



**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.144/2022

20th day of July, 2023

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

Tmt. Vysali Gowrishankar ... Complainant

Versus

1) M/s. Origin Homes]
Represented by its Proprietrix]
Tmt. Megala Dhinakaran] Respondents
2) Tmt. J. Komala]
3) Thiru J. Ragnathan]
4) Ms. J. Bhuvaneshwari]

The above Complaint came up for final hearing before this Authority in the presence of M/s. R. V. Lakshmi pathy - Counsel for Complainant and of M/s. Aditya Suresh - Counsel for 1st Respondent. Respondents-2, 3 & 4 called absent. This Authority passes the following order:

ORDER

The Complainant has submitted in the Complaint that she has booked Row Villa No.7C with super built up area of 2,650 sq.ft. with UDS of 1,150 sq.ft in the project "Blossom" developed by the Respondent herein at Okkiam Thoraipakkam Village, Sholinganallur Taluk, Chennai-600 097 for consideration of undivided share of land cost of Rs.45,00,000/- and construction of building is Rs.1,00,00,000/- totaling to Rs.1,45,00,000/- which includes registration expenses.

2. The Complainant has further stated that the Sale Deed dated 9.3.2022 was executed in respect of 1150 sq.ft. of undivided share of land and the Deed of Construction was also executed on 9.3.2022.

3. The Complainant has also submitted that as per demand of the 1st Respondent, she has paid Rs.51,87,200/- up to the date of registration of Sale Deed and further within another one month Rs.20,62,800/- paid towards part of construction cost itself. The earth work commenced on 13.3.2022, but stands incomplete. The Complainant has also submitted that so far she has paid 50% of total cost of land and building.

3. It is also stated by the Complainant that she has been put to hardship and mental agony due to the 1st Respondent's substandard work even in the earth work itself. Further despite the Complainant's request, the 1st Respondent has not rectified the substandard work.

4. The Complainant has prayed for the following reliefs in the Complaint.

- a) To return the amount in the sum of Rs.22,50,000/- (after deducting the land cost of Rs.45 lakhs and Rs.5 lakhs towards the cost of construction made so far) received by the first Respondent from the Complainant in respect of construction of Row Villa House No.7, which is more particularly mentioned in Schedule "D" hereunder, by cancelling the deed of construction dated 09.03.2022 and registered as Document No.2739/2022 on the file of SRO, Neelankarai together with interest at the rate of 24% p.a. from the date of deed of construction agreement dated 09.03.2022 as per Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016.
- b) To permit the Complainant to engage any other builder to construct the Row Villa No.7C which is more particularly mentioned in Schedule "D" hereunder as per sanctioned building plan and
- c) To pay costs of the complaint and to pass such other order as deems fit in the circumstances of the case and thus render justice.

5. In the common Counter Affidavit filed by the 1st Respondent Promoter, it has been submitted that the present Complaint is not maintainable both in law and facts and the Complainant Mrs.Vysali Gowrishankar has typically been actively represented by one

Mr.Paranthaman who is the father-in-law of the Complainant and also who claims to be a retired police officer. Also it is submitted by the 1st Respondent that the Complainant failed to disburse the payments as agreed in the construction agreement dated 09.03.2022. Further the 1st Respondent has stated that the Complainant's father in law who claims to be a retired police officer had been indulging in threatening the workers at the construction site and acting as a barrier against the peaceful work carried on at the site.

6. The 1st Respondent has also submitted that the Respondent Company has completed the foundation level as on the date of the Complaint. Also the project was registered and approved by this Authority vide registration dated 05.01.2023.

7. The 1st Respondent has further submitted that the entire works in the project site is stalled due to the rude behavior of the Complainant and employees and labourers are afraid to enter the project site because of the Complainant. The 1st Respondent has also stated that as on date all the Villas in the project have been sold out to their customers. The 1st Respondent has also submitted that the Respondent Company is not willing to refund the amount received from the Complainant as on date i.e. Rs.72,50,000/- after deducting the registration charges incurred by the Respondent Company.

8. This Authority has examined the Complaint, the Interim Application Nos.43/2022 and No.44/2022, the Counter Affidavit filed by the 1st Respondent Promoter, the Reply statement on the I.A. as well as on the main Complaint filed by the 1st Respondent Promoter, the Memos filed by

the Complainant, arguments and written submission of arguments carefully.

9. The gist of the Complaint is that the Complainant has alleged that the Respondent Promoter has done substandard work even in the earth work/foundation and has prayed for refund of amount paid by the complainant after deducting the land cost and the cost of construction made so far and to permit the Complainant to engage any other Builder to construct the Row Villa No.7C.

10. The Respondent Promoter has vehemently denied the contention of the Complainant Allottee regarding the substandard construction. The 1st Respondent Promoter has further stated that all other Villas have no complaints from the respective buyers.

11. The Authority notes that this real estate project comprising of 19 Villas are registered with this Authority vide registration No.TN/29/Building/0014/2023 dated 05.01.2023.

12. The Respondent Promoter has also submitted that the delay in completion of this villa booked by the Complainant Allottee is only due to the acts of disruptions/obstructions of the Complainant herself by deploying her father-in-law, a retired police officer.

13. The Respondent Promoter has also stated that the prayer of refund cannot be entertained as the said amount has already been invested in the building of the basement of the building, building of the concrete sump and thorough water proofing using MIVAN technology.

14. The Respondent Promoter has also submitted that under Section 51 of the Indian Contract Act, 1872 the builder i.e. the

1st Respondent is not bound to deliver the Villa unless the Complainant refrains from obstructing the construction activities.

15. As per Section 53 of the above Act, it is the 1st Respondent who is entitled to repudiate the agreement and seek damages against the Complainant and not otherwise.

16. The Authority notes that the Complainant Allottee has not furnished any independent technical assessment of the standard of construction work by a qualified Engineer.

17. The Complainant Allottee has merely furnished certain photographs of the site under construction.

18. Similarly the 1st Respondent Promoter has also enclosed certain photographs of the site under construction.

19. Therefore, this Authority under Section 35(2) of the Act read with Rule 25(2) appoints Er. M.Krishnamoorthy, Executive Engineer (Retd.), PWD to inspect the subject site under construction to assess the quality of construction made by the 1st Respondent Promoter and to submit his report before 30.09.2023.

20. The independent Engineer will be paid a honorarium of Rs.50,000/- plus the travel and other incidental expenses incurred in respect of this assignment. This amount shall be equally shared and payable by both the Complainant Allottee and the 1st Respondent Promoter.

21. Initially an amount of Rs.25,000/- each shall be paid to this Authority before 10.08.2023 by the Complainant Allottee and the

1st Respondent Promoter. The actual travel and other incidental expenses incurred by the Independent Engineer will be intimated separately.

22. This Authority will proceed with this Complaint on receipt of the report from the Independent Engineer.

Sd/-...20.07.2023
MEMBER (M), TNRERA

Sd/-...20.07.2023
MEMBER (J), TNRERA

Sd/-...20.07.2023
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N. Anand
20/7/2023
ADMINISTRATIVE OFFICER

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20-7-23