

BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
Execution Petition No.01 of 2023 in CCP No.17 of 2021

1. V. Rajasekar
2. M. Shobana Devi ... **Petitioners/Order Holders**

Vs.

M/s. VGN Developers Pvt. Ltd.,
Rep. by its Managing Director ... **Respondent/Debtor**

Complainants : Rep. by Mr. M. Balaji, Advocate
Respondent : Rep. by Mr. K. Harishankar, Advocate.

Heard on : 17.04.2023
Delivered on : 08.05.2023

**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 27.07.2022**

The above petitioners/order holders filed the petition for execution stating that the respondent/debtor has not complied with the order passed in the above CCP filed by them.

2. In the counter of the respondent, it is contented that the petitioner sought before this Forum to execute the order of attachment and sale of property described the Column 10 of the petition and the property which is sought to be attached is concerned, the respondent has already entered into agreements of sale and construction with a buyer on 16.02.2023 and the respondent is not the title holder of the property sought to be attached and a third party interest over the property exist and the property cannot be attached and therefore the execution petition is liable to be dismissed.

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3. By way of reply to the counter, the petitioners submitted that an agreement for sale either registered or unregistered is not a transfer of property and there is no question of an existence of any third part interest in the property sought to be attached by the petitioner and therefore the execution petition is to be ordered as prayed for.

4. By the order dated 27.07.2022, this Forum directed the respondent to pay the compensation with interest and also to return the excess amount collected under the head of GST and also the compensation for mental agony and inconvenience with litigation expenses. It is not the case of the respondent that any appeal is preferred before the Hon'ble Appellate Forum. However, the respondent produced copies of agreements for sale and construction dated 16.02.2023 for the flat which was sought to be attached entered by the respondent with a third party. On perusal of the records, it is seen that the petitioners filed the execution petition on 13.12.2022 and the respondent received the notice on 12.01.2023 and when the matter came up for the first hearing on 30.01.2023, the counsel for the respondent undertook to file vakalat for the respondent and subsequently, the counsel filed vakalat on 22.02.2023. The respondent had the full knowledge of the pendency of the EP filed by the petitioner. The respondent had created documents to defeat the claim of the petitioners in the EP. The objections of the respondent are not acceptable. Further execution of agreement for sale or construction cannot create any encumbrance on the property. Therefore, it cannot be contented that there is existence of a third party interest and the property cannot be attached. All the contentions raised by the respondent are rejected.

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5. 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.

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, Thiruvallur District to collect the same to satisfy the claims under the order passed in favour of the above petitioners/order holders.

Sd/- 08.05.2023
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

