount has to be paid to the 2nd respondent to clear the charge over the property. Hence, the 2nd respondent is necessary of proper party to the case. Hence the petition.

3. Counter averments of the 1st respondent/Complainant in brief as follows:-

(a) The above application is neither maintainable on law nor on facts. As per the sections 31 and 79 of the RERA Act, the 2nd respondent is not a necessary party. The adjudicating officer is only a quasi judicial authority and the role of the Adjudicating officer cannot be equated with power of the Civil Courts.

(b) The petitioner failed to deliver a flat on time. No where in the counter, the petitioner indicated that financial institution is a necessary party to the above proceedings. Hence this petition is liable to be dismissed with cost.

4. The point which arises for determination is:-

Whether the petition for impleading the respondent no.2/the proposed party as necessary party is to be allowed?

5. Answer for point:

a) The learned counsel for the petitioner submitted that the 2nd respondent is a proper and necessary party for effective adjudication of the case and therefore the petition is to be allowed. However, the learned counsel for the 1st respondent submitted as per the provisions of the RERA Act, the 2nd respondent is not at all a necessary party to the proceeding and therefore, the petition is liable to be dismissed with cost.

b) It is not in dispute that the 1st respondent availed loan from the 2nd respondent for the purchase of the flat from the petitioner and also created

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mortgage of the sale deed of the undivided share of the land executed in his favour for the flat in the project with the 2nd respondent. Admittedly, the complaint has been filed for refund of the entire amount paid by the 1st respondent to the petitioner towards purchase of the flat with interest and compensation. It is obvious that in the event of refund of the total amount with interest compensation and other charges is ordered by this forum, it is the duty of the 1st respondent to clear the encumbrance created by him with the 2nd respondent and so that the petitioner can sell the flat to any other 3rd party with clear title. Since, the interests of the petitioner and both the respondents are involved in the issue, it is held the 2nd respondent who is the proposed party is a necessary and proper party for a effective adjudication of the main case. Therefore, the point is answered infavour of the petitioner.

In the result, the petition is allowed.

sd/-08.09.2020

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

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