

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

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

S.R. No.266 of 2020 in

UN CCP No. of 2020

Rohini Muthuswami

.... Complainant

Vs.

Sree Vardhana Builders Pvt Ltd
Rep. by its Managing Director Mr.Tini.W.Korah
and 12 Others

.... Respondents

Complainant : Rep.by M/s. Sarvabhauman Associates, Advocates

Heard on : 11.09.2020
Delivered on : 18.09.2020

ORDER

The above complaint by the complainant claiming the refund of the amounts paid to the respondents towards the purchase of the flat with interest, compensation and costs is filed under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. The complaint was returned with the queries including the following queries for compliance by the complainant.

1. When the 1st respondent is a company a legal entity represented by its managing director, how the R2 to R5 are necessary parties to the case?

2. As per section 31 of RERA Act, a complaint can be filed for any violation or contravention of the provisions of the RERA Act only against the promoter, how R6 to R13 are necessary parties to the case?

TRUE COPY
10.09.2020

3. For the first query, it is submitted as the respondents 2 to 5 are the directors actively involved in the affairs of the first respondent company and received the money and corresponded with the complainant and are liable to be punished under Section 69 of the RERA Act for violations. For the second query, the order dated 26.11.2019 in CCP.No.129 of 2019 by the Authority is relied and submitted as they are necessary parties.

4. Heard the counsel for the complainant and perused the documents.

5. The first respondent is a company registered under the companies Act represented by its managing director and is a legal person who can sue and be sued in the capacity as a company. The construction agreement was entered with the complainant by the first respondent company represented by the managing director and payments were made to the respondent company. Section 69 of the RERA Act deals with the offences by companies and provides to punish every person responsible for the conduct and business of the company. Hence, the managing director again as second respondent and other directors as the respondents 3 to 5 are not necessary parties to the lis.

6. The respondents 6 to 13 are the landowners of the project site who executed general power of attorney to the first respondent. The first respondent also executed sale deed for the UDS in favour of the complainants. The first respondent as promoter launched the project and entered in to a construction agreement with the complainant for construction and delivery of the constructed apartment on receiving consideration. Only the first respondent comes under the definition of 'Promoter' under Section 2(zk) of the RERA Act and can be proceeded and made liable by the homebuyer for any violation or contravention of the provisions of the RERA Act.

TRUE COPY

U/s
18.09.2020

7. In CCP.No.129/2019, the first respondent/builder and the second respondent who is the owner of the land represented by power of attorney are parties in the complaint and by order dated 26.11.2019, this forum held both the respondents as liable to pay compensation to the complainant/homebuyer. It is a case, where the owners have executed power of attorney to a third party and not in favour of the builder and no sale deed for UDS was executed in favour of the homebuyer. In this case, the first respondent entered in to a registered joint venture agreement with the owners/respondents 6 to 13 and as power of attorney, the first respondent also executed the sale deed for the UDS in favour of the complainant. Hence the above case cannot be relied to the present case. In the above circumstances, it is held that respondents 2 to 13 are not necessary parties for an effective adjudication of the complaint filed under Section 31 r/w 71 of the TNRERA Act.

8. In the result, the complaint is ordered to be returned to the complainant for making necessary corrections and filing with amended complaint within 2 weeks from the date of this order failing which the complaint stands rejected.

CERTIFIED TO BE TRUE COPY


ADMINISTRATIVE OFFICER
IN REAL ESTATE REGULATORY AUTHORITY

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI