



**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. 107/2020

19th day of August, 2021

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

Thiru. P. Lakshmi Kumar ... Complainant

Versus

M/s. Puravankara Projects Limited., ... Respondent
Rep. by its Managing Director & CEO
Thiru. Ashish Puravankara

This Complaint came up for final hearing before this Authority in the presence of M/s. S.Vasudevan, P.R.Murali & M.Sathyan – Counsel for the Complainant and of the Respondent having appeared as party in person and upon hearing the arguments of both the parties, this Authority passes the following order:

FINAL ORDER

The Complainant Thiru P.Lakshmi Kumar has stated in the complaint that he was desirous to purchase a residential flat of his choice from the Respondent and after mutual discussions; the Complainant was allotted an Apartment No.604, in the 6th Floor, in Block No. C-23 being 3 BHK (3 bedroom, hall & kitchen) with the built up area of 1943 sq.ft. and all inclusive price of approx. Rs.98,53,569.30. The Agreement of Sale was entered into on 04.03.2016 between the Complainant and the Respondent, for the purchase of 0.036% undivided share, right, title and interest equivalent to 748.80 sq.ft. out of the larger extent of land, admeasuring an extent of 20,70,791 sq.ft.

2. The Complainant has further submitted that on the date of entering into the Agreement of Sale, a Construction Agreement was also entered into between the Respondent and the Complainant, for construction of the selected flat by the Complainant being a 3 BHK Apartment, bearing Apartment No.604, in the 6th Floor, in Block C-23 in the residential complex known as "Purva Windermere", having a built up area of 1943 sq.ft. or thereabouts inclusive of balcony, inclusive of floors, ceiling and walls between the apartment and the common area appurtenant thereto, together with one covered car park.

3. The Complainant has also submitted that in pursuance of the Agreement of Sale and Construction Agreement both dated 04.03.2016, the Respondent herein conveyed the undivided share of land to the Complainant by virtue of a registered Sale Deed dated 22.06.2016,

registered as Document No.6513 of 2016, before the Joint Sub Registrar-I, Chennai South, after receiving the entire sale consideration towards conveyance of the undivided share in the land. The Complainant has further stated that as per the third Partial Completion Certificate dated 01.09.2017, the flat/apartment booked and purchased by the Complainant was supposed to be completed. In pursuance thereof, on 04.06.2018, the Respondent after having intimated to the Complainant, made arrangements to handover possession of the flat/apartment purchased by the Complainant.

4. The complainant has further stated that the Respondent has adopted unfair means by allotting car parking at their whims and fancies, completely ignoring not only the right, but also the convenience of other flat owners, including the Complainant, by allotting car parking totally away from their vicinity of the flat, only to cause inconvenience and hardship to them, despite they being early birds in booking the flat and paying the margin amount, well within the definition as coined out by the Respondent towards the sale consideration. Furthermore, the grievance of the Complainant is also that the Respondent has allotted open car parking on the compound sideways and adjacent to pavement roads, as well as over and above the manhole lids of water sumps. The Complainant has also submitted that the Respondent is flouting all the Development Control Rules by gobbling up the entire lands earmarked for OSR by planning and seriously attempting to put up the sports amenities in the said land.

5. The Complainant has prayed for the following reliefs:

- a) *Allot a covered car parking to the Complainant, in tandem to the tower block where the complainant is residing viz. Flat No.604, in the 6th Floor, Block C-23, Purva Windermere, Bhavani Amman Koil Street, Pallikaranai, Chennai – 600 100.*
- b) *Direction to the Respondent to restrain them from in any manner usurping the OSR land and to provide outdoor amenities in the places earmarked for the same as per the Master Plan, within the compound of the project.*
- c) *Direction to the Respondent to take effective and adequate measures for provision of water solution both running water as well as potable water throughout the year sufficiently, without having recourse to outsource the same, which otherwise will incur huge expenditure to the flat owners/members; and*
- d) *Director to the Respondent to draw a Master Plan to provide self sufficient and uninterrupted water supply within the compound premises, in future.*

6. In the Counter Statement of Objections, the Respondent has submitted that the project was completed in its entirety in 2017 and Completion Certificates for the respective blocks in the Project were issued by the Chennai Metropolitan Development Authority (CMDA) on

10.06.2016, 08.09.2016 and 01.09.2017, copies of which has been attached and marked as Annexure-I (typed set of documents of the Respondent). The Respondent has further submitted that by submitting the Complaint, the Complainant has falsely represented that the subject matter of the Complaint falls within the jurisdiction of this Authority, where none exists.

7. The Respondent has also submitted that the law relating to registration of projects is well established and Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 (the "Act") read with Rule-2(h)(ii) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (the "Rules") enacted by the State of Tamil Nadu makes it abundantly clear that only those projects that have not received Completion Certificate and/or Occupancy Certificate are to be registered under the Act, and consequently be treated as on-going projects. Jurisdiction of the Real Estate Regulatory Authority is, therefore, limited to such projects and explicitly excludes completed projects that have received Completion Certificate from the relevant local planning authority.

8. The Respondent has further stated that Rule-2(h)(ii) of the Rules explicitly states that registration of a Real Estate Project is exempted where all development works have been completed as per the Act and certified by the competent agency and application has been filed with the competent authority for issue of Completion Certificate. As development and construction activities were completed and application for the Completion Certificate was filed on 10.02.2017, prior to the Act

coming into force on 01.05.2017, this project is therefore exempted from registration under the Act.

9. In the written submission of arguments, the Complainant has submitted that the Complainant has received communication from the Respondent vide their communication dated 23.08.2018, that the Complainant's flat tower is ready and possession would commence from 23.08.2018 onwards and in the said communication, it is clear that the Respondent has requested the apartment owners including the Complainant to come forward to carryout joint inspection of their respective units. The said communication of the Respondent dated 23.08.2018 is produced as document in Sl.No.12 of typed set of documents by the Complainant. If it is a case of the Respondent, that Completion Certificate has been issued, as early as on 01.09.2017, then what is the explanation for joint inspection, before delivery of possession of the flat in the month of August, 2018. Therefore, on this score itself, the falsity of the Respondent is exposed in as much as the entire project was on ongoing project whilst commencement of the Act and that the project has not been completed and the project is still in progress and completion was carried out in its entirety only by mid of 2019.

10. The Complainant has further submitted that the Respondent has compensated the Complainant as per the Construction Agreement dated 04.03.2016 filed as document in Sl.No.6 for the detailed handover, beyond 30.09.2017 and in such process, the Respondent has paid a compensation of Rs.20,910/- as compensation at the rate of Rs.3000/- per month for 7 months for the period from October, 2017 to April, 2018

and the same is an admitted fact by the Respondent vide their communication dated 01.06.2018. Therefore, from the aforesaid explanations, it should be very clear that the project under question is an ongoing project.

11. The Respondent has not filed any written submission of arguments.

12. The Authority has examined the Complaint, the Counter Statement of Objections filed by the Respondent and the written submissions of arguments filed by the Complainant, carefully.

13. The Division Bench of the Hon'ble High Court of Madras in CMSA No.22 of 2019 dated 15.09.2020 in the case of Subashini Thulasiram Vs. M/s. SPR & RG Constructions Pvt. Ltd., has held that the Real Estate Projects for which the applications for Completion Certificate have been filed on or before 01.05.2017 alone are eligible for exemption from registration with this Authority.

14. Applying this judgment, this Real Estate Project is exempt from registration with this Authority.

15. However, the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in its order in Appeal No.75/2019 dated 09.11.2020 in Olympia Grande Apartment Owner's Welfare Association Vs. M/s. KSM Nirman Private Limited has held that the RERA provisions specifically contemplated with regard to redressal of grievances under the RERA Act irrespective of their registration since the jurisdiction of Civil Court is barred.

16. Taking judicial notice of the above rulings of the Hon'ble Tamil Nadu Real Estate Appellate Tribunal, this Authority holds that this Complaint is maintainable. Therefore, this Authority directs the Respondent promoter to file a detailed Counter Affidavit with reference to the reliefs prayed for in the Complaint before 31.08.2021 with copy served on the Complainant.

17. The date and time of next hearing will be communicated separately on receipt of the Counter Affidavit.

Sd/-...19.08.2021

MEMBER (M), TNRERA


Sd/-...19.08.2021


MEMBER (J), TNRERA

Sd/-...19.08.2021

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


19-8-21