

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.07 of 2021**

T.V.Seetharaman

..... Complainant

Vs

M/s.Ananya Krishnaa Constructions Pvt.Ltd.,
Rep.by its M.D, Y.Gangadhar.
(Project not registered)

..... Respondent

Complainant : Party in person

Respondent : Rep. by M/s.Waraon & Sairams, Advocates.

Heard on : 08.10.2021

Delivered on : 26.10.2021

ORDER

The complaint by the above complainant seeking non-refundable deposit and arrears of rent as per the joint venture development agreement from the respondent 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. Averments of the complainant, in brief, as follows:

(a) The complainant is the owner of the flat in Manthope Colony, Ashok Nagar, Chennai-83. On 14.11.2015, the complainant entered into a joint venture development agreement with the respondent for development of apartment. Based on the agreement, a general power of attorney dated 10.08.2016 was also executed in favour of the respondent.

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(b) Consequent to the construction of flats in August 2018, the respondent failed to fulfill the commitments of payment of Rs.5,00,000/- as non-refundable deposit and arrears of rent at the rate of Rs.20,000/- per month, till the handing over possession of flat, as per the agreement and the deed of power of attorney. Hence the complainant seeks direction to the respondent to pay the non-refundable deposit and the arrears of rent with interest and cost.

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

(a) Except admitted, all the averments and allegations are denied. The respondent entered into a joint venture development agreement dated 14.11.2015 with the owners of the flats in Manthope Colony, Ashok Nagar, Chennai and the complainant is one of the owners of the flats with whom the agreements were entered by the respondent for development of their property, by demolition of the old super structure and construction of new residential apartments with various terms and conditions. The owners also executed general power of attorney in the name of the respondent for the purpose of construction of the flats.

(b) The respondent constructed the residential apartments as per the approved plan and completed the entire construction in March 2018 and the building was ready from 10.12.2018 for occupation and it was also informed to all the owners that there was delay in getting the completion certificate from the CMDA in view of the complaint given by the owners association of the colony. The respondent has taken all earnest efforts to clear the issue with the association. However, the complainant and some other owners are not cooperating with the respondent so as to get the problems solved with the association.

(c) Under clause-18 of the agreement, the owners agreed to keep the respondent fully indemnified against any defects in or want of title or any act or omission on the part of the owner or breach of any covenants made by the owner in the joint venture development agreement. The delay in obtaining completion certificate is not in the hands of the respondent, but, it is in the hands of the owners and the same cannot be treated as a defect on the part of the respondent. Under the above clause, the complainant and the other owners failed to cooperate with the respondent. Therefore, the respondent is in no way responsible. The complaint has no merits and is liable to be dismissed as not maintainable.

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 complaint is maintainable?
- ii. Whether the complainant is entitled for payment of non-refundable deposit and arrears of rent as per the joint venture development agreement from the respondent together with interest and on the ground of failure to deliver the apartment as per the terms of the agreement?
- iii. What are the reliefs, the complainant is entitled to?

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7. Answer for point Nos.(i):

(a) The claim of the complainant is arising out of the joint venture development agreement entered by him as owner of the property with the respondent as promoter for development and construction of the apartment. As per section 2(d) of the RERA Act, the term 'allottee' means a person to whom a plot, apartment or building has been allotted, sold by the promoter and includes any persons who subsequently acquires the property, but does not include a person to whom such plot, apartment, or building, is given on rent. The complainant is not an allottee who entered into any agreements for sale and construction of apartment with the respondent as contemplated under the provisions of the RERA Act.

(b) Under section 31 of the RERA Act, any aggrieved person can file a complaint with the authority or the adjudicating officer for any violation or contravention of the Act or rules or regulations against any promoter, allottee or real estate agent as the case may be. Under Section 71 of the RERA Act, this Forum has power to adjudicate compensation under sections 12,14,18 and 19 of the RERA Act. The case of the complainant does not fall under Sections 12,14 and 18 or under section 19 of the RERA Act, which deals with the rights and duties of the allottees.

(c) Under the provisions of the RERA Act, the complainant cannot seek to enforce the contractual rights and obligations arising under joint venture development agreement between him as the owner of the property and the respondent as the builder. This Forum is not vested with any power to decide the disputes between the owner and the builder. Therefore the claims of the complainant are not sustainable before this Forum. The complaint is not maintainable before this Forum. Thus the point is answered accordingly.

8. Answer for Point Nos.(ii) & (iii):

In view of the answer for point No.(i), it is held that the complainant is not entitled for any reliefs before this Forum. Thus the points are answered accordingly.

In the result, the complaint is dismissed. No costs.

**Sd/- 26.10.2021
G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1--- T.V.Seetharaman

RW-1--- Y. Gangadhar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	30.01.2020	Legal notice to respondent
Ex.A2	14.11.2015	Joint development agreement
Ex.A3	10.08.2016	General power of attorney
Ex.A4	08.02.2015	Joint venture development of property

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	17.06.2013	Letter from TNHB
Ex.B2	04.07.2016	Copy of patta
Ex.B3	10.12.2018	Letter from CMDA
Ex.B4	07.03.2019	Letter from CMDA
Ex.B5	13.06.2019	Letter from CMDA to tNHB

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Ex.B6	03.07.2019	Letter to TNHB
Ex.B7	30.01.2019	Letter issued to Venugopal, Ex.M.P.
Ex.B8	29.07.2019	Letter from TNHB
Ex.B9	13.08.2019	Letter by Dy. C.M.
Ex.B10	16.06.2020	Letter from CMDA
Ex.B11	10.09.2016	Copy of CSR

Sd/- 26.10.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY


26.10.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY