

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

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
I.A. No. 02 of 2019 in
CCP No. 11 of 2019
11th March, 2022**

Subashini Thulasiram

....Home Buyer/Complainant

-Vs-

M/s. SPR & RG Constructions Pvt Ltd.,
Rep by its Directors,

...Promoter/Respondent

The I.A.No. 02/2019 pertains to the petition filed by the home buyer who is the complainant in the original case in CCP.No. 11/2019.

(a) The original complaint in the CCP.No. 11/2019 was filed for compensation in July of 2018 and was numbered as CCP.No. 11/2019. The I.A. 02/2019, the home buyer has sought compensation for delay with prayer seeking compensation for a sum of Rs.20,00,000/- together with interest @ 24% p.a from 31.03.2015, till the date of refund as per Section 18(3), Section 14 in violation of sanction plans and approvals and Section 19(1) of the Tamil Nadu Real Estate (Regulation & Development) Act 2016 for not providing the information as to the status of the environment clearance.

(b) In I.A. 02/2019, the home buyer modified the prayer to direct the respondent to refund the sum of Rs.75,18,367/- being the amounts paid by the applicant from time to time to the respondent towards the cost of the flat and interest thereon at 24% p.a from 14.07.2012 (date of payment of first installment of total cost of the flat). This claim is in addition to the compensation sought by him.

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(c) In the I.A. 02/2019 filed by the home buyer mention has been made with regard of non-obtaining of prior environmental clearance rather obtaining them only on 27.06.2018 after the completion of the project on 03.05.2017 and thus his plea that the application submitted by the promoter for completion certificate on 29.05.2017 would become infructuous. The home buyer in the I.A. 02/2019 further contends that the delay in handing over possession of the flat, the stamp duty and registration charges have shot up from 7% to 13% by which the applicant is forced to bear the escalation cost of flat which means that the charges in 2015 were Rs.88,000/- had rose to Rs.11,44,000/- inclusive of the flat. It is on this ground that the home buyer seeks relief on refund of Rs.75,18,367/- with interest at 24% p.a commencing from 14.07.2012 (date of payment of first installment of total cost of the flat). The home buyer also prays for payment of Rs.20,00,000/- as compensation together with interest at 24% p.a from 31.05.2015 till date of refund as per Section 18, Section 14 in violation of sanctioned plans and approvals and Section 19(1) of the Real Estate (Regulation and Development) Act, 2016 for not providing the information regarding the status of the environment clearance, completion certificate for the project and alteration of sanction plan and also for the delay in handing over possession leading to physical and mental agony for the applicant.

(d) The promoter/respondent in his counter of I.A. 02/2019 contends that the amendment application is only afterthought devised to expand the scope of the complaint beyond the jurisdiction of this Hon'ble Forum. The issue of environmental clearance was with the NGT Principal Bench in terms of its order dated 07.07.2015 which quashed the OM dated 12.12.2012 in O.A No. 37/3015 and 213/2014 (The Hon'ble Supreme Court in C.A. No. 7193-7194/2015 was pleased to grant an order of stay of the order). The home buyer had already been informed of this in the meeting held on 05.09.2015. The promoter further reveals

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of construction agreement dated 27.11.2012 and drew attention to the compensation claimed in case of delay. He further contends that the applicant has not made out any case to refund the consideration or for compensation as provided under the RERA Act, 2016. Under Section 18 delay in delivery of Real Estate Project is the sole ground for withdrawal from the Real Estate Project. The promoter contends that the home buyer acceded to the extension of time cannot rely upon Section 18 as time to essence of the agreement dated 27.11.2012. The complainant cannot expand the scope of the original complaint by way of an amendment and thus strongly object to the contentions made by the promoter.

ORDER

(a) It is clear from the CCP.11/2019, that the complaint was logged in July of 2018. The prayer made in the CCP.11/2019 was restricted to compensation alone of Rs.20,00,000/- together with interest @ 24% p.a from 31.03.2015 till the date of refund. The home buyer pleads laying his claim based on Section 14, 18(3) and 19(1).

(b) Section 14 stipulates that the project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. It further requires the promoter to disclosed or furnish to the home buyer of all such details. It further provides for alteration if any to be made in the sanctioned plans etc., only on the written consent of two-third of the allottees.

(c) Section 18(3) states if the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

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(d) Section 19(1) states the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made there under or the agreement for sale signed with the promoter. Reliance on Section 14, 18(3) and 19(1) would all make the promoter liable for compensation.

(e) The prayer in CCP. 11/2019 was made in July, 2018 much prior to the Hon'ble Supreme Court in the M/s New Tech promoters and Developers Pvt. Ltd Vs State of UP and ORS etc. At the time when the complaint was made, both the Refund and Compensation fell in the jurisdiction of the Adjudicating Officer. The complainant at that point in time had an option for pleading for both the compensation and refund in the same Forum. However, the complainant chose to go for compensation alone and only later decided to add refund to it. The plea for compensation would imply that the applicant/home buyer wanted to continue in the project and so choose to seek compensation for shortcomings alone. The change of plea from compensation and refund will imply that the applicant/home buyer wanted to withdraw from the project and was also seeking compensation.

(f) Subsequent to M/s. New Tech promoters and Developers Pvt. Ltd Vs State of UP and ORS etc., there has been a revision of jurisdiction whereby refund has fallen in the jurisdiction of the Authority while the Adjudicating Officer now has jurisdiction over compensation. Since the issues of refund and compensation fell in two different jurisdictions it would only imply that for the two different reliefs there are two applications to be made, one before the Authority for refund and the other before the Adjudicating Officer for compensation.

(g) It would be very clear from the above that two issues cannot be adjudicated before two Forum in one single plea. The complainant will have to choose between refund and compensation to be filed before the Authority and the

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Adjudicating Officer respectively. Since, in this case the application has already been originally received for compensation in CCP No. 11/2019 it is transferred to the Adjudicating Officer for further adjudication.

(h) The complainant has made out a plea for refund which he has the right to claim under the Real Estate (Regulation and Development) Act. The respondent/promoter is also restricting his objection of this I.A only on grounds that it expands the scope of the complaint. The applicant/home buyer had way back in 2019 expressed his desire to go for refund for which he had filed the I.A. 02/2019. The delay beyond 2019 was only due to the pending I.A. 02/2019. The complainant/home buyer is therefore at liberty to make a fresh application before the Authority for refund within one month of receipt of this order under Form 'M' for adjudication on merits.

In the result, I.A. 02/2019 is disallowed.

Sd/- 11.03.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

