

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

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

**SR. No. 290 of 2021**

in

**Un Numbered in I.A.No. /2021**

in

**CCP No. 137 of 2020**

M/s. Akshaya Private Limited

..... **Petitioner/Promoter**

**Vs.**

Ananth Prabakaran

..... **Respondent/Allottee**

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

Respondent/Allottee : Rep. by Mr. Rama Subramaniam Raja, Advocate

**Heard on : 03.08.2021**

**Delivered on : 17.08.2021**

The petition by the above petitioner/promoter is filed under Section 71 of the RERA Act 2016 to decide the maintainability of the complaint by the respondent/ Allottee as a preliminary issue.

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

(a) The respondent/allottee preferred the present complaint under Section 31 read with Section 71 of the RERA Act 2016 seeking several reliefs including refund of the amount paid to the petitioner/promoter, a sum of Rs.35,77,438/- towards purchase of flat.

(b) The issue of refund has to be decided only by the Regulatory Authority and not by the forum of the Adjudicating Officer. Such the 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/promoter also raised the contention regarding the maintainability of the complaint on the basis of the above decisions in the counter filed by the petitioner/promoter in the main complaint.

18/17/2021  
**TRUE COPY**

(c) Only in the event of the Authority coming to the conclusion that there has been a violation of provisions of the RERA Act which entitles the complainant/allottee to withdraw from the project and seek refund, the issue of compensation can be adjudicated upon. The present complaint seeking compensation on the grounds of withdrawal from the project is premature and not maintainable. Therefore, it is just and necessary that the issue of maintainability can be taken up as a preliminary issue, since the forum of the Adjudicating Officer may not have the jurisdiction to decide the entitlement of withdrawal from the project and the consequent relief of refund claimed with interest. Hence, the petition is preferred.

**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/promoter 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/allottee 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. AT00600000052542, AT00600000052543, 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/allottee contended that the decisions relied by the petitioner/promoter are challenged before the Hon'ble Supreme Court and the operation of the order of Hon'ble Punjab and Haryana High Court is stayed and the issue involved in the cases was rules framed under the Act by the concerned State and TNRERA Rules do not have similar rules and the powers to the Authority to issue directions, and the powers of the Authority to impose penalty or interest for contravention of obligations cast upon the petitioner/promoter, the respondent/allottee and the real estate agents are governed under Sections 37 and 38 of the Act and the complaint under section 18 for refund with interest is well maintainable before the forum of the Adjudicating Officer and the petition is liable to be dismissed with cost. The learned counsel for respondent/allottee also relied on several decisions in support of his contentions.

(c) Section 71 of the RERA Act is framed in the larger interest of the consumers. It is not specifically mentioned in the section that Adjudicating Officer appointed under section 71 is only for the purpose of adjudicating compensation alone. The proviso to Section 71 (1) provides that any person whose complaints in respect of matters covered under sections 12, 14, 18 and 19, if pending before the Consumer Disputes Redressal Forum or the State Commission or National Commission can withdraw the complaint and file an

application before the Adjudicating Officer under the RERA Act. The reading of the proviso makes it clear that such complaints can be in respect of matters covered under sections 12, 14, 18 and 19 of the RERA Act. A further reading of Section 18 of the Act makes it clear that the respondent/allottee is entitled to withdraw from the project seeking return of the amount with interest including compensation in the manner provided under the Act. The section does not provide any division of adjudging the amount refundable to the respondent/allottee, entitlement of interest and claim for compensation separately by different authorities. In this regard, Section 12, which deals with the obligations of petitioner/promoters regarding veracity of the advertisement or prospectus, also provides, in case of incorrect and false statement by the petitioner/promoter, for refund of the investment made by the buyer with interest and compensation. The claim of refund of money is clubbed with interest and compensation to be arrived at under both the Sections 12 and 18, so as to mean to adjudge the amount refundable in case of dispute with interest and compensation to be arrived at. Harmonious reading of the Sections 71, 12, 14, 18 and 19 indicate that this Forum can award the refund of the amount with interest including compensation sought by the respondent/allottee.

(d) As per Wharton's Law Lexicon, 16<sup>th</sup> Edition, '*compensation*' is defined as follows:

*Compensation, according to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss, Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65 (75): AIR 2004 SC 2141.*

*Compensation or purchase money are the same thing under different names, IRC vs. Glasgow South Western Railway Co., (1887) 12 App Cas 315 (HL).*

*In Blacks's Law Dictionary, 'Compensation' is shown as equivalent in money for a loss sustained or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred, or recompense in value for some loss, injury or service especially when it is given by statute. It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value, Rathi menon vs Union of India, AIR 2001 SC 1333 (1337)(2001)3SCC 714.*

The above definitions make it clear that compensation is given to make things equal in value. Compensation or damages can be computed under the heads of pecuniary loss and also non-pecuniary loss. So far pecuniary loss is concerned, the amount given towards purchase of the flat, which was not at all handed over by the due date is actual monetary loss. It is also seen that the British Court, while interpreting the meaning of the word 'compensation' held that compensation or purchase money are the same thing under different names. Therefore, the legislators thought it fit to include return of amount with interest payable for such amount and compensation under Section 18 of the RERA Act to be decided by the Adjudicating Officer.

(e) The learned counsel for the petitioner/promoter relied on the decision of the Hon'ble Punjab and Haryana High Court dated 16.10.2020 in Experion Developers Vs State of Haryana and others in CWP Nos.38144 of 2018 and others. It is relevant to note that in the decision, it is held as follows:-

*47. Corresponding amendments were made to Forms CRA and CAO. A perusal of the unamended and amended Rules 28 and 29 of the Haryana Rules, as juxtaposed, would reveal that the two distinct set of adjudicatory processes, one before the authority and the other before the AO, stand explicitly recognized. Under the amended Rule 28, any*

leg 27/8/2021  
TRUE COPY

*aggrieved person can file a complaint with the authority against any promoter, allottee or real estate agent inform CRA. If in that complaint only an allegation has been made regarding contravention of violation of the provisions of the Act, then the authority itself is to conduct an inquiry for establishing the veracity of the allegations. If the allegation is established, the authority can pass such orders in accordance with the Act. Under the amended Rule 28 (e) when the allottee is the aggrieved person and the promoter has violated the provisions of the Act, and in the complaint compensation has been sought, then the complaint will be referred by the authority to the AO for adjudging 'quantum of compensation' as per section 71(3) of the Act taking into consideration the factors mentioned in section 72 and in a manner prescribed under amended Rule 29.*

*48. Rule 28(2) of the Haryana Rules as amended delineates the procedure that the authority will follow in making the inquiry into the allegation of violation of the provisions of the Act, Rules or regulations. It is further provided under Rule 28(3) as amended that the procedure for the day-to-day functioning of the authority, which has not been provided by Act of the rules, shall be specified by the regulations made by the authority.*

*49. Rule 29 of the Haryana Rules as amended talks of filing of complaint/application for inquiry for adjudging by the AO of the quantum of compensation under section 12,14,18 & 19. the amended Rule 29(2) sets out the summary procedure for inquiry by the AO. Correspondingly, form CRA now stands amended with the heading 'complaint to the authority' and with the caption 'claim for relief, directions / orders and penalty proceedings under 43 of 68 CWP No.38144 of 2018 and other connected matters page 44 of 68 section 31 read with sections 35,36,37 & 38. The corresponding form CAO which pertains to complaint before the AO has also been amended where the word 'claim' has been substituted by "claim for compensation or interest, as the case may be".*

*70. The decision of the Appellate Tribunal rendered on 2<sup>nd</sup> May, 2019 in Sameer Mahawar (supra) to the effect that the Authority lacks the*

*power to examine a complaint seeking refund or the interest can no longer hold good, particularly since it was rendered prior to the notifications of the amended Rules 28 and 29 of the Haryana Rules.*

Therefore, it is clear that the above judgment of the Hon'ble High Court is rendered taking into consideration the amendments of the Rules 28 and 29 of the Haryana Rules. No such amendment is made in TNRERA Rules. Therefore, the judgment cannot be made applicable in this case. The other decisions relied by the learned counsel are not applicable to the facts of the case.

(f) It is very much relevant to note that in the decision in Marvel Sigma Homes Pvt. Ltd and another versus State of Maharashtra and others and connected Writ Petition, reported in 2020 SCC OnLine Bom 7272, relied by the learned counsel for the respondent/allottee, the Hon,ble Division Bench of the Bombay High Court held as follows:

66. From a reading of the above provisions, our findings on the interpretation of the above provisions are set out below:

(i) Although the sub-heading to Section 18 refers to 'return of amount and compensation', on a reading of Section 18 by itself and in context with the other provisions, it is clear that 'return of amount' is a facet of 'compensation' under Section 18. In other words, 'return of amount' and 'compensation' are not mutually exclusive categories.

(ii) Section 18(a), which deals with the promoters failure to deliver possession in accordance with the terms of the agreement is to be read with the consequence mentioned in section 18(b), namely, *'[the promoter] shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such*

*rate as may be prescribed in this behalf including compensation in the manner as provided under this Act'.*

(iii) Significantly, return of the amount with interest is mentioned as including compensation. It is thus clear that the expression 'compensation' does not stand apart from return of the amount, but the monetary amount represented by return of the consideration paid with interest is an aspect of compensation within the meaning of section 18 of the Act.

(iv) This understanding is made abundantly clear by the language of section 71 of the Act, which deals with the appointment, power and position of the Adjudicating Officer under the Act. It begins by stating, **'for the purpose of adjudging compensation under sections 12,14,18 and section 19...'**. It is, therefore, clear from a contextual and harmonious reading of the provisions that all the amounts that can be awarded to be paid by the promoter or that constitute the promoters' liability under section 18 of the Act, are collectively and generally referred to as 'compensation'. This is a clear indication that there is no merit whatsoever in bifurcating the amounts that the promoter is liable to pay under section 18 of the Act as 'return of consideration' on the one hand and 'compensation' on the other hand.

(v) In view of the above, we are of the clear view that the expression 'compensation' as used in section 40(1) of the Act must be understood in the sense of section 71 of the Act, namely, to include all amount that a promoter is liable to pay to an allottee, inter alia, under section 18 of the Act or for that matter under sections 12, 14 and 19 of the Act.

(vi) .....

(g) In the above circumstances, it is held that the complaint filed by the respondent/allottee is well maintainable before this forum. As per rule 38 of the

17/8/2021  
TRUE COPY



TNRERA Rules, this forum is to follow summary procedure for disposal of complaints. The rule provides the manner of filing complaint and also the manner of holding enquiry. The petitioner/promoter is given an opportunity to file their counter to the complaint. The petitioner/promoter has raised the point of maintainability along with other points in the counter. In such a situation, the petitioner/promoter filed a separate petition to decide the maintainability as preliminary issue which is not at all maintainable and delays the final disposal of the case . Hence the petition is liable to be dismissed with cost of Rs.10,000/- payable by the petitioner/promoter to the respondent.

In the result, the petition is dismissed with cost.

Sd/- 17.08.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY

  
17.08.2021  
LAW OFFICER -  
THE REAL ESTATE REGULATORY AUTHORITY