

BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
Execution Petition No. 28 of 2022 in CCP No.02 of 2021

1. Vishal Kankaria
2. Sarika Kankaria **Petitioners/Order Holders**

Vs.

1. M/s. Pacifica (Chennai Project) Infrastructure
Company Pvt. Ltd.
2. M/s. Pacifica Builders Pvt. Ltd.
Rep. by its Managing Director Rakesh Israni **Respondents/Debtors**

Complainants : Rep. by. M/s. Sudha Ramalingam, Advocate.
Respondents : Rep. by Jagruti Dekavadiya, Advocate.

Heard on : 05.12.2022
Delivered on : 28.12.2022

**ORDER FOR RECOVERY UNDER SECTION 40(1) OF THE RERA ACT READ
WITH RULE 26 OF TNRERA RULES FOR NON-COMPLIANCE
OF THE ORDER IN THE ABOVE CCP DATED 25.11.2021**

The above petitioners/order holders filed the petition for execution stating that the respondents/debtors have not complied with the order passed in the above CCP filed by them.

2. In the reply of the respondents, it is contended that the order passed by this Forum to refund the sale consideration suffers from serious legal deficiencies and as per the decision of the Hon'ble Supreme Court dated 11.11.2021 in M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of

TRUE COPY

28/12/22

UP and others, the Adjudicating Officer does not have any power to grant the refund and therefore the order is without jurisdiction and authority of law and due to various reasons, the completion of the project was delayed and the construction of the project was already completed and the respondents are ready to hand over possession to the complainants and therefore, the petition is liable to be set aside.

3. By order dated 25.11.2021, this Forum directed the respondents to refund the amount paid by the petitioners with interest, compensation and cost within 30 days from the date of issue of the order. The respondents filed counter in the main case raising all the objections and points in the counter filed herein. This Forum passed the final order considering all the points raised by the respondents in the main case. It is well settled law that an executing court cannot go beyond its original order. If aggrieved, it was open for the respondents to prefer appeal before the Appellate Tribunal under the Act. It is not the case of the respondents that they have preferred any appeal challenging the order of this Forum before the Appellate Tribunal. In execution proceeding, this Forum cannot re-open the main case and go beyond the final order passed in the CCP. Therefore, all the contentions raised by the respondents are liable to be rejected.

4. Since the amounts due to the petitioners/order holders under the order is to be recovered as arrears as land revenue, it is just and necessary to issue warrant under section 40(1) of the RERA Act read with Rule 26 of the TNRERA Rules. The EP is disposed accordingly.

TRUE COPY

A
28/11/22

In the result, it is ordered as follows:

Issue recovery warrant under section 40 (1) of the RERA Act read with Rule 26 of TNRERA Rules and send it to the District Collector, Chengalpattu District to collect the same to satisfy the claims under the order passed in favour of the above petitioners/order holders.

**Sd/- 28.12.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.**

