



**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.336/2019

21st day of November, 2019

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

Dr. Vandana Parvez

... Complainant

Versus

IVR Hotels & Resorts Private Limited

... Respondent-1

Kotak Alternate Opportunities (India) Fund

Respondent-2

Kotak India Realty Fund

Respondent-3

Kotak Investment Advisors Limited

Respondent-4

IVR Prime Urban Developers Limited

Respondent-5

Soma Hotels & Resorts Limited

Respondent-6

E.Sudhir Reddy

Respondent-7

E.Sunil Reddy

Respondent-8

E.Ella Reddy

Respondent-9

M.Mahesh

Respondent-10

Subhangi Kulkarni

Respondent-11

This Complaint came up for final arguments before the Authority in the presence of the Complainant appeared as party in person and of M/s.Thriyambak J. Kannan, Mr. Rohan Cherian, Mr. Arushi Naresh Hedge, Mr. O.Solaiappan and En.Hareepriya – Counsel for 1st Respondent and of M/s.N.Ramakrishnan, Mr. P. Neethikumar, Mr. Mabel Celestina Thomas & Mr.S.M.Kothai Muthu Meenal for Respondents-2 to 4 and Respondents-5 to 11 being called absent and no representation having been made for Respondents-5 to 11 and upon hearing the arguments of both the parties this Authority passes the following order.

FINAL ORDER

The Complainant had executed an agreement for sale for a plot with Respondent No.1 on 09.12.2011 and had also entered into an agreement of construction of villa thereon.

2. The Complainant has alleged that the Respondent No.1 has infringed the Complainant's right and possibility to the use of the Golf Course which the Respondent No.1 has promised to her vide Clause 9 of the Agreement for Sale. As the Respondent No.1 had neither completed the project nor the Golf Course which is an integral part of the project, the Project is regarded as ongoing and thus should be registered under TNRERA.

3. The Complainant has also submitted that the Respondent No.1 has not completed the Club House of the project. In leaving it incomplete and nonfunctional, the Respondent No.1 has infringed on her entitlement to use the club house which the Complainant was promised on the basis of Clause-13 of the Agreement of Sale entered with the Respondent Company.

4. The Complainant has sought relief praying that the project be registered with TNRERA.

5. The Respondent No.1 in its Counter Affidavit has submitted that the Complainant has arrayed certain individuals as Respondent Nos. 7 to 11, in the present Complaint, who are not even directors of the First Respondent Company.

6. The Complainant has made these individuals parties to the Complaint even though no relief has been sought against them. Hence, it is clear that the Complainant has made these individuals parties to the present proceedings with an intention to harass the said persons.

7. The Respondent No.1 has further submitted that the Respondent Company purchased land in and around Santhavellur village, Sriperumbudur Taluk, Kancheepuram District during the year 2008 and prepared a Layout which was approved by DTCP vide approval dated 16.08.2010 and the Layout was named as "SAMTEN".

8. The First Respondent also gifted certain portions of the land for public use by way of a Gift Deed dated 31.08.2010 which was registered as Document No.4425 of 2010 before the Sub Registrar's Office at Wallajabad. The Layout was further divided into several plots which were then sold to numerous purchasers. One such plot was sold by the First Respondent to the Complainant by entering into an agreement for sale dated 09.12.2011.

9. The said plot, Plot No.262 has an extent of 1980 sq.ft. and forms part of the Layout, the sale deed was registered as Document No.49 of 2013 before the Sub Registrar Office at Sunguvarchatram on 04.01.2012. Further, an agreement for construction to construct a building of an area of 2150 sq.ft. was also entered into on 09.12.2011 between the Complainant and the

First Respondent. This area was later revised from 2150 sq.ft. to 2356 sq.ft. by the Complainant.

10. The Respondent No.1 has submitted that since the layout was approved in the year 2010 itself and further the said plot was sold to the Complainant in 2011 and the said sale was registered in 2012, it will not fall within the purview of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder.

11. The Respondent has also cited Rule 2(h)(i) of the Rules in support of his claim. The Respondent has also stated that the Complainant took possession of the plot and the Villa constructed on the said plot in June 2015 itself, which is prior to the Act and Rules coming into force. Therefore, it does not require registration under the Act.

12. The Respondent has also cited the orders passed by this Authority on 11.10.2018 in *Veeti Kat Somasekar versus IVR Hotels and Resorts limited and another* (Complaint No.144/2017) dismissing the Complaint for lack of jurisdiction. The Complaint which was dismissed by this Authority pertains to the same project "SAMTEN" is the subject matter of the present complaint.

13. The Respondent No.1 has drawn attention to the sale deed dated 09.12.2011 which contains the following clauses:

*"8. Both the parties hereto have agreed that this agreement is restricted / confined only to the property more fully described in **Schedule Property-B** and the purchaser shall not have any right title, claim or interest in the areas other than the property described in **Schedule Property-B**....*

10. That the golf course being developed by the Vendor/Developer in the adjacent land area is a separate

entity and the Purchase herein shall not have any claim, right, title or interest over the said golf course....”

14. Therefore, the sale deed as executed by the Complainant herself contains a Clause labeling the golf course as a separate entity over which the Complainant has no claim, right, title or interest.

15. The Respondent has submitted that despite being a subsidiary Company, the First Respondent has a separate legal identity from its parent companies.

16. The Respondent has finally concluded that in the light of the facts and circumstances stated above, the Authority may dismiss the Complaint.

17. In the Counter Affidavit filed by the Respondent No.2 to 4, they have stated that they are only financial investors in the First Respondent Company and are not involved in the day to day affairs of the First Respondent Company or the "AAVISA project.

18. During the arguments, the Complainant argued that her plot forms part of the land on which a multi use township project was proposed. This multi use township project was named as "Aavisa Golf Township"

19. The Golf Course has not been completed, thus proving that the project is not completed and hence it is to be considered as ongoing project. The Complainant has also reiterated her entitlement use of Club House.

20. The Complainant has also cited certain orders passed by this Authority in respect of some other projects in support of her prayer.

21. In written submission of arguments, the First Respondent has reiterated its earlier submissions and has stated that in Clause-9, 10 and 11 of Agreement for Sale the right of the Complainant to access the Golf Course

is a value added service subject to certain conditions and the Complainant has no right, entitlement or interest over the said land.

22. In the written submission of arguments, the Respondents No.2 to 4 have stated that the Complainant has not produced any evidence to show that the Complainant has privity of contract with the Respondents No.2 to 4. The Respondents No.2 to 4 have not made any representation, promise or assurances to the Complainant in respect of this project.

23. The Complainant cannot make the Respondents 2 to 4 liable and answerable for any of the alleged breaches or deficiency in service stated to have been committed by the First Respondent Company with whom the Complainant had entered into some agreement / contract. The Complainant had added the Respondents 2 to 4 as Respondents with ulterior/mala fide intention.

24. The Complainant has also submitted a memorandum containing various documents such as copy of I.A.No.523, 524, 672 of 2018 before the Hon'ble NCLT, Hyderabad Bench and the response filed by the Resolution Professional, copy of M/s. IVRCL's Liquidation order by Hon'ble NCLT, Hyderabad and copy of the Complainant's written arguments submitted before the Hon'ble NCLT in I.A.No.523 and 524.

25. The Authority has carefully examined the Complaint, Counter Affidavit filed by the Respondents 1 to 4, arguments by the Complainant and Respondents 1 to 4 and the Memorandum filed by the Complainant.

26. It is clear from the agreement for sale executed between the Complainant and the First Respondent on 09.12.2011 that it is agreement to sell a plot only. The sale of the plot is not linked to development of Golf

Course or Club House as may be seen from Clause 9 to 13 of the Agreement for sale produced below:

*"9. That the Membership to use the Golf Course in the project is given to the purchaser as a value added service and that may be used by the **PURCHASERS** and her immediate family (spouse and 2 children under the age of 21). However only while handing over the house to the **PURCHASERS**, a separate letter of authorization will be given by the Vendor/Developer for utilizing the above said service provided the **PURCHASERS** enter into a separate development / construction agreement with us and completes the construction. The **PURCHASERS** however have to pay an annual maintenance charge as will be applicable from time to time for self and family members.*

10. That the Golf Course being developed by the Vendor / Developer in the adjacent land area is a separate entity and the Purchase herein shall not have any claim, right , title or interest over the said Golf Course.

11. That the Club House being developed by the Vendor / Developer in the adjacent land area is the exclusive property of the Vendors / Developers, and the Purchaser shall not have any right, title, claim, or interest over the ownership of the Club House.

12. That the Purchaser shall not have any claim, right, title or interest in the other developments being undertaken by the

Vendor / Developer in the landed properties owned by the Vendors / Developers.

13. That the Purchaser shall be entitled for the Membership/usage of the club house only on payment of requisite fee as fixed by the Vendors/Developers. The membership shall be allotted at the sole discretion of the Vendors/Developer's Company and the Purchaser shall not claim the membership of the club house as an inherent right of entitlement.

27. Also it is seen that the Complainant has taken possession of the Villa in June 2015 itself prior to the commencement of Real Estate (Regulation & Development) Act, 2016. Therefore, this plot cum construction of villa covered by the agreement for sale, the sale deed and construction agreement is a completed project prior to the commencement of the Act and hence does not require registration with the Authority.

28. The Authority does not find any merit in including the Respondents 2 to 4 as Respondents since they are only financial investors in Respondent No.1.

29. The Authority holds that this Complaint is not maintainable and is ordered accordingly.

Sd/-...21.11.2019
MEMBER (M), TNRERA

Sd/-...21.11.2019
MEMBER (J), TNRERA

Sd/-...21.11.2019
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER