



**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.006/2022

2nd day of June, 2023

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

1) Tmt. Sumathy Ramachandran]
2) Thiru S. Ramachandran] Complainants

Versus

M/s. Madhav Associates]
Represented by its Sole Proprietor] Respondent
Thiru S.V.S. Kannan]

The above complaint came up for final hearing before this Authority in the presence of Ms. Hema Srinivasan – Counsel for Complainants and the Respondent called absent set ex-parte. This Authority passes the following order:

FINAL ORDER

The Complainants have submitted in the Complaint that they booked 2 flats (for the purpose of consolidating it into a single flat) in Block E in the Project "Sai Ram" at Zamin Pallavaram Village developed by the Respondent Promoter comprising the portions shown as Flat No.F1, F2, S2 in the drawings and documents (hereinafter referred Flat No.I) in Block E, for a total extent of 3325 sq.ft. built up area with undivided share of 2012 sq.ft. and another flat comprising the portion shown as Flat No.S1 in the drawings and documents (hereinafter referred Flat No.II) in Block E, for a total extent of 526 sq.ft., built up area with undivided share of 318 sq.ft.

2. It is also submitted by the Complainants that they entered into two Agreements for sale, both dated 21.03.2016, with the Respondent builder, acting in his capacity as the power agent of the Landowners. Subsequently, the Complainants entered in two Builder's Agreements dated 05.05.2016, with the Respondent Promoter.

3. The Complainants have also stated that the Respondent has not registered the Project in RERA.

4. The Complainants have further submitted that on 26.05.2016, two Absolute Sale Deeds were executed by the Respondent, as the power agent of the Landowners, in favour of the Complainants. Also the Respondent undertook to complete the construction within 12 months from the execution of the Builder's Agreement dated 05.05.2016, i.e. on or before 05.05.2017. However, the Respondent failed to complete

construction as agreed, by 05.05.2017, and assured the Complainants that the work would be completed shortly.

5. It is further submitted by the Complainants that when the Complainants visited the site in August, 2018 to ascertain the status of construction since the project had been inordinately delayed, nowhere the construction matched the representations made by the Respondent and was merely at the level of laying foundation. In February 2021, the Respondent assured the Complainants that he would visit the site with the contractor for commencing construction but did not honour the same.

6. The Complainants have further stated that out of the agreed total consideration of Rs.1,40,00,000/- for the construction and development of flats, the Complainants have already paid an amount of Rs.1,30,08,440/- amounting to 92.80% of the total consideration has already been paid to the Respondent Builder and yet even as on date only a skeletal structure has been made.

7. The Complainants have prayed for the following reliefs.

- a) To direct the Respondent to register the Project under Section 3 of the Real Estate (Regulation and Development) Act, 2016 and also comply with the terms thereof.
- b) To immediately deposit into escrow amounts collected by the Builder in accordance with the requirements under RERA.

- c) To direct the Respondent to produce accounts, statements and bills relating to project Sai Ram.
- d) To complete the Construction of Project Sai Ram, and immediately hand over Block E or in the alternative to pay back the amounts already paid by the Complainants i.e. Rs.,30,08,440/- with 18% p.a. so that the Complainants can get the construction completed by an alternative builder.
- e) To direct the Respondent to submit to this Authority weekly updates on status of construction with a copy to the Complainants.
- f) To pass such further orders or directions in consideration of the facts and circumstances of the case.

8. In the Affidavit filed by the Complainants, the Complainants have submitted that upon consideration prefer to go by the relief of possession of the flat and the Complainants prayed this Authority to take the prayer of the Complainants on record and may be pleased to proceed with the case on the basis of the same.

9. This Authority has examined the Complaint, the Affidavit filed by the Complainant on 04.11.2022 and the written submission of arguments filed by the Complainant carefully.

10. This Authority notes that even though a copy of the Complaint has been served on the Respondent Promoter, the Respondent Promoter has not appeared in any of the hearings conducted by this Authority and they have not filed the Counter Affidavit after giving several chances to file

the Counter Affidavit in respect of this Complaint. Therefore, this Authority is passing orders ex-parte.

11. It is seen that the Respondent Promoter has received Rs.1,30,08,440/- amounting to 92.80% of the total consideration from the Complainants and that even as on date only a skeletal structure has been constructed.

12. From the sale deeds executed by the Respondent in favour of the Complainant Allottees (page No.50 to 93 of the typed set papers filed by the Complainants), the land to be developed by the Respondent Promoter is 11894 sq.ft. (page No.63 of the typed set of papers filed by the Complainants). As it exceeds 500 sq.mtr. and as this real estate project is yet to be completed in all respects, this real estate project is an ongoing project as on 01.05.2017, the date of commencement of Section 3 of the Act. Accordingly, this real estate project should have been registered with this Authority which has not been done so far by the Respondent Promoter.

13. Therefore, for non registration of this real estate project with this Authority by the Respondent Promoter, this Authority under Section 59 of the Act imposes a penalty of Rs.10,00,000/- (Rupees Ten Lakhs only). This penalty shall be paid before 31.08.2023.

14. From the written submission of arguments and the correspondences between the Complainants and the Respondent Promoter as furnished by the Complainants in the typed set of papers, it is abundantly clear that the Respondent Promoter has inordinately delayed

this real estate project without completing the apartments allotted to the Complainant Allottees in all respects as per the Builder's Agreements executed with the Complainant Allottees and abandoned this real estate project (page No.19 to 42 of the typed set of papers filed by the Complainants).

15. The Complainant Allottees have also filed an Affidavit stating that they would like to have the relief of possession of the flats.

16. Accordingly, this Authority under Section-8 of the Act permits the Complainant Allottees to take possession of the flats in as is where is condition i.e. Block-E F1 & F2 in the First Floor and Flat No.S2 in the Second Floor constructed super built up area of 3325 sq.ft. together with one reserved car park which includes all common areas and Block-E Flat No.S1 in Second Floor constructed super built up area of 526 sq.ft. together with one reserved car park which includes all common areas and carry out the remaining pending works which have been furnished in the list of pending works as on 28.12.2021 in Annexure 13 (page No.133 of the typed set of papers filed by the Complainants) at the risk and cost of the Respondent Promoter.

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

Sd/-...02.06.2023

MEMBER (M), TNRERA

Sd/-...02.06.2023

MEMBER (J), TNRERA

Sd/-...02.06.2023

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


2.6.23