

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

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

I.A. SR. No. 481 of 2021

in

CCP No. 132 of 2020

M/s. Akshaya Private Limited

..... Petitioner/Respondent

Vs.

M/s.Minica Services Pvt.Ltd.

..... Respondent/Appellant

Petitioner/Respondent : Rep. by Mr. Mani Sundar Gopal, Advocate

Respondent/Appellant : Rep. by Mr. T.K.Bhaskar, Advocate

Heard on : 26.10.2021

Delivered on : 23.11.2021

The petition by the above petitioner/respondent is filed under Section 71 of the RERA Act 2016 seeking to dismiss the complaint in limine as not maintainable.

2. Averments of the Petitioner/respondent, in brief, as follows :-

(a) The respondent/appellant preferred the present complaint under Section 31 read with Section 71 of the RERA Act 2016 seeking the reliefs of refund of a sum of Rs.5,00,00,000/- paid to the petitioner/respondent towards purchase of apartment and also liquidated damages.

(b) The issue of refund has to be decided only by the Regulatory Authority and not by the forum of the Adjudicating Officer. Such a view was taken by the Hon'ble Maharashtra Real Estate Appellate Tribunal and also the Division Bench of the Hon'ble Punjab and Haryana High Court. This petitioner/respondent also raised the contention regarding the maintainability of the complaint on the basis of the above decisions in the counter filed by the petitioner/respondent in the main complaint.

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(c) Under section 37 and 38 of the Act, the regulatory authority has the power to issue directions to refund the amount on such conditions as it may deem proper in the facts and circumstances of each case. Therefore, the justification of the complainant for withdrawal from the project and subsequently claiming refund has to be decided by the authority. Hence the claim of refund before the Forum of Adjudicating Officer is not maintainable in law of facts. Hence the issue of maintainability to be taken up as a preliminary issue and to dismiss the complaint is not maintainable.

3. The point for consideration in the petition is:-

Whether the petition under Section 71 of the RERA Act 2016 is maintainable?

4. Answer for the Point:-

(a) The learned counsel for the petitioner/respondent submitted that the appointment of an Adjudicating Officer under section 71 is for the limited purpose of adjudging compensation under sections 12,14,18 and 19 of the RERA Act and neither under section 71 nor under section 72, the Adjudicating Officer is empowered to direct refund of the amount collected from the respondent/appellant with interest and the relief for compensation is not maintainable under section 71 of the Act and the Adjudicating Officer is competent to decide compensation only, whereas the jurisdiction to decide all other issues except compensation under RERA is vested with the Authority and the complaints seeking multiple reliefs including compensation are required to be dealt by the Authority and not the Adjudicating Officer. The learned counsel relied on the following decisions in support of his contentions;

(i) Pankaj Kishore Agarwal & Ors. Vs. Real Gem Buildtech Pvt Ltd & Ors., Appeal No. AT006000000052542, AT006000000052543, Maharashtra Real Estate Appellate Tribunal, Mumbai.

(ii) Experion Developers Pvt Ltd. Vs. State of Haryana & Ors., CWP No. 38144/2018 and other connected matters, High court of Punjab and Haryana at Chandigarh.

(iii) M/s. Orbit Enterprises & Ors. Vs. Prism Corporation & Ors., Appeal No. AT00600000052243, Maharashtra Real Estate Appellate Tribunal, Mumbai.

(b) However, the learned counsel for the respondent/appellant contended that there is no merit in bifurcating the amounts liable to be paid by the petitioner/respondent as return of consideration and compensation under section 18 of the RERA Act and in the event of ambiguity, a beneficial legislation has to be interpreted in favor of the beneficiary so as to be in tandem with the object of the statute and the petition is liable to be dismissed. The learned counsel also relied on the following decision in support of his contentions.

(i) Marvel Sigma Homes Pvt.Ltd. and Ors vs. State of Maharashtra and Ors MANU/MH/0793/2021

(ii) M/s.Akshaya Private Limited Vs.Ananth Prabakaran. SR No.290 of 2020 in Unnumbered in IA No. of 2021 in CCP No.137 of 2020

(iii) Edukanti Kistamma (Dead) through LRS and Ors Vs S.Venkata Reddy (Dead) through LRS and Ors (2010) 1 SCC 756.

(iv) SARE Shelters Projects Pvt.ltd. Vs Sare Squires and Ors MANU/TN/1013/2021

(c) On perusal of the records, it is seen that the petitioner/respondent has filed their counter in the main case and the respondent/appellant also filed their reply to the counter filed by the petitioner/respondent and the respondent/appellant has also let in evidence by filing proof affidavit of the witness and marked documents in support of their case. Thereafter the matter

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was posted for petitioner/respondent side evidence. At that time, the petitioner/respondent has preferred this petition.

(d) The contention of the respondent counsel is that the regulatory authority has the powers to direct the refund of the amount with interest and the forum of adjudicating officer is competent to decide compensation only. Even such a view is found acceptable, still the Forum of the Adjudicating Officer has the powers to decide the question of compensation. The respondent/flat purchaser seeks the reliefs of return of amount paid to the petitioner/promoter and also liquidated damages as compensation. Merely because part of the reliefs is not sustainable or maintainable, it is not just, proper and reasonable to reject the entire complaint as not maintainable.

(e) Since the matter was already part heard, in the interest of justice, the complaint by the respondent is to be fully heard and decided on the merits of the case. Therefore, this petition is liable to be dismissed as not maintainable on the grounds raised by the petitioner/respondent counsel.

(f) In the above circumstance, the petition deserves to be dismissed as not maintainable. Thus the point is answered accordingly.

In the result, the petition is dismissed. No cost.

Sd/- 23.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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23.11.2021
LAW OFFICER
TNRERA REAL ESTATE REGULATORY AUTHORITY