



**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.153/2022

20th day of July, 2023

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

Thiru M. Gokulnath ... Complainant

Versus

M/s. Padmavathi Realty Builders Pvt. Ltd.]
Rep. by Secretary, Thiru Subbuswami] Respondent

The above Complaint came up for final hearing before this Authority in the presence of the Complainant represented by its authorized representative and of M/s. Gowrishankar - Counsel for Respondent. This Authority passes the following order:

FINAL ORDER

The Complainant Thiru M. Gokulnath has submitted in the Complaint that he purchased on 25.10.2021 an apartment bearing No.42 along with one car parking in Block-C in Thaiyur Village, Chengalpattu Taluk, Kancheepuram District in the Project "Jagannath Orchid" developed by the Respondent Builder herein.

2. The only prayer of the Complainant is provision of Car Parking E25 (or) return of Car Parking payment of Rs.1,50,000/-

3. In the Counter Statement, the Respondent has submitted that the allegations made by the Complainant regarding car park is false and baseless. The Respondent has further submitted that it has not violated any rules or norms regarding car parking. It is also stated by the Respondent that the Complainant herein is the second owner of the flat, the Complainant did not purchase the flat from the Respondent herein. The Respondent sold the said flat to one Mr.P.Rajeswar. It is further submitted by the Respondent that the said Mr.P.Rajeswar purchased the said flat from the Respondent in the year 2012. He owned the flat for more than 12 years and did not even make any complaint regarding car park.

4. The Respondent has also submitted that the Complainant herein is the second owner having purchased the said flat from one Mr.P.Rajeswar in the year 2021. Hence, the Complainant has no direct contract with the Respondent herein. The car parking facility is an additional amenity provided to the interested customers on payment and the maintenance of the entire apartment complex including the car parking areas were handed over to the Apartment welfare Association after the completion of the project. Therefore the Complainant has nothing to claim from the Respondent now.

5. The Respondent has further stated that a mere reading of the complaint shows that the complainant is one Mr.M.Gokulnath, but the contents of the representation relates to one Mr.B.Sampath Kumar, seeming to be a retired Government employee. He is neither the past or

present owner of the said property and he has not established any right to represent the Complainant.

6. The Respondent has further submitted that the defect liability period is only one year from the date of handing over of the apartment and hence the present Complaint filed after nearly ten years is barred by limitation and not maintainable. Also the Respondent has submitted that it had already fulfilled their obligations and handed over the apartment with the promised amenities to the fullest satisfaction of the then purchaser Mr.P.Rajeswar. The Complainant cannot make any claim now from the Respondent as it is barred by limitation and not maintainable on facts and law also. Therefore, the Respondent has stated that the project referred to by the Complainant was done in the year 2010-12 and it was not covered under RERA Act which came into force much later. Hence the present Complaint is not maintainable as it is not applicable to the present project.

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

8. From the typed set of papers filed by the Complainant Allottee along with the Rejoinder, it is seen that on page No.11, the Respondent Promoter in their letter dated 21.06.2012, has informed the original purchaser Thiru P.S.Rajeswar that the Promoter has allotted one covered car park numbered as E25 for the apartment No.C42 in this real estate project.

9. On page No.14 of the above Rejoinder filed along with typed set of papers, the Bays Allotment sheet indicates that E25 has been allotted to Thiru P.S.Rajeswar relating to apartment No.C42 and car park D11 has been allotted to Thiru E.Indrajith relating to apartment No.F22.

10. Therefore, the Complainant Thiru M.Gokulnath who is the subsequent purchaser from Thiru P.S.Rajeswar is also entitled to the car park No.E25.

11. The Absolute Sale Deed executed on 25.10.2021 by the original purchaser Thiru P.S.Rajeswar and the subsequent purchaser the present Complainant Thiru M.Gokulnath, indicates the apartment No.C42 in Block-C with one car parking in the schedule of property (Page No.45 of the typed set of papers filed by the Complainant Allottee).

12. The Hon'ble Supreme Court has also upheld in its order dated 11.11.2021 in Civil Appeal Nos.6745 – 6749 of 2021 (Arising out of SLP (Civil) Nos.3711 – 3715 of 2021) in M/s. Newtech Promoters and Developers Private Limited versus State of UP and Others, etc. that the RERA Act, 2016 is retroactive in character.

13. Also 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 since the jurisdiction of Civil Court is also barred.

14. Also the definition of the "allottee" under Section 2(d) of the Act "includes the person who subsequently acquires the said allotment through sale, transfer.....".

15. Therefore, this Complaint is maintainable. Accordingly, this Authority directs the Respondent Promoter to hand over possession of the car park No.E25 to the Complainant Allottee before 31.08.2023.

16. With the above findings and direction this Complaint is disposed of.

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- *[Signature]*
20/7/2023
ADMINISTRATIVE OFFICER
[Signature]
20-7-23.