



**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.446 of 2019

11th day of February, 2021

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

Thiru T.R.Mohanakrishna ... Complainant

Versus

M/s.Dugar Housing Limited ... Respondent
Chennai

This Complaint came up for final hearing before the Authority in the presence of M/s.R.Munuswamy, E.Prabu and V.Surya Sankar – Counsel for Complainant and of M/s. K.V.Bhashyam Chari and P.Vijay – Counsel for Respondent and upon hearing the arguments of both the parties, this Authority passes the following:

FINAL ORDER

The Complainant is the allottee of Flat No.402, Tower-10 of "Sky Dugar" project at Chennai-600 095.

2. According to the Complainant, the sale consideration is Rs.51,59,789/- with twin car park facility. The Construction Agreement was entered into on 22.04.2016 and the Sale Deed for the same was also executed on the same date. The handing over agreement was signed on 10.12.2018. The Complainant has stated that the Respondent has not completed the facilities and has not handed over the twin car park facility.

3. The Complainant has sought the following relief:

- a) restrict the Respondent from allotting the car parks in Tower-10 to others until the Regulatory Authority decides on this complaint.*
- b) to allot and hand over twin car park as agreed in the construction agreement and mentioned in allotment letter, in Tower-10.*

4. In the Counter Affidavit, the Respondent Promoter has submitted that the Complaint is not maintainable before this Authority for want of jurisdiction. As per Rule 2(h)(ii) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, the application for Completion Certificate for this project was filed on 29.05.2017.

5. The Respondent has further stated that the specific twin car parks are not identified / mentioned either in the letter of allotment or in the Construction Agreement or anywhere else. In the letter of allotment, it has

been mentioned clearly that a twin car park slot will be allotted at the time of handing over of the flat.

6. The Respondent has further narrated the procedure for allotment of car parks which is done by way of draw of lots in the presence of the home buyers. This project has 237 flats located in Tower-1 to Tower-12. The car parks are available in the stilt parking only. Most of the car parking is single car parking only. Only a few twin car parks were allocated and they are scattered in various Towers. As a result, many flat buyers who have booked for twin car parks have picked up at different Towers as per the procedure of draw of lots. As on date, car parks have already been allotted / picked up by more than 200 home buyers. The car park allotment was done on 20.09.2019 and the Complainant deliberately did not pick up any car park slot. The Complainant insisted to pick specified slot under Tower-10 where his flat is located in the 4th floor.

7. The twin car park in Tower-10 itself is not possible since the car parks at Tower-10 have already been allocated and taken possession by other flat buyers before the Complainant could step in. The Respondent is ready and willing to allot car park from the balance car park available in the project to the Complainant.

8. In the written submissions of arguments, the Complainant has stated that many amenities promised to be provided by the Respondent have not been provided till date.

9. The Complainant has also referred to the recent judgment dated 15.09.2020 passed by the Division Bench of the Hon'ble High Court of

Madras in CMSA No.22 of 2019 in Subashini Thulasiram Vs. M/s. SPR & RG Constructions Pvt. Ltd. which is squarely applicable to this project. Therefore, this Complaint is maintainable and that the relief prayed for may be granted.

10. The Complainant has also stated that the Respondent demanded extra cost for twin car parking by completely violating their own promises. Since the Complainant refused to accept the demand of the Respondent, they did not permit the Complainant to participate in the lot conducted by the Respondent and failed to allot twin car parking to the Complainant.

11. In the written arguments, the Respondent has reiterated their earlier submissions. However, the Respondent has further stated that the Respondent Company had still offered twin car parks which were available with them, but the Complainant has deliberately refused to accept the same on the pretext that he wants slot No.170 of Tower-10 of the "Sky Dugar" project, despite knowing the fact that the above slot has already been allotted to someone else. The Respondent is still ready and willing to offer the following twin car parking choices which is not yet allotted by them to anyone.

(a) Tower-12 Slot No.199 and 199A

(b) Tower-01 Slot No.10, 10A, 12, 12A, 13 and 13A

12. The Respondent has further submitted that the Complainant did attend the Respondent's office on 20.09.2019 and deliberately did not pick up any car park slot. The Complainant has already been allotted single car

park in Tower-10 and the Respondent is even now willing to provide another car park from the available car parks in the project.

13. The Respondent has also cited the orders of this Authority in Complaint No.401 of 2019 filed by one Mr.Mahendran, in which the Authority has ruled that it has no jurisdiction to entertain the Complaint.

14. The Authority has examined the Complaint, Counter Affidavit filed by the Respondent and the arguments by way of written submissions made by both sides carefully.

15. At this point of time, the Ruling of the Division Bench of the Hon'ble High Court of Madras holds the field wherein it has been stated that the Rule gives an exemption only to the Developers who have applied for Completion Certificate on or before 01.05.2017. In respect of this project, the application for Completion Certificate has been filed on 29.05.2017. Therefore, this project has to be considered as an ongoing project only as per the Ruling of the Hon'ble Division Bench of the High Court of Madras and this Complaint is maintainable.

16. Regarding the allotment of twin car parking facilities, the Authority finds merit in the contention of the Respondent Promoter that no specific twin car park has been identified or mentioned either in the letter of allotment or in the Construction Agreement or anywhere else. Therefore, the Respondent Promoter is obliged to provide a twin car park facility as per the Construction Agreement from among the available twin car parks in this project.

17. Therefore, this Authority directs the Respondent Promoter to allot a twin car park facility from among the available twin car parkings to the Complainant Allottee after ascertaining the choice of the Complainant Allottee to choose from among the available ones before 28.02.2021.


18. With these directions, this Complaint is disposed of.

Sd/-...11.02.2021
MEMBER (M), TNRERA

Sd/-...11.02.2021
MEMBER (J), TNRERA

Sd/-...11.02.2021
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER
R.P.
11.2.2021