



**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.113/2022

20th day of April, 2023

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

Tmt. M. Mahalakshmi ... Complainant

Versus

M/s. Arun Excello Homes Pvt. Ltd.]
Represented by its Managing Director] Respondent

The above complaint came up for final hearing before this Authority in the presence of the Complainant party in person and of Mrs. R.Kamala Rani and R.Cavery Selvan – Counsel for Respondent. This Authority passes the following order:

FINAL ORDER

The Complainant Tmt. M.Mahalakshmi has submitted in the Complaint that she had purchased the apartment vide Flat No.210, Block 4, Four Greens, Mathur, Sriperumbudur Taluk, Kanchipuram District, Tamilnadu-602 105, vide document No.441/2017 Office of the Sub-Registrar, Sunguvarchatram from M/s. Arun Excello Homes Pvt. Ltd., 18, Bhattad Towers, West Cott Road, Royapettah, Chennai-600 014 on 06.03.2017.

2. The complainant has further submitted that on 10.5.2017, while handing over the key of the apartment, relevant documents and approved plans were not handed over to her and also with no electricity facility. Even after the lapse of five years the promoter had failed from his obligation to enable formation of an association/society to represent the interests of the flat buyers. It is also submitted by the Complainant that the promoter continues to collect the maintenance and other charges indefinitely by means of harassing and disconnecting civic infrastructure facilities such as electricity, drinking water etc. and collected money of Rs.1,41,157.50 on 22.07.2022, through SBI cheque No.913746.

3. The Complainant has sought the following reliefs in the Complaint.

- i. take necessary steps for registering an association or society of flat owners with the appropriate authority in accordance with Section 11(4)(e) of RERA Act,2016 and

- ii. Handover the physical possession, the necessary documents, and plans, including common areas, to the society of the allottees or to the allottees, as the case may be, in accordance with Section 17 of RERA Act, 2016 and other relevant Acts and Laws and provide justice.

4. In the Counter Affidavit, the Respondent Promoter has submitted that the project 'Four Greens' was launched in 2016 and promoted much earlier to the enactment of RERA and the approvals were also obtained prior to the RERA coming into effect. It is also stated by the Respondent that the block occupied by this Complainant was also completed before the RERA coming into effect. Also the Respondent has submitted that the Block No.3 alone was registered under TNRERA. Hence it is submitted the blocks were constructed and completed in phased manner. Regarding formation of the Association of allottees, the Respondent has submitted that the Association for entire project can be formed only after the completion of the entire project. It is also submitted by the Respondent that the blocks were completed and handed over at various points of time viz. the Blocks 1, 2 & 4 were completed in June 2017, Block 5 was completed during May 2018 and Block 3 was completed in April 2019.

5. The Respondent has also submitted that Blocks 1, 2, 4 & 5 were exempted from registration under Rule 2(h)(iii) Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 and the completion of the respective Blocks 1,2,4 & 5 were only recorded in the RERA website and the Block 3 is registered under TNRERA under project registration number TN/01/Building/0119/2017 dated 13.10.2017.

6. The Respondent has further submitted that due to the non-payment of maintenance charges by many of the apartment owners, the Respondent was compelled to continue with the maintenance service in order to collect the dues from the defaulters and the apartment owners are paying maintenance charges in installments.

7. Also the Respondent has submitted that since the completion of all the blocks were done in phases; the Respondent was forced to maintain the project till the completion of all the blocks. As the final phase was completed in April 2019, as agreed by the Respondent, the maintenance of the project was to be carried until April 2020.

8. The Respondent has further submitted that due to Covid-19, the Respondent was not able to convene any meeting for formation of Association and the Respondent was carrying out the maintenance even during lockdown without any break by providing all essential services to the residents who were fully satisfied with the service. The Respondent has also stated that till date, the Respondent has been continuing to provide the maintenance services with the support and co-operation of the residents.

9. It is also stated by the Respondent that all the documents pertaining to the said apartment including of the approved plans, etc. was handed over to the financial institution for availing the housing loan by the Complainant. Further, the Complainant had also signed a MOU dated 10.05.2017 with this Respondent on satisfaction of the services provided by this Respondent.

10. The Respondent has also denied the allegations made in para 3, 4 & 5 of the Complaint and submitted that the Complainant failed to remit the maintenance charges subsequent to the period of maintenance of one year undertaken by this Respondent. Hence a demand was made from the facility team of this Respondent to remit the maintenance charges by the Complainant which accumulated to the tune of Rs.1,41,157.50 from April 2018 to March 2023.

11. In the Rejoinder filed by the Complainant, it is submitted that as per Section 17(2) of the RERA Act, 2016, the promoter has the responsibility to handover the necessary documents such as plans and occupancy certificate etc., only to the purchaser and not to the financial institution. So, his statement that he had handed over the documents to the financial institution is irrelevant and it is not in accordance with the law. The Complainant has further stated that the electricity connection to the apartment was provided later after 18.05.2017.

12. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter, the Rejoinder filed by the Complainant, arguments made by both sides and the written submission of arguments filed by the Respondent Promoter carefully.

13. The Respondent Promoter has submitted that the final phase was completed in April, 2019 and as agreed by the Respondent Promoter, the maintenance of the project was to be carried until April, 2020. Due to Covid-19, the Respondent was carrying out the maintenance even during

lockdown without any break and the Respondent has been continuing to provide the maintenance services till date.

14. As per Section 11(4)(e), the Promoter shall enable formation of Association of Allottees. However, Association of Allottees can be formed only by the Allottees of this real estate project voluntarily as members of the Association of Allottees which can be registered as a Society under the TN Societies Registration Act.

15. Therefore, while the Respondent Promoter shall enable formation of the Association of Allottees for this real estate project as per Section 11(4)(e) of the Act, it is also the duty of the Allottees of this real estate project to join together and voluntarily form the Association of Allottees and register the same with the Registrar of Societies.

16. Therefore, this Authority directs the Respondent Promoter to enable formation of Association of Allottees in a time bound manner before 31.07.2023.

17. This Authority also directs the Complainant Allottee as well as all other Allottees in this real estate project to form an Association of Allottees for the purpose of maintenance of common areas in this real estate project before 31.07.2023. The Respondent Promoter shall communicate a copy of this order to all the Allottees of this project in this regard.

18. On formation and registration of Association of Allottees for this real estate project, this Authority directs the Respondent Promoter to

handover the maintenance of common areas to the Association of Allottees before 30.09.2023.

19. This Authority also directs the Respondent Promoter to handover the necessary documents relating to this real estate project to the Association of Allottees namely; copy of the Planning Permission along with approved plan/drawings, Building Permit issued by the concerned Local Body, title documents, electrical and plumbing drawings and other documents necessary for the maintenance of the common areas by the Association of Allottees. This shall be complied with by the Respondent Promoter before 30.09.2023 in accordance with Section 17 of the Act.

20. With the above directions, 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. Anand
20/4/2023
ADMINISTRATIVE OFFICER

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20.4.23