



**BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Egmore, Chennai – 600 008**

[Under the Real Estate (Regulation and Development) Act, 2016]

C.No.143/2017 & I.A.No.15/2019

19th day of December, 2019

**Coram : Thiru K. Gnanadesikan, I.A.S.(Retired), Chairperson
Er. S. Manohar, Member
Adv. V. Jeyakumar, Member**

Mr. Abishek Modi

... Complainant

Versus

M/s. Influence Infrastructure
Represented by its Managing Director
Mr. Naresh Kumar Jain
No.3, Blackers Road, 4th Floor,
Vijay Complex, Anna Salai,
Chennai-600 002.

Respondent

This Complaint came up for final arguments before the Authority in the presence of the M/s. Anant Merathia, Mr.Rangha Sayee, Ms.Poornima Devi, Mr. Rishi Srinivas G. – Counsel for Complainant and of M/s. P .Neethikumar, Mr.R.Abhinandan – Counsel for Respondent and upon hearing the arguments of both the parties this Authority passes the following order.

FINAL ORDER

The Complainant has stated that M/s. Influence Infrastructure represented by Mr. Naresh Kumar Jain approached him in 2012 and convinced him to buy a luxury villa at East Coast Road, to be constructed by him in the name and style 'Bay Influence'.

2. The luxury villa measures 4865 sq.ft. and total cost of the villa is Rs.2,52,25,000/- The Promoter agreement was made on 07.06.2012 and the Complainant has paid Rs.75,00,000/- as advance.

3. As per the Promoter's agreement, the villa should be completed before 6 months from the date of receiving 50% of the total cost.

4. As of August, 2012, he has paid Rs.1,83,72,550 which is more than 72% of the total cost and villa should have been completed by end December, 2012 itself. Unfortunately, there has been no progress in the construction at all and absolutely no response from the Builder also.

5. The Complainant has further stated that he has borrowed Rs.1,61,42,780/- from the Bank for the villa and at the rate of 11.25% interest per annum and paying an EMI of Rs.2,55,759/- per month.

6. The Complainant had visited the site last in March, 2017 and was shocked to see that the Builder has not even completed the basement work of villa. He has also stated that he has been put to hardship, mental torture and agony due to irresponsible and unethical activities of the Builder and indefinite delay caused by him.

7. The Complainant has sought relief by way of refund, interest and compensation from the Promoter.

8. The Complainant has filed an Interlocutory Application arraying M/s. Influence Enterprises (India) Pvt. Ltd represented by its Managing Director Mr.Naresh Kumar Jain, Mr.Naresh Kumar Jain and Mrs.Varsha Jain as Respondents.

9. The Complainant has submitted that originally the Complainant was reluctant in purchasing the villa in the project when the Respondent No.2 Mr.Naresh Kumar Jain had approached him. But he was convinced later when M/s.Vijay Shanthi Builders Limited engaged in the property development promoting the residential spaces in and around Chennai had also given an advertisement promoting the project 'Bay Influence' represented by the Promoter Director Mr.Naresh Kumar Jain, in several leading Dailies.

10. The Complainant based on the advertisement and assurance given by the Respondent No.2, agreed to buy the said villa from the Respondent No.1 only for brand value of M/s. Vijay Shanthi Builders Ltd.

11. The Respondent No.2 had admitted that there was financial tie up with M/s. Vijay Shanthi Builders Limited which has been recorded in the order of the Authority dated 31.12.2018.

12. The Complainant has submitted that in the records of Ministry of Corporate Affairs, the Respondent No.1 has been struck off and the last known returns had been filed by the Company in the year 2013.

13. The Complainant had further submitted that the Respondent No.1 had entered into Joint Development agreement dated 30.12.2010 with M/s. Amient Hotels Resorts and Estates Pvt. Ltd. the owner of the property land measuring 273 cents in Thiruvudanthai Village, Chenglepattu Taluk,

Kancheepuram District and formulated a scheme for development for constructing luxury villa under the scheme known as 'Bay Influence'.

14. On 07.06.2012, the Promoter agreement was entered between M/s. Influence Infrastructure and the Complainant herein and the Respondent No.1 (M/s. Influence Enterprises (India) Pvt. Ltd.). The Respondent No.1 had acted as confirming party.

15. On receipt of payment requisition letter dated 26.12.2012 from the Respondent No.1 demanding the Complainant to release further sum of Rs.27,24,587/- the Complainant questioned the letter since the payment requested by the Respondent No.1 will become due only on the completion of the first floor slab which is not the case since the Respondent No.1 had not started with the construction of the same. Despite several follow ups by the Complainant, there was no firm date of delivery of possession provided by the Respondent No.1.

16. On 21.06.2018, the Authority had directed the Respondent No.1 to furnish necessary documents to Mamallapuram Local Planning Authority wherein the Planning Permission Application was pending as stated by the Respondent No.1. The Authority had also directed the Mamallapuram Local Planning Authority to issue Planning Permission after obtaining the required documents subject to satisfaction of the Rules.

17. The Complainant has also submitted that the Respondent has taken up the construction of the project without Planning Permission, etc. During the hearing on 30.10.2018, the MLPA stated that they had issued the Planning Permission and forwarded the same to the Local Body concerned for issue of Building Permit.

18. During hearing on 13.12.2018, the Respondent No.2 had given assurance to the Authority to obtain the Building Permit and undertook to register the project before 21.12.2018.

19. The Complainant has also submitted that there has been casual, indifferent attitude on the part of the Respondents regarding compliance of the orders of the Authority and continuous violation of Section 3 of the Act. Therefore, the Complainant has prayed that action may be initiated against the Respondents under Section 59(2) of the Real Estate (Regulation and Development) Act, 2016 read with Rule 37 of the Rules 2017 and to punish the Respondent No.2 and 3 with imprisonment for a term of three years with a penalty of 10% of the total cost of the construction under Section 59(2) of the Act.

20. The Complainant had also prayed that the names of the Respondent No.2 and 3 with photos be published in the website of this Authority as a defaulter for public viewing under Section 34(C) of the Act.

21. M/s. Vijay Shanthi Builders Limited in their letter dated 09.12.2017 addressed to the Authority have stated that the project is not developed by them and they have no role to play in the project promoted by M/s. Influence Infrastructure. This letter was written by Mr. Chandan Kumar.H, Managing Director of the Company.

22. Regarding the advertisement about 'Bay Influence' project issued by M/s. Vijay Shanthi Builders Limited, the Company in their letter dated 21.03.2018 have stated that M/s. Influence Infrastructure approached them to do marketing of this project and advertisement was published to do a demand survey. The allegation by the Complainant that they have published

an advertisement promoting the project is not true and rather it was given to do a demand survey only. As they have not received any response for the project they have dropped it. They have also not entered into any agreement with anyone on this project and therefore, they may be discharged from this Complaint.

23. The Land owners M/s. Amient Hotels Resorts & Estates Pvt. Ltd. in their letter dated 25.03.2019 addressed to the Adjudicating Officer, TNRERA have stated that they are the owners of the land on which the project has been proposed to be constructed. They had entered into a Joint Development Agreement dated 30.11.2010 and their role as owner of the land was limited to ensuring that the lands were unencumbered whereas the construction, promotion, compliance under statutes and in terms of Joint Development Agreement was solely handled by the Respondent Company M/s. Influence Enterprise Private Limited. However, the said Company did not fulfill its commitments under Joint Development Agreement and the project was subsequently stalled. They have also stated that the said Company appears to have changed its name to M/s. Influence Enterprise private Limited (Respondent Company in this Complaint) and the same has not been intimated to them so far.

24. They have also further stated that the time is essence of the contract as per Joint Development Agreement and JDA specifically provides for completion of the project within a period of 31 months which includes obtaining necessary permissions and approvals. If this had been complied with by the Respondent Company, the project would have been completed in June 2013. In these circumstances, they were constrained to send legal notice dated 31.10.2017 wherein, they have specifically asked the

Respondent Company to ensure RERA compliances in its capacity as Promoter / Developer vis-à-vis the JDA.

25. Further, the said Company has failed to fulfill its obligations under JDA despite the said legal notice till date.

26. In the Counter Affidavit, the Respondents have stated that they are developing the luxury villa project namely 'Bay Influence' on ECR with Joint Development agreement with one M/s. Amient Hotels Resorts and Estates Pvt. Ltd dated 30.12.2010. They have proposed to construct 22 villas in the said property measuring 273.75 cents out of which the land owners will get 11 villas and the rest 11 villas shall be sold by the Developer.

27. They have further stated that Mr. Abishek Modi had shown interest to purchase a villa at a cost of Rs.2,52,25,000/- and the sale deed was registered on 03.08.2012 in the office of the Sub Registrar, Thiruporur vide document No.8010/2012.

28. They have also stated that their project had been delayed due to delay in getting approvals from the Planning Authorities and now they have received the approval from DTCP and are awaiting approval from Mamallapuram Local Planning Authorities.

29. The Respondents have further submitted that the Complainant based on the interim orders of the Authority dated 21.02.2019 has filed Form-N before the Adjudicating Officer in CCP No.168/2019 and therefore, the Interlocutory Application must not be entertained by this Authority.

30. The Respondents have further stated that they are working towards getting required approvals for the project and they have not advertised and

sold any villas after the Real Estate (Regulatory and Development) Act have come into force, as they have to sell another 7 luxury villas for themselves and another 11 luxury villas for the Joint Development / Land owners, the registration of the project with the Authority is essential and will be done within six weeks and have sought six weeks time for registration and prayed that the Complaint and the Interlocutory Application No.15/2019 in Complaint No.143/2017 be dismissed.

31. The Complainant filed a Rejoinder and submitted that it is the duty of the Respondent to first obtain necessary approvals and then start construction as per the provisions of the Town and Country Planning Act, 1971. The Respondents have been casual, indifferent and absent during many hearings. The Complainant has further submitted that the Interlocutory Application has been filed by the Complainant before the Authority to take cognizance of the disobedient action of the Respondent.

32. The Complainant has also submitted that the pendency of Form-N before the Adjudicating officer does not bar the Complainant to pursue complaint against the Respondent's action of flouting of and non adherence to the orders of the Authority and penal action under the Act.

33. The Authority has examined the Complaint, pleadings and the arguments of both sides carefully.

34. The Authority notes that the Complainant has filed Complaint in Form-N in CCP No.168/2019.

35. It is clearly evident that the Respondents have miserably failed in getting necessary Building Permit from the Local Body and apply for registration with TNRERA in spite of specific direction by the Authority in this

regard and even after 2 years and 5 months after the Notification of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 in our State on 22.06.2017.

36. The Respondent has failed to register this project as an ongoing project thereby violating Section-3 of the Act. Therefore, under Section-59(1) of the Act, the Authority imposes penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) to be paid by the Respondents jointly within 30 days from the date of this order.

Sd/-...19.12.2019
MEMBER (M), TNRERA

Sd/-...19.12.2019
MEMBER (J), TNRERA

Sd/-...19.12.2019
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

19/12
ADMINISTRATIVE OFFICER
N. Prasad
19/12/19