



**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]
I.A. No.52 of 2023 in C.No.58/2023
29th day of January, 2024**

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

M/s. Radiance Icon Owners Association
(RIOA), Represented by its
President/Secretary

Versus

.....Petitioner/3rd Respondent

1) Thiru Selvaraju Duraisamy

.....1st Respondent/Complainant

2) M/s. Radiance Realty Developers
India Limited
Represented by its Managing
Director/Chief Executive Officer

3) M/s. Radiance Facility Management
Services Private Limited
Represented by its Managing Director/
Chief Executive Officer

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].....2nd & 3rd Respondents/1st &
2nd Respondents

4) Mr. Srinivasan, Ex. Secretary,
Radiant Icon Apartment Owners
Assn., Radiance Icon Apartments

.....Proposed 4th Respondent

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The above Interim Application came up for final hearing before this Authority in the presence of M/s. V. Jayachandran - Counsel for Petitioner/3rd Respondent and of M/s. Ralph V. Manohar - Counsel for 1st Respondent/Complainant and of M/s. Arun C. Mohan - Counsel for 2nd & 3rd Respondents/1st & 2nd Respondents. This Authority passes the following order.

ORDER

The Petitioner/3rd Respondent has stated in the I.A.No.52/2023 that the Petitioner is the Secretary of the Petitioner/the 3rd Respondent Association which is the owners Welfare Association constituted by the owners of Radiance Icon Apartments and registered as and registered under the Tamil Nadu Societies Registration Act, 1975 with Registration No.SRG/Chennai Central/16/2022.

2. The Petitioner has further submitted that prior to the election of selection of the present office bearers, the proposed 4th Respondent was the Secretary of the Association, who was elected as the Secretary on December 5, 2021 and was holding the said post till 07.07.2022 on which day, the earlier Association was dissolved and all the owners were informed of the said dissolution, paving way for election and selection of the present office bearers. The Petitioner has further submitted that during the said period of acting as the Secretary of our Association, the said proposed 4th Respondent had received multiple emails from our members, related to our Association, emails of 3rd party service agencies engaged by the then Association and allegedly some correspondences from the Builders

pertaining to the Radiance Icon Apartments, namely from the 2nd and 3rd Respondent by them, which are till date not handed over to the present elected Association.

3. It is further submitted by the Petitioner that after the election of office bearers of the present Association, who is the petitioner/ 3rd Respondent herein, the office bearers started to send e-mail communications, apart from sending letters to the said proposed 4th Respondent, seeking him to hand over all relevant documents in their hands pertaining to the petitioner/the 3rd Respondent's Association including the official e-mail IDs, which were handled by them during the period from 05.12.2021 to 15.08.2022.

4. The Petitioner has further submitted that the present Association is participating in the proceedings initiated by one of its members, wherein the present Association has filed detailed Counter and documents in support of the case of the Complainant, including of affirming its stand in their Counter that there was no proper handing over from the 2nd & 3rd Respondents to the proposed 4th Respondent as alleged by them and further, the proposed 4th Respondent had also failed to handover all relevant documents and e-mails, which were sent and received by them during their tenure as Secretary for the present Association.

5. It is further submitted by the Petitioner that the 2nd and 3rd Respondents are taking the stand that they had handed over entire premises of Radiance Icon Apartments and the relevant records to the proposed 4th Respondent, who was holding the post as Secretary, which were not handed over to the present elected Association either by the

proposed 4th Respondent or by the 2nd and 3rd Respondent due to which the petitioner is constrained to file this present petition. Therefore, the proposed Respondent is the proper and necessary party to the present proceedings.

6. The Petitioner has also stated that this present Association has happened to see a common order dated 02.03.2023 passed by this Authority in the Complaint filed in C.Nos.88 & 90 to 92 of 2022.

7. As per the above order, the present Association, namely, the Petitioner/3rd Respondent is saddled with the complete responsibilities, in spite of no proper handing over between the then Association and the 1st and 2nd Respondent. Hence the present application to implead the Ex-Secretary as the 4th Respondent to give explanation with regard to the alleged handing over and taking over process, apart from directing the proposed 4th Respondent to give all the records and emails of the Radiance Icon Owners Association to the present Association to carry forward all the works related to the premises effectively.

8. The Petitioner has also submitted that if the application is allowed, no prejudice would be caused to any of the Respondent, including the proposed 4th Respondent and on the other hand, the Petitioner/3rd Respondent would be subjected to great hardship and inconvenience in the matter. Also the Petitioner has stated that balance of convenience lies in favour of the Petitioner/3rd Respondent. It is prayed by the Petitioner that this Authority be pleased to implead the out-going Secretary of the Radiance Icon Owners Association, who is a proper and necessary party as the proposed 4th Respondent in the pending present proceedings.

9. In the Counter Affidavit filed by the 1st Respondent/Complainant on the I.A.No.52/2023, it is submitted at the outset that the application to implead the erstwhile Secretary one Mr. Srinivasan is not maintainable and the said erstwhile office bearer of the Society is not a necessary party to the present proceedings. The 1st Respondent/Complainant has further submitted that the adjudication in the present proceedings will not be hampered in any manner without the proposed impleading party and further, to decide the issues and controversies in the present application, which are as against the Respondents-2 and 3 herein, could be decided through the documents available on record, specifically the Counter Statement filed by the petitioner herein is also more than enough to decide the disputes and issues in the present complaint.

10. The 1st Respondent/Complainant has also cited a case law wherein the Hon'ble Apex Court in 2022 LiveLaw (SC) 802 has enumerated two tests to determine who is a necessary party;

"It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party."

In view of the above settled law, the present application is liable to be dismissed.

11. It is further submitted by the 1st Respondent/Complainant that the Petitioner in the application alleges that the proposed party had not

handed over certain alleged document to the present elected Association and therefore, the erstwhile Secretary has to be impleaded in the present proceedings. The 1st Respondent/Complainant has also submitted that the present elected office bearers among whom certain members were already part of erstwhile committee could sort-out the issue in the manner provided under their Byelaws.

12. This Authority has examined the I.A. No.52/2023 filed by the 3rd Respondent Association, the Counter Affidavit on the I.A. filed by the Complainant, arguments and written submission of arguments on the I.A. carefully.

13. During the arguments, the Counsel for the 1st and the 2nd Respondents submitted that they had no objection to implead the then Secretary of the Association sought to be impleaded in this I.A.

14. The Counsel for the Complainant objected to the proposed impleadment of the former Secretary of the Association on the ground that the present complaint can very well be decided without the proposed impleading party.

15. The Counsel for the Complainant has also cited the ruling of the Hon'ble Apex Court in 2022 LiveLaw (SC) 802 wherein the Hon'ble Supreme Court has enumerated two tests to determine who is a necessary party.

16. Applying these twin tests, the Authority notes that the reliefs claimed in the main complaint are against the 1st Respondent Promoter and the 2nd Respondent Maintenance Service Provider. Thus it is clear that no

relief has been sought against the 3rd Respondent namely the Association of Allottees.

17. The proposed impleadment of the former Secretary of the Association of Allottees does not satisfy the 2nd test enunciated by the Hon'ble Supreme Court that no effective decree can be passed in the absence of such party.

18. If there are any issues between the former Secretary of the Association of Allottees and the present set of office bearers, it is for the Association and its present set of office bearers to obtain remedy in the manner known in law.

19. Therefore, this Authority holds that this I.A. is devoid of merits and accordingly the I.A.No.52/2023 in Complaint No.58/2023 is dismissed.

20. The date and time of next hearing of the main Complaint No.58/2023 will be intimated separately.

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