



**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.49/2023**

**29<sup>th</sup> day of January, 2024**

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

Thiru B. Vinoth

] Complainant  
]

Versus

M/s. Rajkham Infra Private Limited

Rep. by its Managing Director Thiru M. Arumugam

] Respondents  
]

The above Complaint came up for final hearing before this Authority in the presence of M/s. R. Ramasubramaniam Raja - Counsel for Complainant and of M/s. Arun G - Counsel for Respondent. This Authority passes the following order.

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**FINAL ORDER**

The Complainant has submitted in the Complaint that he had booked an apartment in project "Silver Crest" promoted by the Respondent Promoter herein at Madurapakkam, Chennai-600 048. The Complainant was allotted Flat No.D307 in Block IV, 3<sup>rd</sup> Floor in project "Silver Crest" at

Madurapakkam. As per the allotment letter, the total consideration was Rs.46,00,000/-. The Complainant has further submitted that the Complainant and the Respondent entered into Construction Agreement and Sale Agreement on 15.07.2019 and subsequently, they entered into a sale deed on 5.12.2019. The apartment was handed over to the Complainant on 25.01.2020.

2. The Complainant has further submitted that it was learnt within few months of taking possession of the apartment that the Respondent had mortgaged the entire project with Shriram Housing Finance Limited and executed the Sale Deed in favour of the Complainant only after getting a conditional NOC from the Shriram Housing Finance Limited. As per the NOC, the Respondent ought to deposit the entire sale consideration from the purchaser in an Escrow Account, failing which the NOC will be null and void. Further as per the Conditional NOC, the Respondent ought to not give possession of the flat till the entire amount is deposited in the Escrow Account, whereas the Respondent had suppressed all these facts and had executed the sale deed in favour of the Complainant.

3. Also the Complainant has submitted that subsequent to the Complainant taking possession of the apartment, the Complainant received an email from Shriram Housing Finance Limited on 16.12.2020, informing about the terms of the conditional NOC and also informed that the NOC will become null & void if there is any breach of NOC. Subsequently on 18.12.2020 the Complainant received another email from Shriram Housing Finance Limited informing that they are withdrawing the NOC as the Respondent had not deposited the entire sale consideration in the Escrow

account. There was a pending amount of Rs.7,00,000/- that was yet to be deposited in an Escrow Account. It is also stated by the Complainant that the Respondent was also party to the said email.

4. The Complainant has also stated that from December 2020, there has been several emails from Shriram Housing Finance Limited informing about the non-deposit of Rs.7,00,000 in an Escrow Account and filed these mails along with the Complaint.

5. The Complainant has further submitted that he has approached the Respondent on several occasions to clear the mortgage and get a NOC from Shriram Housing Finance and despite repeated promises the Respondent has not cleared the mortgage and get the NOC till date. The Complainant has also submitted that the Shriram Housing Finance Limited have visited the house of allottees in the project, including the Complainant house. Further, Shriram Housing Finance Ltd. had also issued a pre-SARFEASI demand notice dated 01.04.2023 on the compound wall of the apartment and the Complainant was shocked to see the said pre-SARFEASI demand notice.

6. Further the Complainant has submitted that the Respondent had issued two letters dated 17.04.2023 and 20.04.2023, informing the allottees about the loan taken for project finance from Shriram Housing Finance Limited and they take full responsibility and shall take all necessary and effective measures to foreclose the loan availed by the Respondent. It is the categorical admission of the liability by the Respondent. Therefore the Complainant has submitted and prayed that the Respondent ought to

clear the loan and obtain a No Lien Certificate/Final NOC/No Due from Shriram Housing Finance for the flat of the Complainant.

7. In the Counter Affidavit filed by the Respondent, it has been submitted that the Respondent had availed project loan from Shriram Housing Finance Limited for the development of the Respondent's project namely "Silver Crest" and at the time of executing the sale deed in favour of the Complainant, the Shriram Housing Finance Limited had issued an NOC with terms and conditions as stated therein and it is no way binding upon the complainant, since he is not a party to that NOC and he has not signed in the said NOC and even if any clause affecting the rights of the Complainant, it is void for the reason that he had purchased the flat for a valuable sale consideration without any agreement or contract with the Shriram Housing Finance Limited.

8. Further the Respondent has submitted that it is absolutely false to state that the Respondent has to pay another sum of Rs.7,00,000/- to the Shriram Housing Finance Limited with regard to the sale proceeds of flat purchased by the Complainant and further, the due payable by the Respondent to the Shriram Housing Finance Limited is with regard to the additional interest amount for nonpayment during the pandemic lock down period and as of now there is no default on the part of the Respondent till this day.

9. The Respondent has further stated that it is not necessary to get another NOC from the Shriram Housing Finance Limited since already an NOC exists. The Shriram Housing Finance Limited had sent pre SARFAESI demand notice only against the Company and its Director and not to the

buyers of the apartments which proves that this will not bind on the purchasers of the apartment and further the Respondent had deposited title deeds of his other property as collateral to the Shriram Housing Finance Limited and therefore if the Respondent fails to pay the dues, the recovery of the same would be done by attaching the other property of the Respondent and not on the project of "Silver Crest".

10. Further, the Respondent has submitted that this Complaint has to be dismissed on the ground of non joinder of necessary parties since the relief sought for is to obtain No Lien Certificate from Shriram Housing Finance Limited for D-307 flat and whereas Shriram Housing Finance Limited was not added as a party to the Complaint.

11. This Authority has examined the Complaint, the Counter affidavit filed by the Respondent Promoter, arguments and written submission of arguments carefully.

12. The Complainant Allottee has prayed for a direction to the Respondent Promoter to obtain No Objection Certificate from M/s. Shriram Housing Finance Limited in respect of the Flat No.D-307 allotted and sold to the Complainant Allottee in this real estate project named "Silver Crest" at Madhurapakkam, Chennai-600 048.

13. It is seen from the Annexure 1 on the page 4 of the documents attached with the written submission of arguments filed by the Complainant that Shriram Housing Finance Limited has given a conditional No Objection Certificate to the Respondent Promoter for sale of the above mentioned flat subject to deposit of entire sale proceeds received from the

purchaser by the Promoter in the designated escrow account with Axis Bank.

14. The Complainant Allottee has also received an e-mail dated 18.12.2020 from this financial institution about the failure of the Respondent Promoter to deposit Rs.7,00,000/- in the escrow account and hence they do not have an option other than to withdraw their No Objection Certificate as the same stands null and void and the flat continues to be mortgaged. Similarly an e-mail dated 12.04.2021 has also been received by the Complainant Allottee from this financial institution.

15. The Respondent Promoter has taken the stand that the Pre SARFEASI demand notice issued by the financial institution is addressed to the Respondent Promoter and 2 Guarantors only (page No.111 to 113 of the typed set papers filed by the Complainant).

16. The Authority notes that the apartment has been handed over to the Complainant Allottee on 25.01.2020 as stated by the Complainant.

17. It is also seen that the sale deed for the undivided share of land has been registered on 05.12.2019 by the Respondent Promoter in favour of the Complainant Allottee.

18. Even though the construction agreement has been entered on 15.07.2019, the apartment has been handed over only on 25.01.2020. The Completion Certificate for this real estate project has been issued by CMDA on 05.11.2019. Therefore, it is obvious that the apartment has been completed much after 01.05.2017, the coming into force of Section 3 of the Act. Therefore, this real estate project is registrable with this Authority

and accordingly this Authority directs the Respondent Promoter to register this real estate project with this Authority before 31.03.2024.

19. The Respondent Promoter has taken the stand that the Complainant Allottee is not a party to the No Objection Certificate and even if any clause affecting the rights of the Complainant is void for the reason that the Complainant has purchased the flat for a valuable sale consideration without any agreement or contract with the Shriram Housing Finance Limited.

20. The Authority is not able to appreciate the above contention of the Respondent Promoter as the Respondent Promoter has an obligation to declare under Section 4(2)(l)(B) of the Act that the land is free from all encumbrances.

21. Therefore, this Authority directs the Respondent Promoter to obtain an unconditional and final No Objection Certificate from M/s. Shriram Housing Finance Limited in respect of flat No.D-307 allotted and sold to the Complainant Allottee before 31.03.2024 and file compliance affidavit with this Authority before 30.04.2024.

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

Sd/-...29.01.2024

MEMBER (M), TNRERA

Sd/-...29.01.2024

MEMBER (J), TNRERA

Sd/-...29.01.2024

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N.  29/1/2024  
LAW OFFICER, TNRERA

29.1.24