

**BEFORE THE HON'BLE ADJUDICATING OFFICER,
TNRERA, CHENNAI
I.A. SR. No. 124 of 2021 in CCP No. 94 of 2020**

1. M/s. Homefinders Housing Ltd.,
Rep by its chairman, and
MD, K.S.Ramalingam

2. M/s. L'amicale Club & Resort Pvt Ltd
Rep by its director,
Kalaichelvi

.... Petitioners/Respondents

-Vs-

Jeganathan Tennis Missier

.... Respondent/Complainant

**Heard on : 16.02.2021
Delivered on : 02.03.2021**

The above petition by the respondents/promoters in the above complaint is filed under Section 38 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) read with Rule 38(2)(c) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as TNRERA Rules).

ORDER

2. The above petitioners/respondents filed the above petition questioning jurisdiction of this Forum and maintainability of the complaint under the RERA Act and TNRERA Rules. The learned counsel for the petitioners was heard on the maintainability of the petition.

3. The learned counsel for the petitioners contended that the present complaint is not maintainable under the RERA Act and TNRERA Rules and the procedure contemplated under Rule 38(2)(b) was never adopted by the Adjudicating Authority and therefore the rule is invoked by the petitioners and the

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Adjudicating Officer has the inherent powers in terms of settled legal jurisprudence to reject a complaint as not maintainable under the provisions of the Act.


4. The Rule 38 of the TNRERA Rules deals with the manner of filing the complaint with Adjudicating Officer and manner of holding an inquiry by the Adjudicating Officer. There is no dispute that the petitioners received notice as contemplated under Rule 38(2)(a) from this Forum specifying date and time for hearing and also the copy of complaint and documents filed in the complaint.

5. On receipt of the notice of hearing, the petitioners appeared through a counsel before this Forum. The petitioners who appeared through the counsel has not pleaded guilty. As per 38(2)(b)(ii), the Adjudicating Officer has to demand an explanation from the promoter. Therefore, the case was posted from 14.10.2020 to 17.12.2020 for explanation of the petitioners by way of counter. The petitioners, in spite of sufficient time being given has not preferred to file counter. There was substantial compliance of the procedure contemplated under Rule 38(2)(b) of TNRERA Rules. Therefore, there is no merit in the contention of the learned counsel for the petitioners.

6. The learned counsel further submitted that under Section 71 of the Act, the Authority is deemed to have delegated the powers and functions of the Authority to the Adjudicating Officer under the Act and by implication, the power of the Authority is given under Section 38 of the Act and Section 81 is in consonance with the interpretation. Section 38 deals with the power of the Authority only. In the absence of any specific order of delegation of any of the powers of the Authority, it cannot be implied on reading of the provisions of the Act. Therefore, such arguments are vague and have no substance.

7. The learned counsel also relied on the decision of the Hon'ble Supreme Court reported in 2008(4) SSC 300 and submitted that the applicability of CPC is not barred by the RERA Act. The judgment related to the general powers of the court under the CPC. Section 88 provides that the provision of the Act shall be in addition to, and not in derogation of, the provisions of any other law for time being in force. Therefore, the applicability of CPC does not arise. The Act and the

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Rules contain procedure for early disposal of cases under the RERA Act. In above circumstances, we find no merits in the petition. The above petition is liable to be rejected. **In the result, the petition is dismissed as not maintainable.**

CERTIFIED TO BE TRUE COPY

G.SARAVANAN
ADJUDICATING OFFICER.


23/02/2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY