

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

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

SR. No. 437 of 2021

in

Un Numbered in I.A. No. of 2021

in

CCP No. 152 of 2019

M/s. Land Marvel Homes

..... Petitioner

Vs.

1. P. Mary Latha Joyce
2. M/s. Arul Constructions
3. Capt. L.V. Joseph
4. Margaret Mary
5. Bernadette Mary
6. Lt.Gen. S.A. Cruze, VSM**
7. Capt. A. Periyamayagam
8. Col. James Susainathan

..... Respondents

.... Proposed Respondents

Petitioner : Rep. by Mr. JP. Karunakaran , Advocate.

Heard on : 22.07.2021

Delivered on : 30.07.2021

The above petitioner filed the petition under *Order 1 Rule 10 read with Section 151 of CPC*, seeking to implead the proposed respondents in the above complaint filed by the first respondent.

(2) Averments of the Petitioner, in brief, as follows :

- (a) The petitioner is the second respondent in the main complaint filed by the first respondent/allottee for refund of the amount with interest and cost from the petitioner and the second respondent. The affidavit of the partner of the petitioner is filed in support of the petition.
- (b) The complaint is filed by the first respondent/allottee under Section 31 read with Section 71 of the RERA Act for refund of the amount paid with interest and cost from the second respondent and the petitioner. The first

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respondent/allottee suppressed the material facts and documents and is not a bona fide purchaser of the flat which is the subject matter in the complaint and has not paid any valid consideration for purchase of the flat.

(c) The respondents from 3 to 8 who are the proposed respondents were directly involved and related in the transaction and were not made as parties in the complaint and they are necessary parties. The project land belongs to the proposed respondents. They entered into a MOU and agreement with the second respondent for joint development and sale of the project land. The first respondent was acting as a broker for mediator and agent between the proposed respondents and the second respondent.

(d) The second respondent and the first respondent/allottee approached this petitioner and handed over the project which faced many financial issues and stopped due to financial issue. The agreement was entered between the first respondent/allottee and the petitioner. The proposed respondents, the owners of the project land, received huge sum of money and are responsible for the present stalemate in the project. Hence, they are also necessary parties for the complaint. If the petition is not allowed, the petitioner would be put to irreparable loss and injury. No prejudice would be caused to the first respondent/allottee. Hence, the petition.

3. The point for consideration is:

Whether the petition under Order 1 Rule 10 read with Section 151 of CPC is maintainable?

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

(a) As per Section 31 of the RERA Act, for any violation or contravention of the provisions of the RERA Act, a complaint can be filed against the promoter, allottee or real estate agent. The first respondent/complainant

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filed the complaint seeking refund of the amount paid to the petitioner and the second respondent on the basis of construction agreement entered with the second respondent as promoter of the project and the petitioner as the subsequent promoter who took over the project from the second respondent under the memorandum of agreement.

(b) Admittedly, the respondents from 3 to 8 are not parties to the above documents. As per Section 2(zk), definition of a 'Promoter' covers only a person who constructs building for sale and also the person who develops land into a project by constructing structures. The definition also includes the assignees of the promoter.

(c) Under civil law, the plaintiff is the dominus litis, i.e., the master of the suit and he/she cannot be compelled to sue a person against whom he does not claim any relief. The complaint before this Forum is a civil remedy. Therefore, Order 1 Rule 10 of Section 151 of the CPC has no relevance to the complaint under section 31 of the RERA Act. The petition deserves to be dismissed as not maintainable. Thus, the point is answered accordingly.

In the result, the petition is dismissed as not maintainable.

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


20.17.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY