

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP No. 336 of 2021**

1. Malathi Badri ..... Complainants  
2. P.N. Badri  
Vs.  
R. Radhakrishnan ..... Respondent

Complainant : Rep. by Mr. M. Krishnamurthy, Advocate.  
Respondents : Rep. by Mr. K.Ganesan, Advocate

Heard on : 27.07.2022  
Delivered on : 22.08.2022

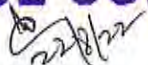
**ORDER**

The complaint by the above complainants seeking compensation from the respondent on the ground of construction in deviation of approved plan and additional flats and making unlawful gain from common covered car parking area is filed under section 71 read with 31 of Real Estate (Regulation and Development) Act 2016, (hereinafter referred to as RERA Act).

**2. Averments of the complainant, in brief, as follows:**

(a) On 22.02.2019, the complainants purchased 500 sq. ft of UDS land from the respondent by sale deed and also entered into an agreement for construction of a flat with the respondent in his project. As per the plan, the respondent/builder has to construct only six flats with six kitchens and to divide the shares of land to all allottees based on the built-up area to the respective flat owners. But the respondent constructed additional two flats with two kitchens in the common area and open terrace for unlawful gain. At the time of purchase of the flat, the respondent has agreed to rectify the above deviations and to provide car parking area to all the allottees including the complainants.

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(b) The respondent made further construction of 400 sq. ft. of additional built-up area and leased out for commercial purpose and also shifted pump and meter rooms to convenient spots to accommodate and to utilize the flat by violating the approved plan. The respondent has not given parent and other connected documents of the property to the complainants during discussion. The respondent undertook to dug bore well of 100 ft. depth, whereas the actual depth of the bore well is only 60 ft. There was breach of contract and breach of trust. The applicants sent legal notice for which the respondent also sent reply to the legal notice. The complainants also made representation to the CMDA authorities.

(c) The respondent is receiving rents in the flat in the stilt floor and gained profit unlawfully. The same resulted in loss of gains for the complainants of opportunity cost. Hence the complainants are entitled for compensation towards opportunity cost and other reliefs.

**3. Averments of the respondent, in brief, as follows:-**

(a) Except admitted, all the averments are denied as false. The complainant is not maintainable either on facts or in law. Planning and building permissions were obtained for construction of a residential building in the property. The area of the land developed does not exceed 500 sq.ft. The number of apartments developed does not exceed eight inclusive of all phases. Therefore, the complaint is not maintainable before this Forum for want of jurisdiction. The area developed is less than the minimum prescribed area under section 3(2) of the RERA Act. The complaint is bad for non-joinder of necessary parties, since R. Vasantha and Rajaram, to whom part of the UDS land is settled, are not made parties to the litigation.

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(b) The building was completed in all respects during the year 2018 and also assessed for tax by the Greater Chennai Corporation. The respondent has not suppressed anything from the complainants. The respondent provided car parking area and also another car parking slot to the complainants. Other allottees / co-owners do not have any problem to the car parking slots allotted to them. The complainants filed this frivolous litigation with false allegations.

(c) The respondent denies that bore well has only 60 ft. depth. The bore well has been erected as per the approved plan and has sufficient water for the use of all the residents. The respondent denies that they have built eight kitchens instead of 6 kitchens as per the plan. The revised plan is under consideration with the competent authority. There is no violation. No prejudice is caused to the complainants. The claim of compensation is liable to be dismissed as not maintainable with cost.

4. An attempt to settle the matter amicably has failed.

5. Both the parties have filed their respective evidence on affidavit with documents.

6. On the basis of the rival contentions of the parties, the following points arise for determination:-

i. Whether the complainants are entitled for compensation of opportunity cost and also for mental sufferings and agony on the ground of deviation of approved plan in the construction of the building and additional construction in the project by the respondent?

ii. What are the reliefs, the complainants are entitled to?

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**Answer for Point No. (i)**

(a) The learned counsel for the complainants submitted that the respondent made additional construction in the ground floor in the stilt area with a two bed room flat with kitchen and effected construction of 8 kitchens instead of 6 kitchens as per the plan and also erected wicket gate and entry side grill gate in the additional flat which prevent the free car and scooter parking area and no revised plan approved and obtained by the respondent and the respondent has to pay the compensation as claimed by the complainants.

(b) However, the learned counsel for the respondent contented that the area of the plot developed does not exceed 500 sq.mts. and the number of the apartments developed also does not exceed 8 in number and therefore the complaint is not maintainable for want of jurisdiction under Section 3(2)(a) of the RERA Act and the building was constructed and completed in all respects in the year 2018 itself and the respondent settled part of the UDS land to an extent of 183 sq.ft. in favour of R.Vasantha and Rajaram and they were not made parties to the complaint and the complaint is bad for non-joinder of parties and the respondent also submitted a revised plan to the concerned authority with regard to the additional construction and the same is still pending for approval and the complainants were already provided car parking area with additional car parking slot and they are in no way aggrieved and made false allegations and the complaint is liable to be dismissed with heavy cost.

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(c) With regard to the jurisdiction of this Forum, the learned counsel for the complainants relied on the decision of this Forum dated 11.03.2020 in CCP No.123 of 2019 in S.P.Arulappaa and another Vs. M/s. A.N. Builders, wherein it was held as follows:

***No doubt, the project falls under Section 3(2)(a) of the RERA Act and does not require registration with the TNRERA. Nowhere, in the RERA Act, it is mentioned that the Act is applicable only for registered projects. The RERA Act provides certain categories of projects as not required to be registered but those projects are within the ambit of the Act. Those projects mentioned under Section 3(2) have been taken out of registration requirement, but not out of the purview of the other provisions of the Act.***

(d) However, the learned counsel for the respondent relied on the decision of the Hon'ble Appellate Tribunal in Appeal No.4 of 2018 dated 11.7.2019 in Dakshin Homes Apartment Owners Association Vs. Dakshin Home Developers and 2 others, wherein it was held that the project of the respondent does come under the purview of Section 3 of the RERA Act and hence the RERA Authority and the Tribunal has no jurisdiction. But the learned counsel of the complainants pointed out that the findings of this Forum on jurisdiction in the decision S.P. Arulappa and Another Vs. M/s. A.N. Builders, referred above, was confirmed by the Hon'ble Appellate Tribunal in Appeal No.47 of 2020 dated 4.11.2020 and therefore this Forum has got jurisdiction.

(e) The RERA Act is a beneficial piece of legislation. Section 79 of the RERA Act bars the jurisdiction of the Civil Court from entertaining any suit or proceeding in respect of any matter which the Authority,

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Adjudicating Officer or the Appellate Tribunal is empowered by or under the RERA Act to determine. Hence this Forum gets jurisdiction from such matter which the Civil Court had. There is no exception for application of the Act. This Forum can take cognizance of the agreements executed under the Contract Act also and is equally competent to grant the relief under the said Act. The view of this Forum that the projects mentioned under Section 3(2) of the RERA Act have been taken out of registration requirement but not out of the purview of other provisions of the Act is not disturbed or set aside by the Hon'ble Appellate Tribunal in the above decision in Appeal No.47 of 2020 preferred by the same complainants before this Forum. Therefore it is held that this Forum has got jurisdiction to decide the present complaint.

(f) Admittedly, the respondent is the owner of the land and also builder in the project and entered into a construction agreement with the complainants on 22.2.2019. Merely because the respondent conveyed by way of settlement a part of the UDS land in favor of his wife and son subsequently and also made additional construction for their benefit, it cannot be said they are also necessary parties to the complaint. Therefore, it is held that the complaint as against the respondent as builder and promoter of the project is well maintainable.

(g) In the counter of the respondent itself it is admitted that planning and building permission of the project was obtained and the building was completed in all respects in the year 2018. As far as the additional construction carried out in the building, it is also conceded that a revised plan has been submitted to the concerned authority and the same is still pending with the authority for approval. Ex.B4 is the plan showing the

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proposed additional construction to the existing residential building in the project. It is not the case of the respondent that the complainants and the other allottees of the project were given notice of the additional construction prior to the commencement of the works on the additional construction adding the built-up area. Under Section 14(2) of the RERA Act, the project is to be developed and completed by the promoter in accordance with the sanctioned plans / layout plans and specifications as approved by the Authority and the same are to be disclosed or furnished to the person who agrees to take one or more apartments and in case of additions and alterations the same cannot be carried out without the previous consent of the said person. The Section also makes it clear that for violation of the Section 14 of the RERA Act, the aggrieved allottees are entitled to receive appropriate compensation under the Act. Considering of the above circumstances, it is held that the complainants are entitled for compensation under Section 14 of the RERA Act. Thus, the point is answered accordingly.

**Answer for Point No. (ii)**

(a) In view of the answer for Point No.(i), the complainants are entitled for compensation. The complainants claimed compensation of Rs.4,80,000/- with interest under the head as opportunity cost. In the counter of the respondent, even though the respondent contented that the claim is arbitrary, unlawful and unsubstantiated, the respondent has not disputed the quantum of the amount claimed as excessive. Considering all the circumstances and aspects of the case, it is held that the complainants are entitled for compensation of Rs.4,80,000/- as prayed by them under Section 14 of the RERA Act. The complainants

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are entitled for interest of the said amount at the rate of 7.30% per annum which was currently the highest marginal cost of the lending rate of interest of SBI at the time of filing of the complaint plus 2%, i.e.,9.30% per annum from the date of filing of the complaint i.e. 17.9.2021 till the payment of the compensation by the respondent.

(b) Apart from the above, considering the facts and the circumstances of the case, the complainants are entitled for a sum of Rs.1,00,000/- towards compensation for mental agony and inconvenience caused of them and also Rs.25,000/- towards legal expenses incurred by them. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

**In the result, the respondent is directed as follows:-**

The respondent shall pay the amounts of compensation with interest and cost as per the findings of the Point No.(ii), Para No.8 of this order within 30 days of issue of this order.

- Sd/- xxxxx  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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*22/9/22*



**LIST OF WITNESSES**

CW-1--- P.N. Badri

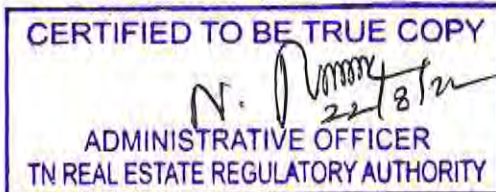
RW-1--- R. Radhakrishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	09.11.2016	Copy of the Approved Plan
Ex.A2	24.04.2018	Legal opinion of property
Ex.A3	22.02.2019	Construction of Agreement
Ex.A4	22.02.2019	Sale Deed
Ex.A5	23.10.2020	Deed of settlement
Ex.A6 (Series)	01.02.2021	Legal notices and reply notices between complainant and respondent
Ex.A7 (series)	28.04.2021	Letter correspondence between the complainant and CMDA
Ex.A8	12.08.2021	Letter from complainant to respondent
Ex.A9	----	Photographs of position of building
Ex.A10	----	Copy of the plan of site condition

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	-----	Area statement and schematic drawing
Ex.B2	31.05.2018	New Assessment Order by Chennai Corporation
Ex.B3	01.02.2022	Application Registration
Ex.B4	-----	Revised plan



- Sd/- xxxxx  
G. SARAVANAN  
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