



**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.219/2019

4th day of September 2019

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

M/s. Fifth Estate Communications Pvt. Ltd. ... Complainant

Versus

M/s. Sabari Realtors Pvt. Ltd. R1]
M/s. Pioneer Homes R2] Respondents

This complaint is for direction to the respondents to hand over Flats No.601 and 906 on the 6th and the 9th floor respectively after completing all the pending works in Margosa Tower in the project called "Sabari Serenity", situated off OMR, Siruseri, Chennai and also for compensation for the delay in handing over of the flats.

2. The matter was listed before the Authority on 11-04-2019, 08-05-2019 and on hearing both the parties the Authority directed the respondents to file counter and register the project with TNRERA by

30-04-2019 and complete the pending works in the project. When the matter was taken upon 13-06-2019 direction was again given to the respondent to register the project by 27-06-2019 along with revised planning permission. Both parties were directed to make their arguments by 04-07-2019. The case came up on 04-07-2019 for final hearing and the counsel for complainant put forth his arguments and respondents were absent. Heard. The Authority reserved order after closing the arguments.

Case of the Complainant:

3. The 1st respondent promoted a project in the year 2010 called 'Sabari Serenity' coming up off OMR, Siruseri, Chennai, spread over 9 acres of land and proposed to build 13 towers with 936 apartments. The 1st respondent completed only 5 towers. Other 2 Towers, namely, Ekambara and Margosa are incomplete and thus they are ongoing. Other towers have not been commenced. The respondents also failed to provide amenities as promised even to the completed towers.

4. The complainant is an advertising private limited company which provided service to the 1st respondent and 1st respondent's group of companies M/s. Sabari Inn Pvt. Ltd and M/s. Sabari Nest Inn Pvt. Ltd. and thereby the 1st respondent owed a sum of Rs. 58,80,196/- to the complainant company. It is further averred by the complainant that in settlement of pending liability of the sum as above said, the 1st respondent offered to allot two flats in the Margosa Tower in the project which is the subject matter of the dispute. Flat bearing No. 601 on the 6th floor in Margosa Tower with a super built up area of 993.43 square feet with one

covered car park together with an undivided share of land measuring 348.96 square feet out of total extent of 344842 square feet comprised in Survey Nos. 29/1, 27/1, 26/2, 29/1, 27/3, 26/1, 27/2, 28, 25/1A and 25/1B situated in Siruseri village, Chengalpattu Taluk (now Thirupporur Talu), Kancheepuram District.

5. Flat bearing No. 906 on the 9th floor in Margosa Tower with a super built up area of 1368.44 square feet with one covered car park together with an undivided share of land measuring 348.96 square feet out of total extent of 344842 square feet comprised in Survey Nos. 29/1, 27/1, 26/2, 29/1, 27/3, 26/1, 27/2, 28, 25/1A and 25/1B situated in Siruseri village, Chengalpattu Taluk (now Thirupporur Taluk), Kancheepuram District.

6. The complainant averred that they accepted the offer made by the 1st respondent and also bore the additional cost. The complainant filed copy of allotment letters issued by the 1st respondent allotting the above said flats in favour of the complainant. The 1st respondent as power of attorney agent of land owners executed sale deeds as Document Nos. 11885/2016 and 11883/2016 both dated 05-10-2016 for flat No.601 and 906 respectively. The 1st Respondent also executed and registered Builders Agreement in favour of the complainant as Document Nos. 11884/2016 and 11882/2016 dated 01-10-2016 respectively.

7. The 1st Respondent should have completed the construction of flat No. 601 before 31-03-2018 and flat No. 906 before 31-12-2018 as per Builders Agreement entered between them. But both flats have not been

completed and handed over in all aspects. The complainant also stated that the 1st respondent, without informing the allottees, have handed over the project to the 2nd respondent for completion of the same by the 2nd respondent, which is violation of Section 15 of the RERA Act. The complainant also averred that since the 1st respondent siphoned off the funds of the project, the 2nd respondent demanded additional sum from the allottees for completion of the project. As per the provisions of the Act, the project is registrable under RERA and thus the complainant prayed for direction in this regard and also for handing over possession of flats after completion of the projects in all aspects including promised amenities.

Defence of 1st Respondent :

8. The 1st Respondent denying all the averments made by the complainant, pleaded that the complaint is not maintainable. The 1st Respondent stated that as per Section 18 of the Act, the complainant is entitled for return of money if he withdraws from the project and the complainant is also entitled to claim interest every month of delay till handing over possession flats. The complainant could not claim any other reliefs other than these two reliefs. Further, the complainant shall comply the provision under Section 19(6) of the Act with regard to payment schedule.

9. The 1st Respondent asserted that no payment has been made by the complainant towards sale consideration. Though the Sale Deed and Construction Agreement mention the phrase "entire consideration already

paid", no such payment is reflected in the books of accounts of the 1st Respondent. Any agreement without consideration is void abinitio. The 1st Respondent also pleaded that sale consideration as allegedly paid by the complainant is a sum due outstanding from other company namely, M/s Sabari Inn Ltd and M/s Sabari Nest Inn Pvt. Ltd payable to the complainant. The 1st Respondent has not given any acknowledgement towards these dues in any documents. The complainant has not paid sale consideration and they are bound to prove that sale consideration paid to Respondents.

10. The 1st Respondent further submitted that 2nd Respondent is a project management consultant and they are not promoters. There is no transfer of project in favour of 2nd Respondent and they are not necessary party. The Respondent stated that the project is structurally completed and the complainant is not entitled for any relief and sought that the complaint be dismissed.

Defence of 2nd Respondent :

11. The 2nd Respondent defended the same as pleaded by 1st Respondent.

Rejoinder of the Complainant:

12. The averments made in the counter of the 1st and 2nd Respondents are denied by the complainant. The Complainant pointed out that the Sale Deed as Doc.Nos. 11885/2016 and 11883/2016 are registered documents and they are legally enforceable contracts. Since the

project is an ongoing, the Authority passed order dt.11-04-2019 directing the 1st Respondent to register the Project with TNRERA before 30-04-2019 and further extended to 13-06-2019. The Respondents failed to comply with the order and they are liable to be punished U/s 59(1) of the Act. The complainant quoted the judgment rendered by Supreme Court of India in *Pioneer Urban Land and Infrastructure Ltd Vs. Govindan Raghavan* in support of claim of interest. The complainant is not responsible for lapses on the part of the 1st respondent on maintaining proper books of account. Section of 19 (6) of the Act is not required since payment is already made by the complainant. The 2nd Respondent is equally liable since 2nd respondent was introduced by 1st Respondent as 'promoter' and hence both respondents are jointly be liable for completion of the project. The complaint is maintainable.

13. On perusal of pleadings filed by both parties and on hearing the arguments put forth by them, this Authority concludes that the Complainant paid sale consideration towards the cost of the flats by way of services rendered and Respondents also admitted and acknowledged the receipt of the same by allotting and registering the apartments in favour of the complainant. The 'Margosa Tower' is incomplete and hence it is held that it is an ongoing project. The Authority vide its order dt. 11-04-2019, 08-05-2019 and 13-06-2019 already directed the Respondents to register the project with TNRERA, but the Respondents have failed to comply with the same. The Authority pass the following final order:

FINAL ORDER

1. In as much as the receipt of sale consideration for the flats has been explicitly expressed in the registered builders agreements and sale deeds, the Respondent is estopped to deny the same which is an afterthought and hence the Respondent is directed to complete the construction of allotted flats in all respects and hand over the same to the complainant immediately without further loss of time.
2. The Registry is directed to initiate proceedings against the Respondents for failure to comply with the directions of the Authority to register this ongoing project.

Sd/-...04.09.2019

Sd/-...04.09.2019

Sd/-...04.09.2019

MEMBER (M), TNRERA

MEMBER (J), TNRERA

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


04/9/2019


ADMINISTRATIVE OFFICER