

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

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

Execution Petition No.48 of 2021 in CCP No.297 of 2019

1. A.Prashanth

2. Karthiga

.... Applicants/Order holders

Vs.

1. M/s. BBCL Properties Private Limited

2. M/s. Sameeraa Foundation Private Limited Respondents/Debtors

Complainants : Rep by Mr. D.V.Rao, Advocate,

Respondent 1 : Rep by M/s.A.A.V.Partners, Advocates

Respondent 2 : Rep by Mr.S.Namasivayam, Advocate

Heard on : 17.03.2022

Delivered on : 31.03.2022

**ORDER FOR RECOVERY UNDER SECTION 40(1) OF THE RERA ACT READ
WITH RULE 26 OF TNRERA RULES FOR NON-COMPLIANCE OF THE ORDER
IN THE ABOVE CCP DATED 11.03.2021.**

The above applicants/order holders filed the petition for execution stating that the respondents have not complied with the order passed in the above CCP filed by them.

2. In the counter of the first respondent, it is conceded that challenging the order of this Forum in the CCP, both the respondents preferred appeals before the Appellate Tribunal and the Appellate Tribunal dismissed the appeals for non-compliance of order passed under section 43(5) of the RERA ACT, 2016 as the pre conditional mandatory deposit was not made before the registry and further stated that the respondent is taking steps to prefer further appeal before the Hon'ble High Court against the order of dismissal of the Appellate

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Tribunal and the respondent has a good case on merits and therefore, the counter has to be taken on record.

3. In the counter of the second respondent, it is contented that the execution petition is not maintainable in law or on facts and the respondent has conveyed the lands allotted for public purpose to the local body by a gift deed and the CMDA has granted layout approval and is therefore exempted under section 2(h)(i) of the TNRERA Rules and the order passed in the main case is devoid of jurisdiction and therefore the execution petition is liable to be dismissed.

4. By order dated 11.03.2021, this Forum directed the respondents, either jointly or severally, to refund the amount paid with interest, compensation and cost within 30 days of the issue of the order. Admittedly, both the respondents preferred appeals before the Hon'ble Appellate Tribunal and the appeals were dismissed for failure to deposit the amount as per the order of the Tribunal. On the question of application of Rule 2(h)(i) of the TNRERA Rules to claim exemption from the provisions the RERA Act, the issue was raised by the respondents in the complaint itself and the same was considered and rejected by this Forum in view of the decision of the Hon'ble Division Bench of the Madras High Court in Subashini Thulasiram Vs. M/s.SPR & RG Constructions Private Limited, reported in 2020-4-LW-865. Merely because, a part of the lands in the project were allotted for public purpose and handed over to the local body by gift deed by the respondents, the respondents cannot take shelter under Rule 2(h)(i) of the TNRERA Rules. This Forum as an executing Court cannot go beyond the order passed in the main complaint. Therefore, the objections of the respondents are not sustainable.

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5. Since the amount due to the applicants/order holders under the order is to be recovered as arrears as land revenue, it is just and necessary to issue warrant under section 40(1) of the RERA Act read with Rule 26 of the TNRERA Rules. The EP is disposed accordingly.

In the result, it is ordered as follows:

Issue recovery warrant under section 40(1) of the RERA Act, read with Rule 26 of TNRERA Rules and send it to the District Collector, Chennai, to collect the same to satisfy the claims under the order passed in favor of the above petitioners/complainants.

**Sd/- 31.03.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.**

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY
31.3.2022