



**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.478 of 2019**

**11<sup>th</sup> day of February, 2021**

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

Mr. R.Ravi and Mrs. Yamuna Ravi ... Complainants

**Versus**

M/s.Jain Housing and Constructions Limited, ... Respondent  
Rep. by its Managing Director  
Mr.Sandeep Mehta

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The issue on the maintainability of this Complaint came up for final hearing before this Authority in the presence of M/s.Mani Sundargopal, T.Sathiyamoorthy and Akshayaa Benjamin – Counsel for the Complainant and of Thiru S.Sai Sathya Jith – Counsel for Respondent and upon hearing the arguments of both the parties, this Authority passes the following:

## ORDER

The Complainants have stated that the Construction Agreement and the Sale Deed were executed and registered jointly in the name of the Complainants by the Respondent Promoter on 23.11.2018 for sale of undivided share and the residential flat with covered car park in the Real Estate project "Jains Adwitya" Ambattur.

2. The Complainants have submitted that the Respondent Promoter has not handed over the apartment to the Complainants so far. The Complainants have sought the following relief:

*to direct the Respondent to hand over physical possession of the apartment bearing Flat No.73, II Floor at Block-3 in the "Jains Adwitya Project, Ambattur".*

3. The Respondent Promoter has filed Preliminary Counter Affidavit objecting to the maintainability of the Complaint. The Respondent Promoter has stated that this Real Estate project "Jains Adwitya" was completed by the Respondent Promoter as early as in 2016 and the Completion Certificate was also obtained from Chennai Metropolitan Development Authority (CMDA) on 17.05.2017.

4. The Respondent Promoter has also further cited the order of this Authority in Complaint No.400 of 2019 vide its order dated 30.01.2020 in support of its stand that this Complaint before this Authority is not maintainable.

5. In the written submissions of arguments, the Complainants have stated that Section 79 of the Act categorically states that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the Adjudicating Officer or the Appellate

Tribunal is empowered by or under this Act to determine. In the present case, the relationship between the Complainant and the Respondent arises out of a Real Estate transaction wherein the Complainant is a home buyer and the Respondent is a promoter as defined under the provisions of the Real Estate (Regulation and Development) Act, 2016.

6. The Complainants have also stated that the Agreement between the Complainant and the Respondent was entered on 29.08.2018 after the commencement of the Act and hence the Respondent is not entitled to claim that the provisions of this Act will not apply to this particular project since it is completed prior to the commencement of the Act. Even in respect of Real Estate projects which have been completed prior to the commencement of the Act, any disputes that arise in relation to the subsisting rights and obligations of the parties will have to be resolved under the adjudicatory mechanism provided under the Act.

7. In the written submissions of arguments, the Respondent Promoter has stated that there are dues from the Complainants as they have failed to comply with the terms of the Settlement Agreement and the Flat allotment Agreement.

8. The Respondent has also referred to the provisions of Section 3 of the Act and Rule 2(h) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The Respondent has also stated that the law is applicable only prospectively.

9. The Respondent Promoter has filed an application for Completion Certificate before the CMDA which was received by CMDA on 28.12.2016. Thereafter, the Completion Certificate has been issued to this Project on 17.05.2017. The above dates are a matter of record and produced by the Respondent in the typed set of papers filed before this Authority. In this

regard, the Respondent Promoter has also referred to the recent order of this Authority in Complaint No.001/2020 dated 30.09.2020. In respect of this project, the Completion Certificate was applied on 28.12.2016 which is prior to the cutoff date of 01.05.2017 and hence this Project is not an ongoing project and the Complaint is not maintainable.

10. This Authority has examined the Complaint, Counter Affidavit filed by the Respondent Promoter with reference to the maintainability of the Complaint and the written submissions of arguments of both sides regarding the maintainability issue carefully.

11. It is true that in respect of this Real Estate Project, the application for Completion Certificate was filed on 28.12.2016 and the Completion Certificate was issued by CMDA on 17.05.2017 as seen from the copy of the Completion Certificate filed by the Respondent Promoter in the typed set of papers.

12. Regarding the registrability of the Project, the Ruling of the Division Bench of the Hon'ble High Court of Madras in its order dated 15.09.2020 in CMSA No.22 of 2019 in Subashini Thulasiram Vs. M/s. SPR & RG Constructions Pvt. Ltd. wherein it has been stated that the Rule gives an exemption only to the Developers who applied for Completion Certificate on or before 01.05.2017 holds the field. Therefore, this Real Estate Project for which application for Completion Certificate was filed on 28.12.2016 is not registrable with the Authority since it is a completed Project.

13. However, the maintainability of the Complaint has to be examined with reference to the Ruling of the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in Appeal No.75/2019 dated 09.11.2020 in Olympia Grande Apartment Owner's Welfare Association Vs. M/s. KSM

Nirman Private Limited. In this Order, the Hon'ble Tamil Nadu Real Estate Appellate Tribunal has held that *"the only ways and means to the aggrieved party under the construction industry is the provisions of the Act. Hence, the Appellant approached the Regulatory Authority rightly and the RERA provisions also specifically contemplated with regard to redress grievances under the RERA Act irrespective of their registration ....."*

*"for this relief the Appellant/Complainant cannot approach the civil court since there is a specific bar under Section 79 of RERA Act. Therefore, the only way open to the Appellant/Complainant is under RERA Act ....."*

14. Taking judicial notice of the orders of the Hon'ble Tamil Nadu Real Estate Appellate Tribunal, this Authority holds that this Complaint is maintainable even though this Real Estate Project is not registrable as per the Ruling of the Hon'ble Division Bench of the High Court of Madras.

15. Therefore, the Authority directs the Respondent Promoter to file a detailed Counter Affidavit regarding the relief sought by the Complainants in the Complaint within 2 weeks from the date of receipt of the certified copy of this Order with copy served on the Complainants.

16. On receipt of the Counter Affidavit from the Respondent Promoter, the date and time of the next hearing through video conferencing will be intimated separately.

Sd/-...11.02.2021

Sd/-...11.02.2021


Sd/-...11.02.2021

MEMBER (M), TNRERA

MEMBER (J), TNRERA

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

  
ADMINISTRATIVE OFFICER  
