

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

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

S.R. No.228 of 2020

in

Unnumbered CCP No. of 2020

Sai Peace and Prosperity Apartments Buyers Association Complainant

Vs.

1. Ambojini Property Developers Pvt Ltd.

2. ASK Investment Manager Pvt.Ltd.

3. Real Value Promoters Pvt.Ltd Respondents

Complainant : Rep.by Mr. Srinath sridevan, Advocate

Heard on : 10.11.2020

Delivered on : 30.11.2020

The complaint by the above named association is filed u/s 31 read with section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) seeking direction to the respondents for return of the amount and to pay Rs.337,130,799 /- as compensation together with interest as per section 18 of the RERA Act.

2. Averments of the complaint ,in brief, as follows :

(a) The complainant is an association of home buyers in the project, namely "Sai Peace and Prosperity" at Kottivakkam, Chennai promoted by the respondents. In pursuance of advertisement and brochures inviting offers for purchase of apartments in the above project in the year 2015, various buyers approached the third respondent for purchase of flats in the project. The members of the association offered to purchase apartments from the respondents and paid advance amount and further amounts towards purchase of the constructed apartments in the project and also entered into construction agreements with the third respondent. Sale deeds for the

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undivided share of land were also executed in favour of the some of the members of the association.

(b) As per the construction agreements, the construction was to be completed in the year 2018. But, no construction was initiated by the respondents as promised to purchasers. The respondents failed to complete construction and are unable to give possession of the apartments as per the agreements with the members of the association. Hence, the present application is filed seeking return of the amount and compensation from the respondents under section 18 of the RERA Act 2016.

3. Regarding the maintainability of the complaint, the counsel for complainant was heard.

4. The point for consideration is:

Whether the complaint by the association on behalf of the individual allottees/members for return of the amount and compensation with interest under section 18 of the RERA Act is maintainable?

5. **Answer to Point :**

(a) The learned counsel for the complainant submitted that under section 31 of the RERA Act, a person aggrieved can file a complaint before this Forum for violation and contravention of the provisions of the RERA Act and the explanation to the section provides that the aggrieved person can also be an association of allottees or any voluntary consumer association registered under the law and further section 71 of the Act also provides for adjudication of compensation on the complaint filed by any person and the present complaint is maintainable.

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(b) In support of his contentions, the learned counsel also relied upon the following decisions:-

(i) Akhil Bharatiya Soshit Karamachari Sangh vs Union of India reported in Manu/SC/0058/1980.

(ii) Amarapali Sapphire Flat Buyers Welfare Association vs Amarapali Sapphire Developers Pvt Ltd reported in 2016 SCC online NCDRC 2727.

(iii) Amarapali Sapphire Developers Pvt Ltd vs Buyers Welfare Association reported in 2017 SCC online SC 1945.

(iv) Subhechha Welfare Society vs Earth Infrastructure Pvt Ltd reported in 2020 SCC online SC 208.

(c) Under section 18, the promoter is liable to return of amount received by him in respect of an apartment with interest including compensation on demand to the allottee in case the allottee intends to withdraw from the project.

(d) Some of the flat purchasers in the project already preferred complaints in the in CCP.No's.107,122,123of 2018,32/2019, 87/2019 and 09/2019 before this Forum seeking return of the amount with interest and compensation. This Forum also disposed the complaints filed by them with directions to the promoter to return of the amount with interest and compensation. The complaints were filed by them in their individual capacity as flat purchasers and not through the association.

(e) Admittedly, the association who is the complainant in the present case is not an allottee/flat purchaser. This Forum is given power to adjudicate compensation under sections 12, 14, 18 and 19. The factors to be taken into

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account by this Forum are prescribed under section 72 of the RERA Act, wherein it is made clear that while adjudging the quantum of compensation or interest, the Adjudicating officer shall have due regard to the factors such as the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default, the amount of loss caused as a result of the default, the repetitive nature of the default and such other factors which the Adjudicating officer considers necessary to the case in furtherance of justice.

(f) As per Section 72, the allottee claiming return of amount with interest and compensation is required to prove the facts or factors mentioned in the section. The said facts or factors constitute cause of action giving right to the allottee to sue for compensation and other reliefs. Cause of action implies right to sue. The association as complainant lacks cause of action which gives rise to right to sue.

(g) It is the settled law that award of compensation is to be just and reasonable in the facts and circumstances of each case. The source of fund and purpose of purchase of apartment will not be the same and may vary in each and every case of flat purchaser. The circumstances and related facts are to be pleaded and proved by allottee. Hence the complaint on behalf of many flat purchasers in the name of association claiming consolidated amount sans proper pleading as compensation is not sustainable.

(h) No doubt, section 31 of the RERA Act which deals with the filing of complaints before this Forum provides for filing of complaint by any aggrieved person and the explanation under the section also clarifies that "person" shall include the association of allottees or any voluntary consumer

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association. As per section 2(zg) also, the word "person" includes an association of persons or a body of individuals whether incorporated or not.

(i) Section 16 of the Act which deals with the obligations of promoter mandates that on formation of association of allottees, all the documents relating to insurance are to be handed over to the association by the promoter. Further section 17 also requires the promoter to execute a registered conveyance deed in favour of the allottee along undivided proportionate title in common areas to the association of allottees and also to hand over the physical possession of the apartment to the allottees and the common areas to the association of the allottees with the other title documents. The RERA Act clearly demarcates the role of the association of allottees under the Act. A complaint can be instituted by the association to enforce the obligations of the promoter under sections 16 and 17 of the Act.

(j) So far as the decisions relied by the learned counsel are concerned, in *Akhil Bharatiya Soshit Karamachari Sangh vs Union of India (supra)*, it is a case in which the association is the petitioner, the Hon'ble Supreme Court held that the directives of the Railway Board relating to seniority and promotions are constitutional. The decision is not applicable to the facts of the case.

(k) In *Amarapali Sapphire Flat Buyers Welfare Association vs Amarapali Sapphire Developers Pvt Ltd (supra)*, the Hon'ble National Consumer Disputes Redressal Commission, while interpreting section 12(1)(b) of the Consumer Protection Act, held that a complaint can be instituted by recognized consumer association even if the consumer is a member of such association or not. In the other two judgments in *Amarapali Sapphire*

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Developers Pvt Ltd vs Buyers Welfare Association (supra) and Subhechha Welfare Society vs Earth Infrastructure Pvt Ltd (supra) also, the Hon'ble Supreme Court dealt with the same provision i.e., section 12(1)(b) Consumer Protection Act and held that under the above section, a registered association can file a complaint on behalf of several allottees each of whom has a separate and distinct cause of action. There is no similar provision in the RERA Act. Consumer Protection Act 1987 also has no provision similar to section 72 of RERA Act under which this Forum is required to follow the principles under section, while adjudicating the quantum of compensation or interest. Therefore the above judgments are not applicable to the provisions under the RERA Act.

(I) In the above circumstances and on consideration of the facts and provisions of law, it is held that the complainant association has no locus-standi or cause of action to file the complaint before this Forum under section 18 of the RERA Act. The complaint is liable to be rejected as not maintainable. Thus the point is answered accordingly.

6. In the result, the complaint is dismissed as not maintainable.

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY