

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

I.A. Nos. 69 of 2020 and 70 of 2020

in

C.C.P. No.24 of 2020

I.A. No. 69 of 2020:-

Artha Properties,

Rep by its authorized representative

....Petitioner/ 2nd Respondent

-Vs-

1. R. Arun

....1st Respondent/Petitioner

2. Green Avenue Homes & Gardens

....2nd Respondent/1st Respondent

I.A. No. 70 of 2020:-

Bennett Property Holding Company Ltd,

....Petitioner/ 2nd Respondent

-Vs-

1. R. Arun

....1st Respondent/Petitioner

2. Green Avenue Homes & Gardens

....2nd Respondent/1st Respondent

3. Artha Properties

...3rd Respondent/2nd Respondent

Heard on : 16.03.2021

Delivered on : 01.04.2021

ORDER

The application in I.A No.69 of 2020 is filed by the above applicant to strike out the name of the applicant/second respondent from the complaint and the application in I.A. No.70 of 2020 is filed by the applicant therein to implead the applicant as one of the respondent in the above complaint.

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2. Averments of the petitioners, in both the I.A, in brief, as follows:-

The affidavits of A. Senthil Kumar as authorized representative of the petitioners in both the I.A's are filed in support of the petitions. The project in the complaint was marketed by "Artha Real Estate Corporation Limited" on the basis of marketing agreement dated 06.09.2012 between the said company and the second respondent/promoter. This name of the said company has been arrayed as "Artha Properties" in the complaint. By an order dated 09.08.2018, the National Company Law Tribunal approved a scheme of arrangement by which all the assets and liabilities, except RERA registered projects, of Artha Real Estate Corporation Limited got transferred to Bennett Property Holdings Company Limited. Since the subject project is a non-RERA registered project, all the documents, including the books of accounts, were transferred by Artha Real Estate Corporation Limited to Bennett Property Holdings Company Limited. Therefore, Artha Real Estate Corporation Limited has no connection with respect to the project and the said company is not a necessary and proper party to the complaint and its name is liable to be struck off and Bennett Property Holdings Company Limited seeks to implead themselves as one of the respondent in the CCP. Hence, the petitions.

3. Common Counter averments of the first respondent, in brief, as follows:-

(a) The respondent/complainant does not admit any of the contentions of the petitioners. The liabilities of Artha Real Estate Corporation Limited is to be discharged by Bennett Property Holdings Company Limited. The contentions to the contra are untenable and unsustainable. Artha Real Estate Corporation Limited was shown as respondent and party to the complainant, since the said

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company marketed the property receiving the advance amount from this respondent and they promised with the buyer to complete and hand over within the time limit specified in the agreement. Both of them are jointly and severally liable to pay the compensation.

(b) Since, the payment were acknowledged on receipt of the amount by Artha Real Estate Corporation Limited, they are also liable to pay the amount to make good the order sustained by the respondent and they are also necessary party in the above complaint. Hence, Bennett Property Holdings Company Limited may be impleaded and both the companies are liable jointly and severally liable to pay the compensation to the complainant.

4. The point that arises for determination are:-

(i) Whether the M/s. Artha Properties, namely Artha Real Estate Corporation Limited is to be struck off from the complaint as unnecessary party?

(ii) Whether "Bennett Property Holdings Company Limited" is to be impleaded as a party to the complaint?

5. (a) Heard both sides. It is not in dispute that in pursuance of the order of the NCLT, all the assets and liabilities, except RERA registered projects, of Artha Real Estate Corporation got transferred to Bennett Property Holdings Company Limited. Since, the present project is a Non-RERA registered project as on the date of the order i.e., 09.08.2018, the same was transferred to Bennet Property Holdings Limited. Admittedly, by order dated 20.06.2019 in CP 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.

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(b) Now, the position on the basis of registration of the project has changed. 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 analyzed only in the context of the evidence and provisions of the law. The liability for the claim of the complainant on the respondents can be fixed only at the time of the final order. Therefore, the analogy of the second 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.

(c) In the above circumstances, that the liabilities were taken over by Bennett Property Holdings Company Limited from Artha Real Estate Corporation Limited on the ground that the subject project is a Non-RERA registered project, it is not appropriate and just to struck off the name of the Artha Real Estate Corporation Limited from the complaint is a party as an unnecessary and not proper party. However, there cannot be any objection by the respondent/complainant for impleading Bennett Property Holdings Company Limited as one of the parties to the complaint. Thus, the point is answered accordingly.

In the result, I.A No.69 of 2020 is dismissed and I.A No.70 of 2020 is allowed. The first respondent/complainant is directed to add Bennett Property Holdings Company Limited as one of the respondents by making appropriate amendments to the complaint.

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

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N. [Signature]
17/11/20
Administrative Officer