



**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.24/2022

23rd day of March, 2023

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

1) Tmt. G. Magdalin Joenita ... Complainants
2) Thiru V. James Pio

Versus

M/s. Indira Projects & Developments (T) Pvt. td.]
Represented by its Founder and Chairman] Respondent
Thiru M.D. Bhupesh Nagarajan]

The above Complaint came up for final hearing before this Authority in the presence of M/s. J.Justin Theobald – Counsel for Complainants and of M/s. A.Thiagarajan – Counsel for the Respondent. The Authority passes the following order:

FINAL ORDER

The Complainants have submitted in their Complaint that they booked a Unit/Villa No.51 in the project 'INDIRA's SS Avenue, residential villas developed by M/s. Indira Projects & Developments (t) Pvt. Ltd., at Puduchery Village, Sriperumbudur Taluk, Kancheepuram District, Tamil Nadu on 15.06.2017. Also an agreement for Sale and a Construction Agreement were entered into between the Complainant and the Respondent on 07.08.2017. The total cost payable by the Complainants for the said villa is Rs.30,88,050/- .

2. The Complainants have further submitted that the total amount disbursed from the Complainant as well as through loan facility availed bank PNB till date is Rs.26,90,618/- The Complainants have also stated that the overall outstanding amount to the Respondent is Rs.3,97,432/-and that 90% of cost of the villa has already been received by the Respondent. The Respondent was supposed to complete the construction of the said villa by 21.09.2018 as per the Agreement for Sale dated 07.08.2017 but the Respondent failed to complete the construction of the same within the specified period. It is also stated by the Complainant that as per the Construction Agreement, the date of handover of the villa is 12 months from the date of execution of the Sale Deed i.e. 21.09.2018.

3. The Complainants have also submitted that they have inspected the progress of the said villa on 20.04.2021 and found that the work has not been completed. The Complainants have further submitted that in response to the e-mail sent by the Complainants, the Respondent has sent

an email dated 30.05.2021 stating that once the pending works are completed the same would be updated to the Complainants.

4. The Complainants have prayed for the following reliefs in their Complaint.

a) Direct the Respondent to ensure completion of the remaining construction and handover the villa to Complainant in habitable condition along with all common amenities.

b) Direct the Respondent to pay a sum of Rs.50,000/- towards the legal expenses incurred in filing this complaint and compensation for an amount of Rs.15,00,000/- towards deficiency of service and unfair trade practices committed by the Respondent.

Pass such other orders as this Hon'ble Forum deems fit and thus render justice.

5. In the Counter Affidavit, the Respondent has submitted that the claim does not fall within the jurisdiction of this regulatory Authority. The present project Indira's S.S.Avenue was not registered under RERA and therefore the Complainant has no locus standi to file this case before this Authority. Admittedly the land area is 625 sq.ft. and the super built up area to be constructed is 1105 sq.ft. Therefore when the area is less than what is contemplated under the RERA Act, the present complaint is not at all maintainable. The Respondent has also submitted that the Respondent is a builder and the Complainant entered into the construction agreement on

07.08.2017 to build 1105 sq.ft. of building with this Respondent. Therefore, this Authority has no power to deal with this dispute and this Authority has no jurisdiction to pass an order with regard to the present dispute.

6. The Respondent has further stated with regard to the land that the owners obtained DTCP and the Complainant directly purchased the plot from the owners and only construction part was given to the Respondent. The entire plots were sold to several customers by the owners and the entire layout is developed by several builders and one such builder is the Respondent. The Complainant has not impleaded the land owners and therefore the complaint is liable to be dismissed for non joinder of necessary parties.

7. The Respondent has also referred to the Clause 29 of the Construction Agreement dated 07.08.2017 and as per this Clause 29, any dispute that may arise under the construction agreement shall be referred to an arbitrator.

8. It is also stated by the Respondents that as per the Construction Agreement, the total amount payable by the Complainant is Rs.33,29,130/- and the Complainant wrongly stated that the total amount is Rs.30,88,050/- and that he is liable to pay balance sum of Rs.3,97,432/- and 90% of the cost of the villa has already been received by the Respondent. Further it is submitted by the Respondent that the Complainant is liable to pay a sum of Rs.6,39,402/- to the Respondent and 90% of the work is completed and only 10% work to be completed for which the Respondent would incur a sum of Rs.3,08,805/- and the Respondent is ready to complete the construction and handover the villa

provided the Complainant pay a sum of Rs.6,39,402/- to this Respondent. Actually the amount to be received from the bank is Rs.1,54,402/- and the Complainant is liable to pay a sum of Rs.4,85,000/- to this Respondent which is the own contribution amount.

9. The Respondent has also referred to the Clause 25 of the Construction Agreement and as per clause; the Respondent shall handover possession to the Complainant within one month after completion of construction or after obtaining the entire payment due for the said construction as well as for the provision of amenities and various deposits from the Complainant. In the alternative, the Respondent has submitted that the construction could be completed with a sum of Rs.3,08,805/- and if the Complainant pay a sum of Rs.3,30,597/- to this Respondent, they can issue NOC to the Complainant so that they can complete the balance 10% construction.

10. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent and arguments made by both sides and written submission of arguments filed by the Complainants carefully.

11. The Respondent has contended that the Complaint is not maintainable on the ground that the land area is 625 sq.ft. and the super built up area to be constructed is 1105 sq.ft. Therefore, this Authority has no jurisdiction.

12. It is seen on page No.55 of the typed set of papers filed by the Complainants, the Layout on which the villa booked by the Complainants is located has been approved by the Deputy Director of Town and Country

Planning, Chengalpattu in 2015 with approved Layout No.115/2015. This Layout has an extent of 5.32 acres and has 93 approved plots.

13. The Respondent has developed this real estate project as 'Indira's SS Avenue' as may be seen from the receipt issued by the Respondent (page No.68 of the typed set of papers filed by the Complainant).

14. On page No.86 of the typed set of papers filed by the Complainant, the Respondent has sent a letter dated 18.03.2020 to the Complainant thanking him once again for selecting the Respondent as their preferred Developer for buying their dream house and it shall handover the unit by end April, 2020.

15. On page No.35 and 36 of the same typed set of papers filed by the Complainant, the Plot Development Charges Agreement between the Respondent and the Complainants states that the owners of the land measuring 5.32 acres had allotted the development of the entire extent exclusively to the Developer herein under the recital 'A' on page No.35 of the typed set of papers filed by the Complainant. It is further stated on page No.36 of the same typed set of papers that the purchasers had agreed to pay a sum of Rs.3,12,500/- as development charges to the Developer for developing the project layout into individual plots by demarcation, laying of roads, street lights, etc. in line with the approved plan and in accordance with the Rules of Directorate of Town and Country Planning.

16. Therefore, it is abundantly clear that the Respondent is the Promoter of this real estate project involving development of Layout as per

the approved plan and construction of Villas and marketing, booking of Villas to the prospective buyers including the Complainant Allottee.

17. On page No.21 of the typed set of papers filed by the Complainants (Construction Agreement dated 07.08.2017), the Schedule B refers to the residential Villa bearing No.51, Ground Floor only, project namely 'Indira's SS Avenue' to be constructed on the land, more particularly described in the Schedule A above measuring about 1237 sq.ft. build up area containing two bed rooms, a living cum dining, kitchen and two toilets.

18. Therefore, this Authority holds that the Respondent is the promoter of this real estate project namely Indira's SS Avenue involving development of Layout measuring 5.32 acres approved in DTCP Layout No.115/2015. Therefore, this Complaint is maintainable. Also as the Construction Agreement itself has been entered on 07.08.2017 and the Villa has not been completed till date and accordingly this real estate project is an ongoing project as on 01.05.2017 the date of commencement of Section 3 of the Act.

19. Therefore, this Authority directs the Respondent Promoter to register this real estate project with this Authority before 31.05.2023.

20. The Respondent Promoter itself admitted that the Villa is yet to be completed as per the Construction Agreement. Therefore this Authority directs the Respondent Promoter to ensure completion of the remaining construction strictly as per the Construction Agreement dated 07.08.2017 and handover the Villa to the Complainant Allottee in habitable condition

before 30.06.2023 after receiving the balance sale consideration, if any, strictly as per the Construction Agreement.

21. With the above findings and directions, this Complaint is disposed of.

Sd/-...23.03.2023

MEMBER (M), TNRERA

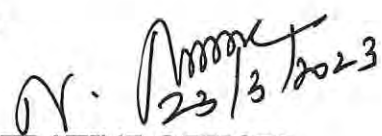
Sd/-...23.03.2023


MEMBER (J), TNRERA

Sd/-...23.03.2023

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


23-3-23