

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

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

**Execution Petition No. 53 of 2023 in CCP No. 58 of 2021**

- 1) Kannan Ramasubbu
- 2) Sharmila Soundararaj

... Complainants

**Vs.**

M/s. Akshaya Private Limited  
Rep. by its Managing Director

... Respondent

Complainant : Rep. by M/s. T.Sai Krishnan, Advocates  
Respondent : Rep. by M/s. Mani Sundargopal, Advocates

**Heard on: 21/11/2023  
Delivered on: 12/04/2024**

**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 14/03/2023**

1. The above complainant filed the petition for execution stating that the respondent has not complied with the order passed in the above CCP filed by them.
2. The respondent has not obtained any stay in any appeal preferred by the respondent before the Appellate Tribunal nor has he paid the amount due to the complainant in compliance of the order of this Forum.
3. In the above CCP, the respondent is directed to pay the complainant, the amount of Rs.64,97,987/- with interest @ 9.30% p.a, for the paid sum of Rs.36,69,518/- till realization and litigation expenses of Rs.25,000 as ordered in CCP No. 58 of 2021 dated 14/03/2023. (i.e. Rs.36,69,518/- with interest at the

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rate of 9.30% p.a from the date of respective payment till 01/06/2023, Rs.28,03,469/- and litigation fee of Rs.25,000/-) (Rs.36,69,518/- + Rs.28,03,469/- + Rs.25,000/- = Rs.64,97,987/-)

4. In the additional counter filed on 14/11/2023, the respondent questions Power of Authority under section 40(1) Rule 26 and 40(2) Rule 27 regarding execution of the order passed by the authority. At the same counter in para 3 it is stated that *"in the event of its inability to execute the order, send such order to the civil court, to execute such order"*. The same facts has been reiterated by the ruling of the Hon'ble Supreme Court judgment rendered in **A.R. Antulay V. Ramdas Srinivas Nayak (1984(2) SCC 500)**

*"where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."*

5. The above quoted citation is not relevant to the case in hand.

6. On considering the above facts in Section 40(1) and 40(2) and Rule 26 and 27, it is specifically stated that in the event of the inability of this authority to execute the order, the same may be sent to the Civil Court for execution.

7. Taking the consideration of the above facts, this authority is executing its power under section 40(1) and 40(2) and Rule 26 and 27.

8. Secondly, the respondent filed additional counter on 21/11/2023 and introduced a new point, that since the property has been furnished as a security to Axis Bank for availing loan by the complainant, the bank is a necessary party to the execution proceedings.

9. Since, the same fact has not been raised by the respondent at the time of trial before passing the order dated 14/03/2023. This point could not be considered at this stage.

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10. As per Section 35(2) of RERA Act and under the Rules 27 the same powers vested in a civil court under Civil Procedure Code 1908 and hence the order passed by the Authority is deemed to be decree. Section 40 of the Act reads with caption Recovery of Interest of Penalty or Compensation and enforcement of order etc. The Recovery warrant issued after holding enquiry with both parties. The contention of the respondent with reference to jurisdiction question does not arise.

11. Since, the amount due to the complainant under the order is due and liable to be recovered, 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 disposed of 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 to the District Collector, Chengalpet District, to collect the same for the satisfaction of the claim under the orders passed in favor of the above complainant.

Sd/- 12/04/2024  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

