

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

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

**SR. No. 424 of 2021**

**in**

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

**in**

**CCP No. 261 of 2019**

M/s. Medhika Infrastructures

Rep.by its Sole Proprietor, S.Tamilselvi

..... Petitioner/4<sup>th</sup> Respondent

**Vs.**

1. Santhakumari.

.....Respondent/Allottee

2. M/s.Crescentz Homes and Infrastructures  
Pvt.Ltd.

Rep. by its Director Zubair Ahmed Thajudeen

3. M/s.Altimiz Infrastructure Ltd.,

Rep. by its Director Zubair Ahmed Thajudeen

4. M/s.Crescentz Square,

Rep. by its Partner Jalal Ahmed

..... Respondents/Respondents

Petitioner/4<sup>th</sup> Respondent : Rep. by Mr. R.Selvakumar, Advocate

**Heard on : 20.07.2021**

**Delivered on : 24.08.2021**

The petition by the above petitioner/4<sup>th</sup> respondent/promoter is filed under Order-1 Rule-10 C.P.C. to strike out the petitioner/4<sup>th</sup> respondent from the above complaint, consequently add the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as necessary parties.

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

(a) The affidavit of the petitioner of the 4<sup>th</sup> respondent is filed in support of the petition. The 1<sup>st</sup> respondent/allottee filed the complaint against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. Subsequently the petitioner was impleaded by the order dated 20.03.2020 in I.A.No.105 of 2019. In pursuance of the amendment, the 1<sup>st</sup> respondent filed amended petition to claim the refund of the amount as

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against this petitioner also. By memo dated 18.02.2020, the 1<sup>st</sup> respondent gave up the relief as against the 2<sup>nd</sup> and the 3<sup>rd</sup> respondents.

(b) The 1<sup>st</sup> respondent/allottee is totally unknown to this petitioner as there is no privity of contract between them. The transaction took place before the registration of the project and prima facie there is no jurisdiction for this Forum to enquire into the claim of the 1<sup>st</sup> respondent. The claim as against this petitioner is based on the order of the Authority in complaint in C.No.370 to 391 & 396,397/2019 dated 21.11.2019. The claim is barred by Res Judicata. There is no written agreement which is mandatory as per section 13 of the RERA Act. The claim of the 1<sup>st</sup> respondent is barred under section 18 of the Act. Hence the petitioner is claiming the relief.

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

Whether the petition is maintainable?

### **4. Answer for the Point:-**

(a) The learned counsel for the petitioner submitted that the petitioner is not at all a necessary party to the complaint filed by the allottee and there was no privity of contract between them and as per the sections 13 and 18 of the Act, written registered agreement is compulsory and there was no agreement between the petitioner and the respondents and therefore the petition is filed to strike off the name of the petitioner and the petition is to be allowed.

(b) It is not in dispute that the 1<sup>st</sup> respondent/allottee was allotted a flat in the project in dispute on 13.04.2016. By the order of the Authority dated 21.11.2019 in C.Nos.372 to 391 of 2019, the petitioner was inducted as a new promoter of the project. Admittedly, subsequent to the order of the Authority, the 1<sup>st</sup> respondent/allottee filed a petition in I.A. No.105 of 2019 before this Forum to implead the petitioner and also the 4<sup>th</sup> respondent herein as

respondents in the main complaint. This petitioner and the other proposed party were given an opportunity to file their counter and were heard in the petition and this Forum passed an order allowing the I.A. on 20.03.2020. Subsequently, amended complaint was filed by the 1<sup>st</sup> respondent impleading the petitioner as 4<sup>th</sup> respondent. The petitioner also filed a detailed counter with documents on 15.04.2021. The matter stands posted for enquiry.

(c) In the order in the above I.A., this Forum held that the petitioner is also a necessary party to effectively and completely adjudicate upon and settle all the questions involved in the case and allowed the application. The petitioner also preferred an appeal in appeal No.5 of 2020 before the Hon'ble Tribunal and by order dated 17.12.2020 the Hon'ble Tribunal confirmed order of this Forum and dismissed the appeal. In the meanwhile, this petition is filed by the petitioner. It is not the case of the petitioner that they have preferred any further appeal against the order of the Hon'ble Tribunal. Instead the petitioner filed this petition which is ill-conceived, unsustainable and intended to delay further progress of the case. There is no merit in the petition. Hence the petition is liable to be dismissed with cost of Rs.5,000/- payable to the 1<sup>st</sup> respondent/allottee.

In the result, the petition is dismissed with cost.

Sd/- 24.08.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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24.8.2021  
LAW OFFICER  
TNRERA REAL ESTATE REGULATORY AUTHORITY