

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
SR. No. 355 of 2022
in
Unnumbered CCP No. of 2022

1. Thecla Gnanam Benjamin

2. M.K. Vijaya Anand

.... **Complainants**

Vs.

M/s. Prestige Estate Projects Ltd.

.... **Respondent**

Complainants : Rep. by M/s. T.S. Gopalan And Co., Advocates.

Heard on : 24.04.2023

Delivered on : 17.05.2023

The complaint is filed by the above complainants seeking direction to the respondent to pay compensation for making false promises, non-availability of completion certificate, unfair trade practices and gross deficiency of services and also for the mental tribulations caused to them and other reliefs under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. The complaint was returned by the office of this Forum on 30.01.2023 raising several queries. After taking return of the papers, the complainants represented the complaint on 15.02.2023. However, the office of the Forum made second return of the complaint for non-compliance of all the queries. The complainants complied with only 3 queries of the return out of the 5 queries and represented the papers on 08.03.2023.

3. The queries raised by the Office of the Forum, which were not complied by the complainants, are as follows:

(3) Previous Return Sl.No.5 case in CC No.66/2016 is pending before District Consumer Forum as said in Page No.5 in Form-N. But as per Section 71 of RERA Act, it shall be withdrawn and to be filed before Adjudicating Officer.

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(4) Complying Previous Return under Sl.No.7, as per Section 14(3) of RERA Act restricted to file within a period of 5 years by the allottee from the date of handing over possession.

The following are the reply of the complainants:

(3) The compensation sought in CC No.66/2016 is not being sought under the present complaint. Section 71 gives the right to the complainant either to withdraw or conduct the case before the Consumer Forum – Please Ref. Section 71(1) proviso.

(4) Section 14 deals with adherence to sanctioned plans. Section 18 deals with compensation. The present complaint comes under Section 18, not under Section 14. On 03.08.2020, a legal notice has been sent to the respondent which is within five years.

4. Heard the counsel for the complainants on the maintainability of the complaint regarding the queries in the return for which the complainants made replies and not complied with. It is not in dispute that a case in C.C.No.66/2016 is pending before the District Consumer Forum. The Hon'ble Supreme Court and the various Hon'ble High Courts have already pointed out that the remedy available to the flat purchasers under the RERA Act is an additional remedy without prejudice to any other remedy available under any other law and the home buyer could pursue parallel proceedings against the builders under both the RERA Act and Insolvency and Bankruptcy Code in addition to approaching the Consumer Forums. Section 88 of the RERA Act also does not bar the application of other laws. Therefore the pending consumer case is not a bar for entertaining the complaint by this Forum.

5. Regarding the other query is concerned, admittedly the possession of the flat was taken by the complainants on 10.02.2016 and the complaint was filed on 28.12.2022. Under section 14, if the defects are brought to the notice of the promoter within the period of five years and the promoter fails to attend, it is a case of continuing cause of action. In this case, the allottees/complainants are seeking compensation for non-availability of completion certificate also. The case of the complainants is that till date, the completion certificate is not made available by the promoter. On this point of query, only on adjudication of the

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case only, the merits of the claim of compensation can be decided and the complaint is to be numbered.

6. However, on perusal of the complaint, it is seen that initially the complaint was filed adding three respondents with relevant and necessary averments and subsequently corrected adding only one respondent, but without any corrections of the averments. Therefore, the complaint is ordered to be numbered on condition that the complainants make appropriate corrections of the averments and file clean amended copy of the complaint by 24.05.2023, failing which, the complaint stands dismissed.

Sd/- 17.05.2023
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

