



**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.215/2019

20th day of June 2019

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

Tvl. Geethpriya & Arivazhagan Moorthy ... Complainants

Versus

M/s. T.K. Housing & Constructions ... Respondent

FINAL ORDER

Tvl. Geethpriya and Arivazhagan Moorthy have filed a complaint u/s.31 of the Act, against M/s. T.K.Housing and Construction, represented by its sole proprietor Mr. T.Kumar, having office at Plot No.1, Thirukumaran Nagar, "Jasmine Grove", Eachankaranai, Chennai – 603 002.

2. The complainants have made a Sale Agreement and Promoter Agreement on 29.6.2017 for purchasing a Villa in the land bearing S.No.48/2B, Thirukumaran Nagar, Eachankaranai, Chengalpattu Taluk,

Kancheepuram District. The complainants have stated that the promoter has obtained approval from DTCP during November, 2017 vide CR/DTCP/LP-173(R)/2017). The complainants have stated that the respondent has not registered the project with TNRERA. The respondent has agreed to complete the construction within 10 months from the date of agreement provided the allottee has no arrear in payment. Further, the allottees agreed to give the promoter a grace period of 3 months in the event of incompleteness.

The following are the prayers of the complainant.

- a) The promoter to register the project with TNRERA
- b) Hand over the villa as per the agreement

3. A Notice was served to the promoter calling for explanation for the delay in handing over the Villa. The promoter has furnished a reply stating that the construction was completed as early as April 2018 to an extent of 99% and the remaining jobs are finishing works only. It will take a week's time before the delivery of the possession. The respondent has further stated that complainant did not make the payment and they have time and again delayed the payments and have not adhered to the payment schedule as per the agreement. The complainants are still having dues of more than Rs.4.00 lakhs as outstanding and also liable for delay interest payment as per the terms of the agreement. Hence, the respondent has initiated Arbitration proceedings but the complainants did not appear before the Arbitrator. As the complainants have not appeared before the Arbitrator, Arbitral award has been passed ex-parte in the arbitration proceedings and hence the complaint filed by the complainants is devoid of merits. Further, the respondent has taken a stand that the project falls outside the jurisdiction of TNRERA. The

respondent is not the owner of any land in the project and all the plots were sold much earlier to the constitution of RERA and the Respondent is only acting on the "Need to work" basis as and when requested by the customers. As far as the complainants are concerned the promoter did this work as a stand alone construction and it was never even meant to be within the project and hence requested to dismiss the complaint.

4. The complainants have filed a written submission on the reply filed by the respondent. The complainants have stated that the respondent has not furnished information such as sanctioned plan, layout plan and specification of the villa to the complainant. The complainants have further stated that the built up area is 1135 sq.ft. as per the sanctioned plan but the total extent as per the booking, allotment order and construction agreement the total extent saleable area is 1538 sq.ft. The respondent has charged an extra amount to the extent of 403 sq.ft. which amounts to Rs.11,53,187/-. The complainant further stated that there is a difference in the amount between sale agreement and registered sale deed.

5. The complainants have also quoted Supreme Court judgment in the review petition (Nos. 2629 to 2630 of 2018 in Civil Appeal Nos. 23512 – 23573 of 2017 between M/s. EMMAR MGF LAND Ltd, Vs. Mr. Aftab Singh. The Hon'ble Supreme Court has observed that the arbitration tribunal is a private forum chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals are public fora constituted under the Laws of the country. It has further observed that the disputes which are to be adjudicated and governed by the statutory enactment, established for specific purpose to subserve a particular public policy, are not arbitrable.

6. In the affidavit filed by the respondent, the respondent has stated that all the plots in the layout are sold much earlier to the constitution of the Authority. Only when the land owners request for construction of any building, the respondent is making construction on the land. The respondent has further stated that he has acted as a facilitator to get approval from the DTCP.

7. The layout approval was given by DTCP on 22.12.2017. The contention of the respondent is not acceptable. Under Rule 2 (h) (iii), any layout project, where the land is developed into plots the roads, open space are gifted to the local bodies prior to the notification of the sub-section 1 of Section 3 of the Act i.e. 1.5.2017 alone are exempted from registration with TNRERA. In the instant case the layout is approved only on 22.12.2017 which is after RERA notification and hence it is mandatory to register the layout with TNRERA. It is also noted that the Respondent has been advertising this real estate project as a gated community under the name "Jasmine".

8. As per the plan approved by the Local Body, the built up area of Ground floor + 1st Floor is 1135 sq.ft. But as per the Promoter's agreement (Construction Agreement) signed by both the parties, the floor area mentioned in Schedule "B" is 1538 sq.ft. The Respondent has filed an affidavit which is produced by the complainant stating the he undertook not to violate the sanctioned construction plan and that the construction will be strictly as per the sanctioned plan. He has further undertaken to obtain sub-division approval from DTCP within three months from the date of sanction of loan and produce the same for verification by the Bank. The Respondent after giving an affidavit violated the condition and made the agreement with the

complainants by increasing the built up area from 1135 sq.ft. to 1538 sq.ft. which is not correct.

9. The Promoter's Agreement has been signed by both the parties on 29.06.2017 which is after the RERA Act coming into force followed by Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 notified on 22.06.2017. Therefore we find merit in the contention of the complainants regarding the Arbitral Award in the light of the direction of the Hon'ble Supreme Court in the case of M/s. EMMAR MGF LAND Ltd. Vs. Mr. Aftab Singh.

10. In view of the above, the Respondent is directed to hand over the Villa to the complainant within one month from the date of this order as per the terms and conditions of the Agreement and shall charge only for the floor area approved by the competent Authority. The Respondent is also directed to register the layout with the Authority.

Sd/-.....20.06.2019
MEMBER (M), TNRERA

Sd/-.....20.06.2019
MEMBER (J), TNRERA

Sd/-.....20.06.2019
CHAIRPERSON, TNRERA

TRUE COPY/FORWARDED/BY ORDER

[Handwritten Signature]
20/6/2019
ADDITIONAL DIRECTOR (OPERATION)