

BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI

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

I.A. No. 52 of 2022
in
C.C.P. No.287 of 2021

M/s. KG Foundations Pvt. Ltd,
Rep. by its M.D., Mr. Kishorekumar Gokuldas

.... Applicant/Respondent

Vs.

M/s. Norton Granites & Properties (P) Ltd,
(Formerly known as Norton Granites
and Spinners (P) Ltd.),
Rep. by its M.D., Mr. D. Udayakumar

.... Respondent/Complainant

Heard on : 28.12.2022
Delivered on : 30.01.2023

ORDER

The above application by the applicant/respondent praying to take up the maintainability of the complaint as preliminary issue and dismiss the complaint has not maintainable is filed under section 38(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'RERA Act') read with rule 38(2) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as 'TNRERA Rules').

2. Averments of the applicant/respondent in brief, as follows:-

(a). The affidavit of the Assistant Manager-Liaison of the applicant company is filed in support of the application. The respondent company filed the complaint seeking compensation on various grounds and other reliefs from the respondent as

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promoter of the project. The applicant/respondent already filed a preliminary counter raising a preliminary objection on the very maintainability of the complaint on the ground that the respondent falls within the definition of 'promoter' as defined under the RERA Act and therefore the very complaint is not maintainable before this Forum.

(b). The very same respondent filed a complaint in C.No.164 of 2021 before the TNRERA Authority under Section 31 of the RERA Act against the applicant on the very same project seeking directions to register the project and deliver the possession of the flats mentioned therein and also for rectification of defects in certain flats. The applicant raised preliminary objections on the maintainability of the complaint. The applicant did not file any counter on the merits of the case, but only chose to question the maintainability. After elaborate arguments by the both sides, the Authority, by its order dated 18.11.2021, held that the complaint is not maintainable and accordingly dismissed the complaint.

(c). Subsequently, the respondent filed appeal in Appeal No.5 of 2022 before the Hon'ble Tamil Nadu Real Estate Appellate Tribunal. By order and judgment dated 02.09.2022, the Hon'ble Appellate Tribunal affirmed the order of the Authority in C.No.164 of 2021 as the complaint is not maintainable. The issues raised in the present complaint stand covered against the complainant by the orders referred above by the Authority and the Hon'ble Appellate Tribunal. Hence, the applicant prays to decide the maintainability of the complaint as a preliminary issue and decide on the same to dismiss the complaint.

3. The respondent/complainant has not filed any counter.

4. The point which arises for determination :-

Whether the maintainability of the complaint is to be taken up as a preliminary issue and decided before going into the merits of the complaint?

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5. Answer for the point:

(a). The learned counsel for the applicant/respondent submitted that the respondent/complainant filed the present complaint before this Forum seeking directions to the applicant/respondent to pay compensation and interest on various grounds and the respondent filed complaint in C.No.164 of 2021 before the Authority under section 31 of the RERA Act against the applicant on the very same project seeking direction to register the project with TNRERA and also for delivery of flats and rectification of defects in certain flats and the applicant raised preliminary objections and on the very maintainability of the said complaint on the ground that falls within the definition of a 'promoter' as defined under section 2(zk)(ii) read with explanation to Section 2(zk) of the RERA Act and the Authority heard both sides elaborately and held that the complaint is not maintainable and is liable to be dismissed in limine by the order dated 18.11.2021 and subsequently, the respondent preferred appeal before the Hon'ble Appellate Tribunal in Appeal No.5 of 2022 and the Hon'ble Appellate Tribunal also on hearing both sides confirmed the order of the Authority and dismissed the appeal preferred by the respondent and the issues raised by the respondent/complainant stand covered already by the Authority and the Hon'ble Appellate Tribunal and the very same is applicable to the present complaint pending before this Forum and the very maintainability of the complaint is to be taken up as preliminary issue and decide on the same even before going into the merits of the complaint and dismiss the complaint as not maintainable.

(b). Various documents including the order of the Authority in C.No.164 of 2021 and order of the Hon'ble Appellate Tribunal in Appeal No.5 of 2022 are filed in support of the petition. On perusal of the complaint before this Forum, it is seen that the complainant company which is engaged in the business of purchase and sale of properties is the absolute owner of the lands in the project and entered into a memorandum of understanding with the applicant company for the development of the lands on 09.04.2008 and subsequently entered into a joint venture agreement with the applicant company on 12.04.2012 for development of the property. The respondent has filed the complaint before this Forum claiming

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compensation as the allottee of the flats under this project. A perusal of order of the Authority in C.No.164 of 2021 dated 18.11.2021 clearly reveals that the Authority heard both sides and examined the facts and documents in the case and held that the complaint is not maintainable and the dispute between the applicant and the respondent is a civil dispute between the two promoters and the Authority has no jurisdiction of under the RERA Act to settle their disputes and dismissed the complaint. It is also seen that the Hon'ble Appellate Tribunal also confirmed the order of the Authority in the appeal preferred by the respondent in Appeal No.5 of 2022 by order dated 02.09.2022. Therefore, it is obvious that the point raised in the complaint as to the question 'whether the respondent is an allottee entitled to invoke the provisions of RERA Act' has already been decided by the Authority and the same was confirmed by the Hon'ble Appellate Tribunal. Since the present complaint before this Forum invokes the same question as to the relationship between the parties, the order and the judgment of the Authority confirmed by the Hon'ble Appellate Tribunal is binding on this Forum on the preliminary issue as to the maintainability of the complaint invoking the provisions of the RERA Act.

(c). Considering all the above facts and circumstances, it is held that the complaint is not maintainable. Therefore, the point is answered accordingly.

In the result, I.A. No. 52 of 2022 is allowed.

Sd/- 30.01.2023
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

