



**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.319/2019

17th day of October, 2019

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

Tvl. Rakesh Kumar

Complainant

Versus

M/s. Acolyte Infrastructure and Mining Ltd.
Represented by Thiru Ashish Kumar
Kataruka, Director

.... Respondent

This complaint is for a direction to the Respondents to reduce the cost of the flat in proportion to the built up area of the flat. This complaint came up before the Authority on 15th July, 2019 in the presence of M/s. R.Bharath Kumar, V.Ayyappa Raja and S.Venkatesh, counsel for the Complainant and of Thiru M.S.Krishnan, Senior Counsel for M/s. Sarabhauman Associates, counsel for the Respondents and upon hearing the both sides, this Authority passed the following order:

FINAL ORDER

Complainant's Averments :

1. The Complainant entered into a sale Agreement dt. 28-12-2008 with the Respondents for purchase of flat having built up area of 1377 sq.ft. along with 384 sq. ft. garden area (one third of Garden area is charged) and 575 sq.ft. undivided share in the land for Rs. 36,47,800/-. An advance of Rs.6,00,000/- (Rupees six lakhs only) was paid by the Complainant to the Respondents on various dates by way of cheques. The Complainant agreed to pay the balance sale consideration within 62 calendar days i.e. by 28-2-2009. The Complainant averred that the Respondents had constructed a built up area of 1141 sq. ft. only as against 1377 sq. ft. as agreed in the Agreement of Sale. That is 236 sq.ft. less which the Complainant protested and sought to reduce the price according to the built up area actually sought to be conveyed. For reduction of the price, the Respondents did not agree. Hence this dispute. The complainant averred that he is always ready to pay the balance amount provided the Respondents should reduce the price in proportion to the area of the built up area to be conveyed.

Reply Statement of 1st and Respondent adopted by the 2nd Respondent :

2. The 1st Respondent is the developer of the land belonging to the 2nd Respondent. The Respondents denied all the allegations contained in the complaint as false, baseless and misleading except that of an Agreement of Sale dated 28-12-2008 entered between both parties. The Respondents stated that the complaint is not maintainable before this Authority since the project has been completed before the commencement of the Act as early as in the year 1995-96 and units were sold before 2015. The possessions of dwelling units and shops have already been handed over prior to the notification of the Rules. It is structurally completed project 20 years ago prior to the commencement of RERA regime. The property has been assessed to the Corporation Tax and the apartment Association was formed in the year 2015. The Respondent also averred that the complaint is barred by law since the complaint was filed after a lapse of 10 years as the date of Agreement of Sale on 28-12-2008. The Respondent stated that the Complainant failed to pay the remaining sale consideration within the time stipulated in the agreement and the complainant admittedly has not performed his

part of the contract. The Respondent waited for 18 months and after that they sent a legal notice on 28-7-2010 thereby forfeiting the advance paid by the complainant for breach of contract. The Respondents further averred that measurement of the property was done prior to the agreement of sale. The Respondents state that it is impracticable to entertain the Complainant's request to hand over the property on the consideration determined in the year 2008. There is no shortfall to the measurement of the property. Hence the complaint is to be dismissed with costs.

Written Submissions of the Complainant :

3. The Complainant stated that the Authority has jurisdiction to entertain the complaint since exemption claimed under Section 3(2)(b) of RERA Act , 2016 by the Respondents is not valid for want of any credible proof. The builder has not yet received the authenticated completion certificate and they did not produce the same before the Authority. They did not file any certificate from architect or structural engineer/licensed surveyor for completion of structure and the project was not listed in the official website of DTCP.

4. The Complainant further submitted that the provisions of RERA are applicable to projects which are not registered with RERA. The complainant asserts that though the association was formed in the year 2015, the maintenance of the building was continued by the builders' management even after the implementation of the Act. 36 units are yet to be sold by the promoter and advertisement to the effect has been given continuously by the builder. Hence, the TNRERA has jurisdiction over the complaint and the false claims of the Respondent should be dismissed.

Written Submissions of the Respondents :

5. The Respondent argued that TNRERA does not have jurisdiction since the property is not an ongoing project and is structurally complete prior commencement of RERA. It is exempted from the application of RERA Act. Photos have been produced to show completion of structure. Shops and Flats have been sold from the year 1995 and details of the same were filed. Property assessment details are also filed. Property has been handed over the association. The complaint is liable to be rejected.

6. In view of the objections raised by the Respondents regarding the jurisdiction/maintainability of the complaint, the Authority passes the orders on jurisdiction/maintainability without going into the merits of the complaint.
7. As per the contract, i.e., Agreement of Sale dated 28-12-2008, the complainant ought to have raised a dispute before jurisdictional civil court for performance of the contract on the part of the Respondent. Moreover, the complainant paid only an advance amount of Rs.6,00,000/- Though he was having an issue in the measurement of built up area, he might have chosen to pay balance sale consideration in proportion to the built up area as claimed by him, within the agreed time as per the contract. Neither he performed the contract nor proceeded against the Respondent in accordance with Specific recital of the contract for performance of contract.
8. With regard to reduction of price in proportionate to the built up area to be sold as prayed by the Complainant, it is for him to file suit for specific performance. The Complainant was well aware of

this remedy and the same was raised in his lawyer's notice dated 02-08-2010 sent to the Respondent.

9. It could be well inferred from the copies of receipts of Tax Assessment of Coimbatore Corporation that the tax assessment was effected much earlier prior to the commencement of the Act. The building was completed and was put into use and occupation much before the commencement of the Act.

Therefore the complaint is not maintainable under the Act and hence the complaint is dismissed accordingly.

Sd/-...17.10.2019

MEMBER (M), TNRERA

Sd/-...17.10.2019

MEMBER (J), TNRERA

Sd/-...17.10.2019

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADDITIONAL DIRECTOR (OPERATION)