

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

Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member

C.No. 93 of 2022

A. G. Viswanathan **Complainant**

Vs.

M/s. Premier Construction Company,
Rep by Nageswara Rao (Proprietor) **Respondent**

Complainant : Rep by Mr. J. Ravi Shankar, Advocate.

Respondent : Rep by M/s. U. Karunakaran, Advocates.

Heard on : 24.08.2023

Delivered on : 06.06.2024

This complaint came up for final hearing before the Hon'ble Single Member in the presence of counsel of both parties, this Authority passes the following order:-

2. Averments of the complainant, in brief, as follows:-

(a) The learned counsel for the complainant avers that he was in possession of land measuring 2400 Sq.ft situated at Plot No. 40, Door No. 4, Bakiyalakshmi Nagar, 3rd Street, Alapakkam, Porur, Chennai. The complainant avers that he entered into the **Joint Development Agreement (JDA)** with the respondent on 24.06.2019.

(b) The **JDA** further stipulates that two separate plan approval shall be obtained wherein the complainant was to retain his possession of 50% which lied on the eastern side of the land. The remaining 50% would belong to the respondent. The complainant avers that the respondent had been construct the flats and allot G-1, F-1 and S-1 to the complainant. The remaining 50% was to fall in the share of the respondent as per the agreed ratio.

(c) The complainant share of the flats was completed and handed over to him on June 2021. However, the complainant avers that the

respondent has failed to hand over the **completion certificate** in despite continuous request and follow up with him by the complainant. The complainant further avers that there were still some pending works which were incomplete and have been brought to the knowledge of respondent without any relief. The shortcomings include:-

1. *Ceiling leakage and water stagnation on open terrace.*
2. *Lift installation, handing over letter, technical specification certificate lift physically given in October 2021.*
3. *G 1 shortfall built up area for only 120 Sq.ft instead of agreed 240 Sq.ft.*
4. *Building completion certificate to be given for the project along with complete accounts settled.*
5. *Excess time delay in handing over the property compensation clause.*
6. *Locker provision not done in the bedrooms as per the agreement F1 and F2.*
7. *Weathering course not done in the open terrace land space and also in the lift machine room area.*
8. *Copy of the building plan approval documents to be given for the Door No. 40B.*
9. *Part of the property given to respondent extent cost market value to define.*
10. *EB service number problem for Flat F1 and F2.*

(d) Since, the respondent has failed to respond to the complainant's request for rectifying the above shortcomings, the complainant issued legal notice dated 16.04.2022 to the respondent which too was not replied by him. Aggrieved, the complainant pleads for direction to the respondent to rectify the shortcomings as mentioned above and in addition to compensation and litigation cost.

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3. Counter averments of the respondent, in brief, as follows:

(a) The learned counsel for the respondent denies all averments made in the complaint and submits that the same was not maintainable either on fact or law. The respondent avers that the Hon'ble Authority has no power to deal with this matter as the building does not come under the purview of the RERA Act. The respondent concurs with the complainant on the basic facts as stated by the complainant regarding the **JDA** entered on 24.06.2019.

(b) The respondent had taken up the construction based on the **JDA** on a 50:50 basis. The respondent had completed the construction as agreed and had even handed them over to the complainant by June 2021. The respondent avers that as per the agreement he had retained his share of the built-up portion as agreed in the **JDA**. The respondent also denies the contention of the complainant of not handing over the completion certificate to the complainant.

(c) The respondent avers that the completion certificate from the respondent was not necessary for the individual flats. Moreover, the respondent avers that he carried out the additional works for which the complainant was to make payment to him due to which he had retained the completion certificate even though he had obtained. With regard to the shortcomings pointed out by the complainant in his complaint, the respondent has given a reply wherein, he has submitted that all the shortcomings have been appropriately completed and submits that it was for completing the shortcomings that an amount of Rs.4,16,000/- was due to him from the complainant.

(d) The respondent thus gives details for the amount of Rs.4,16,000/-. The respondent thus prays to dismiss the complaint.

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ORDER

(a) The complainant in his complaint has clearly stated that the **JDA** was entered between the two parties on 24.06.2019. The **JDA** was for the development of the complainant's land area measuring 2400 Sq.ft on which Stilt + 2 floors were to be constructed in the 50% of the share belonging to the complainant. The remaining 50%, as per the **JDA**, was the respondent's share. The complainant has prayed that the respondent had handed over the possession of his share in June 2021 and the complainant has admitted to the same.

(b) The respondent has raised the primary objection on the basis of jurisdiction. The project entered by the complainant consists of stilt + 2 floors. The area for which the **JDA** were entered was to an extent of 2400 sq.ft (222.96 sq.mt) which would not make the project registerable within the provisions of Section 3 of the RERA Act and would thus not lie in the jurisdiction of this Hon'ble Authority. The Section 3 of the RERA Act provides as follows:-

3. Prior registration of real estate project with Real Estate Regulatory Authority.—(1) *No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

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Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

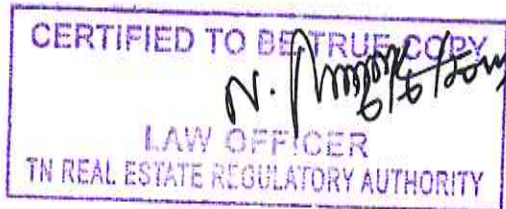
(c) Since, the said project extends to 2400 sq.ft (222.96 sq.mtr) falling short of the required 500 sq.mt as laid down in Section 3 of

the RERA Act. The contents of the complaint would not qualify in registration and hence not maintainable.

(d) Further, the Hon'ble High Court of Madras in the Judgment in C.M.S.A Nos. 23 and 24 of 2020 and CMP (MD) Nos. 9226 & 9236 of 2020 and 5221, 5219, 9499 & 21214 of 2022 in *M/s. Devinarayan Housing and Property Developments Pvt Ltd and 2 others vs. Manu Karan and 2 others* has held as follows:-

"For all these reasons, this Court holds that Authorities, Adjudicating Officer and Regulatory RERA referred to in the Act are entitled to deal with the issue regarding the registered real estate project alone. As far as unregistered real estate project is concerned, they will not have any control over the same and in case, if any person is aggrieved of the unregistered real estate project, they have to approach either before the civil Court or consumer forum in accordance with law and not before RERA"

Thus, the complaint is dismissed allowing liberty to the complainant to seek remedy before the appropriate Forum.



Sd/- 06.06.2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI