



**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]

I.A.No.14 of 2019 in C.No.20 of 2018

30th day of December, 2020

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

Padmalaya Apartments Buyers' Association, ... Complainant
B-39-001, Provident Cosmo City,
Pudupakkam, Chennai – 603 103

Versus

M/s. Real Value Promoters (P) Ltd., ... Respondent
Ambojini, 17-1, Poes Road 2nd Street,
Teynampet, Chennai-600 018

This Interim Application came up for hearing before the Authority in the presence of Thiru K.Chandrasekaran – Counsel for the Petitioner/ Complainant and of Thiru P.Vinoth Kumar – Counsel for the Respondent and upon hearing the arguments of both the parties, this Authority pass the following order:

ORDER

In this Complaint, the Complainant Association had complained against the Respondent Promoter regarding the inordinate delay in completing the apartments in the residential Real Estate Project known as 'Padmalaya' in the lands comprised in S.Nos.243/3F, etc. in Pudupakkam village, Vandalur-Kelambakkam Road, Tiruporur Taluk.

2. This Complaint is being heard from May, 2018. In spite of various promises made by the Respondent Promoter during several hearings in the last 2 years, there has been no forward movement in the progress of construction and completion of the apartments booked by various home buyer allottees who are members of the Complainant Association.

3. In this Interim Application No.14/2019 in this Complaint No.20/2018, the Complainant Association has stated that during the year 2013, the members of the Complainant Association numbering more than 100 have entered into construction agreement with the Respondent Promoter for construction of flats and for conveyance of proportionate undivided share. According to the Complainant, as on 02.03.2018 as against the total cost in excess of Rupees Thirty Crores in respect of the flats and proportionate undivided share under the said agreements, the Respondent Promoter has already collected a total amount in excess of Rupees Twenty Two Crores from the members of the Complainant Association amounting to about 70% to 80% of the stage payment.

4. Though the Respondent Promoter has collected almost 70% to 80% of the total cost, the construction in the project has not even reached

40% of the estimated construction in respect of A, B, C & D Blocks and in respect of P and Q Blocks, the construction has not yet been started.

5. The Complainant Association has further submitted that during the various hearings before this Authority the Respondent Promoter has repeatedly been pleading that in order to continue and complete the pending construction, a total sum of money in excess of Rupees Forty Crores is needed and about Rupees Three Crores is due from the members of the Complainant Association and for the balance shortfall amount, the Respondent Promoter has been in the process of obtaining finance from various sources and the Respondent Promoter has not taken any concrete steps towards commencement and completion of constructions as undertaken by it before this Authority.

Therefore, the Complainant Association has filed this Interim Application under Section-35 of the Act read with Rule-25(2) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 seeking an order to conduct a forensic audit by a competent agency of the accounts of the Respondent Company including its subsidiary and/or associate and/or companies in order to find out as to the mode and manner in which the entire monies paid by the members of the Complainant Association have been applied and/or diverted by the Respondent Promoter.

6. The Respondent Promoter has filed Counter Affidavit on this Interim Application stating that the Respondent Promoter had received Rupees Fifty Three Crores from the customers of the 'Padmalaya' project towards construction. However, the Respondent Promoter had spent Rupees Fifty Six Crores towards construction of the Project. The

Respondent Promoter is yet to receive Rupees Three Crores from the customers of this project towards the balance construction cost.

7. The Respondent Promoter also stated that they have clearly informed the expenses details to the Complainant Association. The Respondent Promoter has further stated that they had submitted details of the expenses to the Complainant Association on 10.01.2019 and the Complainant did not raise any objection for the same. Therefore, the question of conducting of forensic audit in the said project does not arise.

8. In the Rejoinder, the Complainant Association has stated that the percentage of the construction does not match the funds received by the Respondent Promoter and hence the Complainant Association genuinely apprehends siphoning of funds by the Respondent Promoter without spending the same only for the subject project. The Complainant Association also submitted that mere inclusion of an amount in the statement of accounts signed by the Chartered Accountant of the Respondent Company cannot, by itself, be a conclusive proof that the said amount has definitely been utilised by the Respondent Promoter only for the subject project. Furthermore, in the absence of any access to the Complainant Association to the books of accounts of the Respondent Promoter, the Complainant can neither counter check nor comment on the statement of the accounts signed by the Respondent Promoter.

9. The Complainant Association has also stated that the statement of accounts is not in consonance with and as undertaken by the Respondent Promoter while submitting the application for registration with this Authority in respect of the subject project.

10. The Complainant Association has further stated that the land owners of the project who had earlier entered into a Joint Development Agreement with the Respondent Promoter has now executed a Deed of cancellation of Power of Attorney dated 17.10.2019. This crucial and material fact also has been deliberately suppressed by the Respondent Promoter before this Authority during the previous hearings. The Complainant Association has also submitted that it is pertinent to state that very execution of deed of cancellation of Power of Attorney executed by the land owners was, inter alia, on the grounds of non maintenance of proper accounts, non rendering of accounts and reports to the Principals and various other failures and reasons.

Therefore, the Complainant Association has submitted that it is beyond any doubt that the Respondent Promoter has not definitely utilised the entire amounts collected from the members of the Complainant Association and there is genuine apprehension that the monies paid by the members of the Complainant Association has been siphoned and diverted by the Respondent Promoter and therefore, it is just and necessary for conduct of forensic audit as prayed by them in the Interim Application.

11. The Authority has examined the Interim Application of the Complainant Association, Counter Affidavit of the Respondent Promoter and the Rejoinder Affidavit of the Complainant, carefully.

12. It is seen that the Blocks A, B, C and D of this Project have been registered with this Authority in May, 2018 (TN/01/Building/0149/2018 dated 07.05.2018). The Respondent Promoter has opened an Account

No.50200027028375 in HDFC Bank at Alwarpet as a designated Project Account as prescribed under the Act.

13. The Respondent Promoter in the Quarterly Progress report for the period ending December, 2019 has indicated the following physical and financial progress as percentage.

Block	Physical %	Financial %
A	86	86
B	86	86
C	86	86
D	78	78

14. As per Section-4(2)(I) of the Real Estate (Regulation and Development) Act, 2016, the Respondent Promoter shall get his accounts audited within six months after the end of every financial year by a Chartered Accountant in practice, and shall produce a statement of Accounts duly certified and signed by a Chartered Accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilized for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

However, the Respondent Promoter has not filed the Annual Report on statement of Accounts in Form-7 prescribed under Tamil Nadu Real Estate Regulatory Authority (General) Regulations, 2018 for the financial year ending 31.03.2019.

15. It is seen that there is vast variation in the financial progress as stated by the Respondent Promoter and the Complainant Association. Therefore, it is necessary for this Authority to make an independent

assessment of the utilization of the amounts paid by the Allottees for the construction and completion of this Real Estate Project.

Therefore, under Section-35(1) of the Act read with Rule-25(2) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017, this Authority will engage Thiru R.Jarard Kishore, B.Com., F.C.A., Chartered Accountant, Membership No.205898 of M/s.JARARD KISHORE & ASSOCIATES, Chartered Accountants (FRN 0176685), No.3D, Krishna's Ormesleigh, New No.2, Dr.Muniappa Road, Kilpauk, Chennai-600 010 to scrutinize the Project Account and furnish a report with specific reference to utilization of amounts paid by the Allottees towards construction and completion of the apartments booked by them in this Real Estate Project. This report shall be furnished within one month from the date of intimation by this Authority to commence the above assignment. He will be paid a fee of Rupees One Lakh only for this assignment.

16. The Complainant Association is directed to pay this fee upfront to the Authority before 31.01.2021. On receipt of the fee from the Complainant Association, the Authority will inform the expert to commence the above assignment. The Authority will determine whether the fees paid for the expert has to be recovered from the Respondent Promoter while passing final orders on this Complaint.

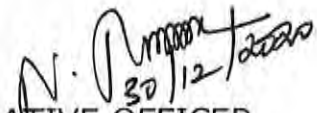
17. With these directions, this Interim Application is disposed of.

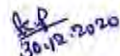
Sd/-...30.12.2020
MEMBER (M), TNRERA

Sd/-...30.12.2020
MEMBER (J), TNRERA

Sd/-...30.12.2020
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


30/12/2020