

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
Execution Petition No.85 of 2021 in CCP NO.144 of 2020**

- 1.K.Kanchana Mala (deceased)
2. S.Krishna Raju
3. K.Ashok Raaj

... Order holders/Applicants

Vs.

M/s. VGN Developers Pvt. Ltd,
Rep by its Managing Director

... Debtor/Respondent

Applicants : Rep. by Mr. K.Ganesan, Advocate
Respondent : Rep. by Mr. K.Harishankar, Advocate

**Heard on : 10.05.2022
Delivered on : 27.05.2022**

**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 CCP NO.144 OF 2020 DATED 28.09.2021**

The above second and third petitioners as the legal heirs of the deceased first petitioner/complainant filed the petition for execution stating that the respondent/debtor has not complied with the order passed in the above CCP filed by the deceased first petitioner.

2. In the counter of the respondent, it is stated that the claim petition was filed by K.Kanchanamala, the purchaser of the flat in the project developed by the respondent and the execution petition has been filed by the legal heirs of the said Kanchanamala, since she has passed away and the present petitioners have no locus standi to file and prosecute the present execution petition as they have not taken leave of this Hon'ble Tribunal to implead themselves as legal heirs of

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the said Kanchanamala by filing appropriate application as mandated under law and it is to be determined whether the applicants are the rightful heirs of the deceased and the right to sue survives in their favor and as on date, the respondent has sold out the UDS in the lands to various flat purchasers of the project and the respondent is not the title holder of the property and the third party interest over the property exists in the property sought to be attached and the petitioners have not provided the appropriate details of the property and the petition is liable to be dismissed.

3.(a) Heard both sides. Admittedly, the original complaint was filed by K.Kanchanamala as an allottee in the project of the respondent. This petition for execution is filed by the husband and the son of the said Kanchanamala as her legal heirs. From the death certificate and the legal heir certificate produced by the petitioners, it is seen that the said Kanchanamala passed away on 18.09.2021, leaving behind her, S.Krishnaraju, the husband and K.Ashok Raaj, the son, who are the second and third petitioners, as the surviving legal heirs.

(b) The respondent questioned locus standi of the surviving legal heirs of the original allottee/complainant to file the execution petition. Under section 31 of the RERA Act, any aggrieved person can file a complaint before this Forum for any violation or contravention of the provisions of the Act or the Rules and Regulations made there under against any promoter, allottee or the real estate agent. As per section 2(d) 'allottee' is defined as follows:

“(d) ‘allottee’: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who

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subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

It is very clear from the above definition that the word allottee includes the persons who subsequently acquire the allotment through sale, transfer or otherwise and the surviving legal heirs of the deceased allottee also come under the definition of the allottee. The RERA Act is a beneficial piece of legislation. A hyper-technical approach cannot be made to deprive the litigants of their right to redress their grievances under the Act. Therefore, this execution petition is found maintainable.

(c) The respondent also raised the contention that the respondent has sold out the UDS in the lands to various flat purchasers of the project and the respondent is not the title holder of the property. The respondent has not given the details of the persons to whom the UDS lands were sold out and the details of the plots remaining unsold. The above contention of the respondent is vague and is made only to defeat the claim of the petitioners. Further, by the order of this Forum in the main case, a charge is created on the apartment booked and for which payments were made by the allottee/the first petitioner. All the above objections of the respondent are not sustainable. Therefore the petitioners have right to proceed against the respondent for recovery of the amounts due under the order passed by this Forum.

4. Since the amounts due to the petitioners/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.

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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 forward the same to the District Collector, Chennai, to collect the same to satisfy the claims under the orders passed in favor of the above petitioners/order holders.

Sd/- 27.05.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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27.5.2022
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY