

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating
Officer,**

**SR. No.617 of 2020
in
Un Numbered in I.A.No. 2020
in
CCP No.161 of 2019**

M/s. North town Estates Private Limited Applicant/Respondent

Vs.

Ravi Jaiswal Respondent/Complainant

Applicant/Respondent : Rep. by Mr.G.Vivekanand, Advocate

Heard and Delivered on : 10.12.2020

The above petition by the Applicant/Respondent is filed under section 36 of the of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) read with Rule 38 of the TNRERA Rules, 2017 seeking to dismiss the complaint as not maintainable.

(2) Averments of the Applicant/Respondent, in brief, as follows :

(a) The affidavit of the Manager – Admin of the applicant/respondent company is filed in support of the petition. The complaint was filed by the respondent/allottee under section 31 r/w 71 of the RERA Act for refund of the amounts paid to the applicant with interest, compensation and cost. The applicant filed counter on 30.09.2020 with preliminary objections with regard to the maintainability of the complaint. In addition to those preliminary objections, the applicant also raised additional preliminary objections with regard to the maintainability of the complaint before this Forum. The respondent committed delay and default in payment of consideration and failed to adhere the payment schedule as agreed under the construction agreement.

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(b) The complaint shall amount to recession of the contract which is not possible post performance and conveyance of the property. The power to adjudicate on the recession of the contract lies with the Authority and not before this Forum. The respondent is not end user but is only an investor. The project land is owned by another company and the applicant is only a developer of the project. The complaint is also bad for non-joinder of proper and necessary parties. The complaint is not maintainable. Therefore the applicant prays for dismissal of the complaint.

3. Regarding the maintainability of the petition, the counsel for the applicant / promoter was heard.

4. The point for consideration is:

Whether the petition by the applicant/ promoter for dismissal of the complaint on maintainability is maintainable?

5. **Answer to Point :**

(a) The learned counsel for the applicant/promoter submitted that the petition is maintainable under section 36 of the RERA Act and the Rule 38 of the TNRERA Rules and even though both sides have let in evidence and the matter stands posted for arguments of both sides, the petition is maintainable in view of various decisions of the Apex Court and also relied the following decisions:-

(i) FATMA BIBI AHMED PATEL Vs STATE OF GUJARAT and anr reported in (2008) 6 Supreme court Cases 789.

(ii) CANTONMENT BOARD AND ANOTHER Vs CHURCH OF NORTH INDIA reported in (2012) 12 Supreme Court Cases 573.

(iii) JAGMITTAR SAIN BHAGAT & ORS VS DIRECTOR, HEALTH SERVICES, HARYANA, reported in (2013) 10 Supreme Court Cases 136

(b) Admittedly, both sides have let in evidence and the applicant/promoter filed their proof affidavit and marked Ex.B1 to Ex.B19 documents on 18.8.2020 and the matter is pending for arguments for several hearings till date.

(c) Section 36 of the RERA Act deals with the powers of the Authority to issue interim orders. A reading of the section reveals that the Authority on being satisfied that there is an act in contravention of the Act, or rule or regulation has been committed or is being committed or about to be committed can pass ex-parte interim orders during the course of the inquiry. Section 34 deals with the functions of the Authority and Sections 35 to 38 deals with the powers of the Authority.

(d) So far as the power of the Adjudicating Officer is concerned, the power to adjudicate is provided under Section 71 of the RERA Act. Therefore the section 36 cannot be applied before this Forum. Even assuming that this Forum has power under section 36 of the RERA Act to issue any interim order, the applicant has not alleged any act in contravention of the Act or rule or regulation as committed or is being committed or about to be committed and so that the interim order is sought as preventive measure. Therefore, the application of Section 36 of the RERA Act does not arise.

(e) Rule 38 of the TNRERA deals with manner of filing a complaint with the Adjudicating Officer and the manner of holding enquiry by the Adjudicating Officer. Rule 38 makes it clear that the Adjudicating Officer has to follow summary procedure for inquiry in the manner provided therein. Therefore Rule 38 also does not apply to the petition, since the respondent has also filed counter with documents and also let in evidence in support of his case.

(f) So far as the decision relied by the learned counsel is concerned, the decision in FATMA BIBI AHMED PATEL Vs STATE OF GUJARAT and ANR (supra) arose out of final judgment of the Hon'ble High Court in a Criminal Revision Application

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wherein it was held that jurisdictional issue can be permitted to be raised at any stage of proceedings, save and except for certain categories of cases.

(g) The decision in CANTONMENT BOARD AND ANOTHER VS CHURCH OF NORTH INDIA (supra) also arose out of judgment and order of the Division Bench of the Hon'ble High Court in Appeal against the order in a Writ Petition wherein it is made clear that defects with respect to lack of inherent jurisdiction is basic and fundamental and validity of such order can be challenged at any stage, even in execution or in collateral proceedings.

(h) The decision in JAGMITTAR SAIN BHAGAT & ORS VS DIRECTOR, HEALTH SERVICES, HARYANA (supra) also arose out of judgment of the National Consumer Disputes Redressal Commission wherein it was held that Consumer Forum does not have jurisdiction in regard to a pure service dispute and the matter was not covered under the Consumer Protection Act.

(i) The above decisions are not applicable to the facts and circumstances under the RERA Act. Therefore the petition is liable to be dismissed as not maintainable with a liberty given to the applicant to raise all the legal defense available to him at the argument of the complaint. Thus the point is answered accordingly.

In the result, the petition is dismissed as not maintainable.

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY