

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

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

**SR. No. 08 of 2021 in
Unnumbered I.A. No. 2021 in
CCP No. 95 of 2020**

1. Army Welfare Housing Organization
 2. Project Director,
Army Welfare Housing Organization
- Applicants/Respondents

Vs.

Col R Ganesan

..... Respondent/Complainant

Applicants/Respondents : Mr. Thriyambak J. Kannan, Advocate:

Heard and Delivered on : 18.03.2021

The above petition by the applicants/respondents is filed under section 8 of the Arbitration and Conciliation Act, 1996 read with Regulation 32(1) of the Tamil Nadu Real Estate Regulatory Authority (General) Regulations, 2018.

(2) **Averments of the applicants/respondents, in brief, as follows :**

The affidavit of the authorized representative of the first applicant/respondent is filed in support of the petition. The complaint is filed by the respondent/allottee under Section 31 r/w 71 of the RERA Act for compensation and other reliefs against the applicants/respondents as promoter of the housing scheme. The respondent has taken possession of the dwelling unit allotted to him and filed the complaint seeking several reliefs. In terms of Rule 89 of the Army Welfare Housing Organization Rules, 1987 which Rules form an integral part of the Army Welfare Housing Organization's Master Brochure of 1987 which in turn is part and parcel of the booking letter dated 31.07.2012, any disputes between the parties are required to be resolved by arbitration pursuant to the provisions of the Arbitration and Conciliation Act, 1996. Therefore, the respondent is to be directed to seek appropriate remedy from the Chairman of the first applicant. Hence, the petition.

TRUE COPY

~~18/3~~
18/3/2021

3. Regarding the maintainability of the petition, the counsel for the applicants / respondents was heard.

4. The point for consideration is:

Whether the petition by the applicants/respondents is maintainable?

5. **Answer to Point :**

(a) The learned counsel for the applicant/promoter submitted that the petition is maintainable and the reliefs claimed by the complainant in the main complaint are in the nature of reliefs arising out of and in connection with the agreement between the parties and are in the nature of personal reliefs within the ambit of the agreement which can be adjudicated on by an arbitral tribunal and as per the application form issued to the applicant/respondent seeking allotment of a dwelling unit in his favor, the consequent allotment letter and the booking letter the complainant consented to abide by and be bound by the Army Welfare Housing Organization's Master Brochure of 1987, wherein Rule 89 makes applicable arbitration to all disputes arising between the parties and therefore, the complaint is not maintainable. The learned counsel also relied on the following decisions of the Hon'ble Supreme court:-

(i) Vidya Drolia Vs. Durga Trading Corporation [2020 SCC Online SC 1018].

(ii) Rajeev Hitendra Pathak and others Vs. Achyut Kashinath Karekar and another [(2011) 9 SCC 541].

(b) In spite of sufficient time given for filing the counter of the applicants/respondents, they have not chosen to file any counter to the complaint and the matter stands posted for enquiry. The petition is filed under Section 8 of the Arbitration and Conciliation Act, 1996 read with Regulation 32(1) of the Tamil Nadu real Estate Regulatory Authority (General) Regulations, 2018.

TRUE COPY

[Signature]
12/3/2021

- (c) Section 88 of the RERA Act makes it clear that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for time being in force. In M/s. Emaar MGF Land Limited Vs. Aftab Singh reported in (2019) 12 SCC 751, the Hon'ble Supreme Court upheld order passed by the National Consumer Disputes Redressal Commission holding consumer disputes to be non-arbitrable. Therefore, the jurisdiction of this Forum cannot be fettered by existence of an arbitration clause in the agreement or brochure of the applicant.
- (d) In view of the above, the petition is not maintainable and is liable to be dismissed. Thus the point is answered accordingly.

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

CERTIFIED TO BE TRUE COPY

N. Narayan
12/3/21
Administrative Officer

G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.