

BEFORE THE HON'BLE ADJUDICATING OFFICER,
TNRERA, CHENNAI

I.A. Nos. 32/2020 and 33/2020

in

C.C.P. No. 212 of 2019

T. Aananathi

..... Applicant/Complainant

-Vs-

1.M/s.G.K.S.Technology Park Ltd.,

2. Mr. Suresh Vaidyanathan

... Respondents/Respondents

Heard on : 27.10.2020

Delivered on : 20.11.2020

The above petitions, filed by the Applicant/complainant, seeking permission to file additional documents and also for amendment of the reliefs sought in the main complaint, came up for final hearing on 27.10.2020 and after hearing both sides and having perused the documents, this Forum, after due consideration of the materials on record, passed the following:-

ORDER

2. The case of the petitioner, in brief, as follows:-

(a) The Petitioner is the complainant/purchaser in the main complaint. She booked a flat and entered into an agreement for sale and construction of flat with the respondents in their project, "VIHA Apartments" at VOC new colony, Ayanavaram, Chennai. She filed the above complaint before this Forum for compensation for delay in construction and handing over of the apartment. She also filed complaint in Complaint No.411/2019 before the Authority for directions

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to the respondents to register sale deed and other reliefs which were partly allowed by the Authority by order dated 19.12.2019. Aggrieved by the order of the Authority, the petitioner filed appeal in A.No.11/2020 before the Appellate Authority. Hon'ble Appellate Authority by order dated 10.02.2020 allowed the appeal with a direction to respondents against which the respondents preferred CMSA No.16/2020 before the Hon'ble High Court.

(b) On 22.03.2020, the petitioner was given possession of the flat. She found that the flat was incomplete with many defects. The sale deed was executed on 06.03.2020. Therefore it is just and necessary to enhance the claim of compensation by making amendments to the relief sought before the Forum. For the purpose of enhancement of compensation, it is also necessary to mark additional documents filed by the petitioner. Hence, the above petitions.

3.Counter averments of the respondents, in brief, as follows:-

(a) The present petitions for amendment of the claim in the complaint are not maintainable. Except admitted, all the averments in the petitions are denied.

(b) The first respondent, a renowned builder, is developing the project. The petitioner entered into agreements for sale and construction with the first respondent. The first respondent completed the project and a completion certificate was also issued by CMDA. The petitioner was making delayed payments and at one point sought for the cancellation of the allotment. The respondents granted waiver of several charges.

(c) The petitioner created dispute with regard to car park and filed the complaint in Complaint No.411/2019 before the Regulatory Authority for several reliefs. The

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Hon'ble Authority passed a final order on 19.12.2019 rejecting the claim of the petitioner to car park and directing the respondents to execute sale deed on receipt of balance amount with interest. The complainant preferred appeal before the Appellate Authority on 30.12.2019.

(d) The Appellate Authority allowed the appeal by order dated 10.02.2020 against which the respondents preferred CMSA No.16/2020 before the Hon'ble High Court and obtained interim orders. When the order of the Appellate Authority in Appeal no.11/2020 is subject matter of appeal before the Hon'ble High Court in the above CMSA, the very same issue cannot be a cause of action for amendment in the petition for amendment.

(e) The petitioner wanted to cancel the contract and thereafter came forward to go ahead with the purchase and created dispute in relation to car park and refused to come for registration. The petitioner cannot take contradicting pleas. The interest part is contained under section 38 of the RERA Act and is conferred on the Authority and the petitioner cannot claim interest component before the Adjudicating officer. Hence, the petitions are liable to be dismissed.

(4) The point for consideration is :-

Whether the petition seeking permission to file additional documents and the petition for amendments of reliefs in the complaint by the petitioner are to be allowed or not?

(5). Answer for the point:

(a) The petitioner submitted that it is just and necessary that she has to be permitted to mark additional documents for enhancement of compensation and also to make amendments to the prayer in the complaint, otherwise she will be

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put to great monetary loss and suffering and the petitions are to be allowed in the interest of justice.

(b) However, the learned counsel for the respondent opposed the petitions and submitted that the petitioner sought to make amendments in the complaint on the basis of order of the Appellate Tribunal dated 10.02.2020 and the respondent filed appeal in CMSA No.16/2020 before the Hon'ble High Court and the same cannot be a cause of action for filing the amendment application and the petitioner claimed interest towards compensation and section 38 of the RERA Act confers power to the Authority to impose interest and the same is not left to the discretion of parties under adjudication and the petitioner has taken contradictory pleas in the proceedings and she is estopped from taking different pleas and the petitions are liable to be dismissed.

(c) It is settled law that the power to allow amendment should be liberally excised in order to avoid multiplicity of proceedings. The principle governing the permission to be given to the parties are that as general rule leave to amendment will be granted so as to enable the real question in issue between the parties to be raised on the pleading, where the amendment will occasion no injury to the opposite party. So far as the present case is concerned, the petitioner seeks to amend to the prayers in the complaint regarding the quantum of compensation, interest and refund of money as excess amount payable by the respondent.

(d) Admittedly, the petitioner filed the complaint before the Regulatory Authority in Form M in Complaint No.411/2019 and the Authority passed final order dated 19.12.2019 against which the petitioner preferred appeal before the Appellate Tribunal in A.No.11/2020. Appellate authority disposed the appeal against which

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the respondent preferred CMSA No.16/2020 before the Hon'ble High Court and the same is pending for disposal.

(e) The present petition before this Forum in Form N is filed under section 31 r/w 71 of the RERA Act. The objection of the learned counsel for the respondent is that when the order of the appellate authority is subject matter of appeal before the Hon'ble High Court , the very same issue is being agitated before this Forum in the present complaint by filing amendment petition and the interest component is contained u/s.38 of RERA Act.

(f) A reading of section 38 of the RERA Act reveals that the section deals with the power of the Authority to impose penalty or interest in regard to any contravention of obligations cast upon the promoters, the allottees etc., under the Act or rules and regulation. It is clear that the interest contemplated under section 38 of the Act is penal in nature. On the other hand, the interest component provided under section 18 of the RERA Act by adjudicating officer is compensatory in nature. Therefore, the contentions of the learned counsel for the respondent regarding interest component are not sustainable.

(g) Any judicial forum or court may, in its discretion, admit other documents than the documents filed at the time of filing the original petitions. It is settled law that where documents are admitted after hearing is concluded, the oppose party should be given sufficient opportunity to raise objection or to adduce evidence.

(h) A perusal of the list of additional documents to be marked on the side of the petitioner reveals that all the documents came into existence after filing of the present complaint. Therefore, it is clear that petitioner was not in possession of the document at the time of filing of complaint on 09.09.2019 before this Forum.

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Therefore, the petitioner is to be allowed to mark the additional documents listed in the petitions on her side in the interest of justice.

(i) The respondent raised so many other objections on legal factual grounds on the merits of the amendments sought by the petitioner. It is open for the respondent to raise objection on merits before this Forum in the main petition. Therefore, the petitions seeking amendment and permission to file additional documents are to be allowed in the interest of Justice. Thus the point is answered accordingly.

In the result, the petitions are allowed.

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

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY
20.11.2022