

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

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
SR. No. 48 of 2021 in
Unnumbered I.A. No. 2021 in
CCP No. 147 of 2020
22nd February, 2022**

M/s. Grove OMR properties pvt ltd
Rep. by its Managing Director

....Petitioner/Respondent

-Vs-

David Joseph

...Respondent/Complainant

The above petition by the respondent/promoter in the above complaint is filed under Section 38 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) read with Rule 38(2)(c) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as TNRERA Rules).

2. The above petitioner in the I.A, has filed the W.P.No. 655 of 2021 before the Hon'ble High court of Madras for issue of writ of declaration to declare that the Authority, TNRERA, Egmore, Chennai has no jurisdiction or authority to hear or entertain CCP No. 147/2020 filed by the other party as per Rule 2(h)(3) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The Hon'ble High Court, was prima facie satisfied was pleased to grant interim injunction restraining the CCP No. 147/2020 to be proceeded with before TNRERA, Egmore, Chennai.

3. Subsequently, the W.P.No.655 of 2021 was finally heard by the Hon'ble High Court of Madras and the same was disposed on 29.11.2021 as follows:

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"In view of the above, this Court permits the petitioner to canvass all the points including jurisdiction and maintainability by way of objection/reply before the first respondent and if any such objection/reply is filed by the petitioner, the first respondent shall consider the same and pass appropriate orders in CCP.No. 147 of 2020, within a period of 6 weeks from the date of receipt of objection/reply, that is to be filed by the petitioner"

4. The petitioner in the I.A argued that the project commenced in 2011 but the parliament had enacted the Real Estate (Regulation and Development) Act, 2016 and the assent of the president was obtained on 25.03.2016. The RERD Act did not have any retrospective effect. Since the project had commenced much earlier and obtained the structural completion certificate much earlier to the passing of the Act, the said Act does is not applicable to him.

5. Government of Tamil Nadu, also in exercise of the powers conferred by Section 84 of the RERD Act made the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 which came into force on 22.06.2017. He claims that the Rule 2(h) comes to his rescue as the projects name figures in Sl.No.17 of DTCP which was published to show status of the applications, in pursuance of Rule 2(h)(iii) of the TNRERD Rules. He claims that Block 1 and 6 structural workswas completed as per approved plan and Block 2, 3, 4 and 5 all works completed as per plan.

6. With these, he has also contended that the Adjudicating Officer under the RERA Act has no jurisdiction and the complaint is to be dismissed as not maintainable.

7. The counter statement filed by the respondent/petitioner in the I.A denies all the allegations and averments. He also contended that the project commenced in 2011 and the enactment of RERA was only in 2016, but goes on to argue that the project was not completed even in 2017 as evidenced in the email dated 30.11.2016 from the petitioner in the I.A to the respondent in the I.A conveyingthat the construction of the Imperial Red Block (consisting of 19 floors)

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was to commence only 45 days later and the completion was to be around December 2017.

8. In the second evidence, email dated 06.07.2017 received from the promoter it informs of the 16th floor getting completed. There are 19 floors in the said project. He further says that Rule 2(h)(iii) of TNRERD Rules does not apply to the respondent project as the project was not listed within 16 days in the DTCP list as provided in Rule 2(h)(iii).

9. TNRERD Rules came into force on 22.06.2017 and 15 days from date of notification of the TNRERD Rules would be 07.07.2017. The promoter figures in Sl.No.17 which also shows the submission date as 11.10.2017 i.e., 3 months after the deadline date. The respondent in the I.A goes on to argue that the project was still an ongoing project and does not fall under the Rule 2(h)(iii) of the TNRERD Rules. He further, argued that the Adjudicating Officer under RERA Act has no jurisdiction for CCP.No. 147/2020.

ORDER

It is clearly put forth by the respondent in the I.A that on 06.07.2017, he was informed by the petitioner in the I.A regarding 16th floor getting completed through email dated 06.07.2017 when there were a total of 19 floors in the project. With 07.07.2017 being the deadline for the project to be considered as complete and to qualify for being in the list of the DTCP's completed projects list, it seems only probable as also in the absence of any evidence otherwise it can only be presumed that the remaining three floors could not have been completed in the one day and thereafter also allow time to him to claim the same before the DTCP.

The petitioner in the I.A, claims that in accordance with Rule 2(h)(iii), his project had been listed as completed in Sl.No. 17 of DTCP. In the list of evidences put forth by the Respondent in the IA, the DTCP list referred, the date of application as shown in column showing approved details (approval no/date)it mentions 11.10.2010. This would clearly show that the project was ongoing on the crucial date hence it would not qualify to be covered under the Rule 2(h)(iii).

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This bench would further rely on the order of Hon'ble TNREAT Appeal No. 01 of 2018 Mr.Y.Ravishankar Vs M/s. Marg Properties Ltd, The Managing Director;

"Therefore having admitted in their objection itself, that it is not structurally completed, how could they even apply to the concerned authority that it should be treated as a completed project as per the Act within 15 days from the notification of the rules which is much earlier namely on 06.06.2017"

- a) Therefore, it is very clear that the project was not completed as claimed by the petitioner in the I.A and hence would allow the Respondent in the IA to plead for refund.
- b) The claim of the petitioner regarding the Adjudicating Officer not having jurisdiction on the issue of Refund has also set right in the Hon'ble Supreme Court Judgement in M/s. New Tech Promoters & Developers Pvt Ltd Vs State of UP &Ors. Etc in Civil Appeal Nos. 6745-6749 of 2021. In compliance the issue of Refund is now being taken up by the Authority and not the Adjudicating Officer.

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

Sd/- 22.02.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA,CHENNAI

