



**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.112/2022

20th day of April, 2023

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

Tvl.

1) S. Ganesan]	
2) Pradeep Konnath]	
3) Rubi Sharobini]	
4) Kamalakannan]	
5) Unni Krishnan]	Complainants
6) Sivanandam]	
7) Anuradha]	
8) Muniyandi]	
9) Vinod Kumar]	

Versus

1) M/s. Real Value Promoters Pvt. Ltd.]	
Represented by Thiru Kolappan]	
2) Neelkamal Apartments Buyers Association]	Respondents
Represented by its Secretary]	
Thiru G. Saravanan]	

The above Complaint came up for final hearing before this Authority in the presence of M/s. R. Chandrasudan and A.K. Rajaraman - Counsel for

Complainants and of M/s. Jayanthi K Shah - Counsel for 1st Respondent and of the 2nd Respondent called absent. This Authority passes the following order:

FINAL ORDER

The Complainants have stated in their Complaint that they had purchased residential apartments from the Real Value Promoters Private Limited (RVP) the 1st Respondent herein in their project "Neelkamal" at S.No.101/1, Kazhipattur Village, Chengalpattu Taluk, Kancheepuram District, Rajiv Gandhi Salai, Old Mahabalipuram Road, Kazhipattur.

2. The Complainants have further submitted that the project was promoted in March, 2010 and came to a standstill during the year 2013 and still remains incomplete.

3. It is also stated by the Complainants that the 2nd Respondent Association (NABA) herein approached this Authority reportedly representing 91 of their 150 members by way of a complaint in C.No.80 of 2020 under Section 31 of RERA Act, 2016. This Authority has permitted the Respondent Association (NABA) under Section 8 of the Act to carry out the remaining construction of the apartment in this real estate project as well as the common amenities at the risk and cost of the 1st Respondent promoter Real Value Promoter.

4. The Complainants have further submitted that without getting the written consent from the 221 members of the other Association namely Kazhipattur Neelkamal Owners Association (KNKOA) and without making

proper financial arrangement towards executing the common amenities, the 2nd Respondent Association (NABA), has, in consonance with the order but in contravention of the condition set in by this Authority, proceeded with the execution of works relating to common amenities particularly road construction activity utilizing the accumulated maintenance corpus to the tune of Rs.35.00 lakhs unauthorisedly.

5. The Complainants have prayed for the following relief (s) in their complaint.

- a) To direct the 2nd Respondent Association (NABA) now the mandate holder in place of the promoter to refund the maintenance corpus amount to the tune of Rs.35.00 Lakhs (to produce a certified statement of bank account) that was spent for road construction totally violating the RERA orders within one month to the other Association namely Kazhipattur Neelkamal Owners Association (KNKOA) account and thus render justice.
- b) Direct the 2nd Respondent Association (NABA) in line with the orders of RERA reference cited above, to complete all the pending common amenities within a time schedule to be worked out in consultation with the 1st Respondent Promoter (RVP) in any case before 31.10.2022 and take refund from the original promoter RVP including cost overrun if any.
- c) Restraining the 2nd Respondent from demanding further contribution from the Complainants towards completion of all

the common amenities.

- d) Directing the 1st Respondent Promoter (RVP) and 2nd Respondent Assn. (NABA) to discuss immediately within two weeks and submit their joint action plan towards completing the common amenities indicating the cost, timeline, no. of days required for completion, tentative date of start of work etc. individually.
- e) Pass such further or other orders as this Authority may deem fit particularly for submission of false information with regard to registration status and for violation of the condition stipulated by this Authority that are proper in the circumstances of the case and render justice.

6. In the Counter Affidavit, the 1st Respondent Promoter has submitted that it had already provided drawings, approved plans, structural designs, etc. required by the 2nd Respondent to carry out the remaining construction and the same has been complied with. The 1st Respondent has also submitted that this Respondent Promoter is not entering into any sale/financial transaction respect of this real estate project from the date of pronouncement of the order.

7. The 1st Respondent has further submitted that it had handed over the maintenance to the Association and therefore any issue with regard to maintenance cannot be made as against the 1st Respondent. The relief in clause a, b, c and e are for direction against the Association. If the Complainants have any dispute against the Association, they will have to

vent it out before the appropriate Forum as the same is not within the scope of statute in RERA or the Rules framed there under.

8. In the Affidavit filed on behalf of the 2nd Respondent Association, it has been submitted by the 2nd Respondent that the present Complaint as such is not maintainable as per Section 31 of the Real Estate (Regulation and Development) Act, 2016, read with its Rule-37(1), since there is no violation or contravention of the provisions of Act or its rules and regulations by this 2nd Respondent. The 2nd Respondent Association has also submitted that the main averments in the present complaint are relating to alleged deviation or violation, etc., of the Order dated 19.08.2021 in the C.No.080/2022, hence, the grounds and the averments in the present complaint are outside the purview of Section 31 of the Real Estate (Regulation and Development) Act, 2016, read with its Rule 37(1), thus, the present Complaint deserves to be dismissed.

9. The 2nd Respondent Association has further stated regarding the averments of the Complainants that this 2nd Respondent stepped into the shoes of the 1st Respondent, when that being the ground of the Complaint, then the 1st Respondent has become non-est.

10. The 2nd Respondent Association has also stated that the present Complainants are members of Kazhipattur Neelkamal Owners Association with 221 members/owners in the Project "NEELKAMAL" promoted by the 1st Respondent, had deliberately not joined the said Association as part to this instant Complaint, thus, the instant Complaint is bad in law for non-joinder of necessary and interested parties to the case and to hear them to put forth their facts for better adjudication of the case. Even otherwise the Complaint is not maintainable.

11. It is further submitted by the 2nd Respondent Association that since the final order directs the builder only to reimburse the amount spent only the flat owners need to contribute and get the repayment. In this case the Complainants shall pay their per capita contribution of Rs.2,67,151/- towards completion and take it from the builder/1st Respondent later as they had mistakenly paid 100% for an incomplete project.

12. Regarding the said approach road project carried out by the Complainants' Association Kazhipattur Neelkamal owners Association (KNKOA) where the Complainants herein are members with the available funds as NABA/2nd Respondent is not directly connected in any process of the road project including demand of funds inviting quotation finalizing the vendor and disbursement of payments, but NABA/2nd Respondent and KNKOA had entered into an MOU before the commencement of the Road Project in order to define scope and responsibility of each Association.

13. Regarding the averments that the NABA/2nd Respondent Society is not a registered Association the 2nd Respondent Association has submitted that this Association was registered in July 2015 and registration certificate and number were given by the concerned authorities. Since then, annual renewal has been promptly done after approval of audit report in AGM. The member's list is updated as per the norms of the Registrar Office.

14. This Authority has examined the Complaint, the Counter Affidavits file by the 1st and the 2nd Respondents, carefully.

15. The 1st Respondent has no locus in this Complaint as the 2nd Respondent Association has stepped into the shoes of the 1st

Respondent Promoter as per the orders of this Authority under Section 8 of the Act.

16. The 2nd Respondent Association has clarified its role relating to the approach road project carried out by another association in this real estate project.

17. The 2nd Respondent has also referred to the MoU entered between the 2nd Respondent Association and the other Association M/s.Kazhipattur Neelkamal Owners Association (KNKOA) dated 27.05.2022. As per clause 3 of this MoU, KNKOA with due scrutiny process shall award the road construction project work to the lowest bidder as the case may be in concurrence of the KNKOA Executive Committee.

18. In view of the above submission by the 2nd Respondent, the prayer of the Complainants to direct the 2nd Respondent Association to refund Rs.35 lakhs spent for road construction is rejected as devoid of merits.

19. Regarding other prayers, this Authority holds that it is for Allottees to pay the required sums to the 2nd Respondent Association to carry out the remaining construction of the apartments in this real estate project (excluding Annex Blocks) as well as common amenities in this real estate project at the risk and cost of the Respondent Promoter.

20. With the above findings, this Complaint is disposed of.

Sd/-...20.04.2023

MEMBER (M), TNRERA

Sd/-...20.04.2023

MEMBER (J), TNRERA

Sd/-...20.04.2023

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N. Prasad 20/4/2023
ADMINISTRATIVE OFFICER

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20.4.23

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