



**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.442/2019  
13<sup>th</sup> day of August, 2020**

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

Thiru V.K. Vijayaraghavan ... Complainant

Versus

- |  |   |             |
|--|---|-------------|
| 1. M/s. SPR & RG Constructions Pvt. Ltd. | ] | Respondents |
| Represented by its Managing Director.    | ] |             |
|  | ] |             |
| 2. Mr.Hitesh P.Kawad,                    | ] |             |
| Managing Director                        | ] |             |
| M/s. SPR & RG Constructions Pvt. Ltd.    | ] |             |
|  | ] |             |
| 3. Mr. M.G.Surendranath                  | ] |             |
| Director                                 | ] |             |
| M/s. SPR & RG Constructions Pvt. Ltd.    | ] |             |

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This Complaint came up for final arguments before this Authority in the presence of Thiru A.Neelakantan and Rahul Neelakantan – Counsel for Complainant and the Respondent is represented by an employee of the Respondent Company and upon hearing the arguments of both the parties, this Authority passes the following.

## **FINAL ORDER**

The Complainant has stated that he had purchased a flat bearing Door No.2126 in a Real Estate Project called "Osian Chlorophyll" situated at Karambakkam village, Bypass Road, Karambakkam, Porur from the 1<sup>st</sup> Respondent under an agreement of sale and construction dated 13.07.2012.

2. The 1<sup>st</sup> Respondent conveyed undivided share of land of 406 sq.ft. to the Complainant by a registered sale deed dated 01.02.2013.

3. As per the initial plan approved by CMDA, this project has 950 dwelling units. The completion date of this project was to be within 36 months i.e. on or before 31.03.2015 as per Clause-8 of the agreement. There has been delay in completing the project in all respects by the Respondent due to his default. The Complainant has also observed several deviations from the initial plan which has been made arbitrarily by the Respondent without any consent from the Complainant for change of plan or alteration/modification of the initial plan.

4. The Respondent had applied to CMDA for revised plan approval on 17.07.2014 and obtained revised Planning Permission vide CMDA letter dated 20.07.2018. The project Completion Certificate from CMDA was obtained by the Respondent on 06.09.2018. The revised plan approval is for 1050 dwelling units. The number of car parks and the two wheelers parking has been drastically reduced. The revised plan obtained by the Respondent envisages mechanical stack parking in basement in certain Blocks including the Block-II where the Complainant's flat is located.

5. The Complainant has also stated that he is not sure about the structural stability of this arrangement and a separate mezzanine floor has been built recently. This floor was not part of the revised plan either and therefore, totally unauthorized and the construction is not yet completed. There is also reduction in the area of Community Club Houses.

6. The Complainant has also stated in the Complaint that he had paid the entire amount towards cost of the flat and the 1<sup>st</sup> Respondent by letter dated 30.06.2017 had handed over possession of the flat for fit-out purposes to the Complainant. The Complainant after carrying out the interior works conducted the Grihapravesham on 25.06.2018 and moved into the flat. Even when he moved into the flat, several amenities vital to occupation were not available like no permanent electricity connection from TNEB, no metro water connection and sewerage facilities apart from other common amenities that were promised by the 1<sup>st</sup> Respondent.

7. The Complainant also states that the project comes under the ambit of 'on-going project' as defined in Rule 2(h) of the Tamil Nadu Real Estate (Regulation & Development) Rules 2017 and hence the project needs to be registered with TNRERA.

8. The Complainant has prayed for the following reliefs:

- i. To direct the Respondents to register the project under the TNRERA as per the Act and Rules.*
- ii. Punish the 1<sup>st</sup> Respondent who is the Developer of the project and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are the Managing Director and Director respectively of the 1<sup>st</sup> Respondent for not registering the project under TNRERA*

*and impose exemplary penalty for the violation as per Section 59(2) of the Act.*

- iii. To punish the Respondents for revising the building plans in violation of section 14 of the RERA.*
- iv. Direct the Respondents to restore the Club Houses and other amenities as provided in the initial plan and as per the agreement.*
- v. To direct the Respondents to remove the shade/structure (pergola) unauthorisedly put up by them below the Complainant's balcony.*
- vi. To direct the Respondents to provide car park as per the allotment exclusively for the Complainant in the basement of Blocks-2.*
- vii. Direct the Respondents to provide visitors' car parks and other car parks as per the initial CMDA approved plan, Agreement and the CMDA/Development Control Rules.*
- viii. To direct the Respondent to produce evidence to show the buildings particularly in Blocks 1 and 2 are structurally safe in the wake of the Respondent putting up unauthorizedly a Mezzanine floor above the basement.*
- ix. Direct the Respondent to refrain from putting up or altering any constructions arbitrarily anywhere in the project land which is outside the scope of the Agreement and initial approved plan/drawings.*

- x. *To fix a time frame for the Respondents to complete the entire project by providing all amenities agreed to be provided.*
- xi. *Direct the Respondents to pay the cost(s) for this Complaint to the Complainant.*

9. The Complainant has also prayed for the following Interim order:

*The Hon'ble Tribunal may be pleased to order an interim injunction restraining the 1<sup>st</sup> Respondent as the project land owner and Developer, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as the Managing Director and Director of the 1<sup>st</sup> Respondent or any of its agents, representatives and other Directors from alienating/transferring in any manner the unsold apartments in the project until the project is completed as prayed for above. The deviations in the club house area if sold can also be compensated from the unsold flats.*

*The Complainant apprehends that the Respondents may sell off the remaining unsold flats and exit the project without completing the project as per the Agreement which will cause severe hardship to the Complainant. The balance of convenience is in favour of the Complainant. Hence, the Complainant is entitled to this Interim Order.*

10. In the Counter Statement, the 1<sup>st</sup> Respondent has stated that the project has been completed as early as 5<sup>th</sup> May, 2017 and the application for Completion Certificate with CMDA filed on 29.05.2017 and the Completion Certificate was granted by CMDA vide its letter dated 06.09.2018. The Respondent has also stated that Rule-2(h)(ii) of the Tamil

Nadu Real Estate (Regulation and Development) Rules, 2017 specifically excludes those projects in Chennai Metropolitan Area for which the application for Completion Certificate has been filed prior to the notification of the Rules. The above mentioned facts are further corroborated by entry No.53 in the list titled 'List of Completion Certificate Applications submitted in CMDA prior to 22.06.2017 for Chennai Metropolitan Area published in the website of TNRERA. Therefore, this project does not come within the ambit of ongoing projects. This stand has been confirmed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal (TNREAT) in its order dated 19.06.2019 in Appeal No.2/2019. Therefore, the 1<sup>st</sup> Respondent has submitted that the Complaint may be rejected.

11. In the rejoinder, the Complainant has stated that the present complaint is the first complaint filed by the Complainant before this Authority and the Complainant is not a party in Appeal No.2/2019. Therefore, the contention of the Respondent that the stand has been confirmed by the Hon'ble TNREAT is unsustainable and untenable and therefore liable to be rejected. These contentions and facts raised in the Complaint have not been agitated before this Authority in any other proceedings to the best of knowledge of the Complainant.

12. In the arguments, the Complainant made detailed oral arguments which have also been submitted as written submissions. The authorized representative of the 1<sup>st</sup> Respondent submitted that he was not in a position to argue thereby defaulting the right of the Respondent to argue the case in the hearing.

13. In the written submissions, the Complainant has also referred to a claim under Form-N made by the Complainant therein before the Adjudicating Officer of this Authority. The Adjudicating Officer had held that the project was an ongoing project. The said order was appealed against by the Respondents in Appeal No.2 of 2019 before the Hon'ble TNREAT. The Hon'ble Appellate Tribunal by its order dated 19.06.2019 set aside the order of the Adjudicating Officer and held that the project was not an ongoing project. The Complainant therein filed an appeal against the order of the Appellate Tribunal in CMSA No.22 of 2019 before the Hon'ble High Court of Madras and the Complainant is given to understand that the Order is pending.

14. The Authority has examined the Complaint, Counter Statement of the 1<sup>st</sup> Respondent, Rejoinder by the Complainant and the arguments followed by the written submission of the Complainant carefully.

15. It is undeniable that the Hon'ble TNREAT has held that this project is not an ongoing project and that the 2<sup>nd</sup> Appeal filed by the concerned party is pending before the Hon'ble High Court of Madras.

16. The very first relief sought by the Complainant is to register the project with this Authority as per the Act and Rules.

17. Given the fact that the Hon'ble Appellate Tribunal has already held that this project is not an ongoing project and that the 2<sup>nd</sup> Appeal by the concerned flat buyer against the orders of the Hon'ble Appellate Tribunal is pending before the Hon'ble High Court of Madras for orders, this Authority cannot go into the registrability of this real estate project and in view of the decision on the same by the Hon'ble Appellate Tribunal.

18. Therefore, this Authority holds that this Complaint is not maintainable and proper course of action would be to await the decision of the Hon'ble High Court of Madras in the 2<sup>nd</sup> Appeal.

19. This Complaint is disposed of accordingly.

Sd/-...13.08.2020  
MEMBER (M),TNRERA

Sd/-...13.08.2020  
MEMBER(J),TNRERA

Sd/-...13.08.2020  
CHAIRPERSON,TNRERA

/TRUE COPY/FORWARDED/BY ORDER

*[Handwritten signature]*  
13/8/2020  
ADMINISTRATIVE OFFICER (i/c)  
12.8.2020