

4. Gulzar Rahman,]	
Partner,]	
ABC (India) International,]	Proposed Respondents
No.37, Harleys Road, Kilpauk,]	
Chennai-10]	

These Petitions in C.No.20/2018 came up for hearing before the Authority in the presence of Mr. K.Chandrasekaran – Counsel for Petitioners / Complainants Association and of Thiru P.Vinodhkumar – Counsel for Respondent and upon hearing the arguments of both the parties this Authority passes the following order.

ORDER

These petitions have been filed by the Petitioner Complainant Association praying for impleading the 2nd to 4th Respondents as Respondents to the pending Complaint; for interim injunction restraining the proposed 2nd to 4th Respondents from selling, mortgaging, leasing, parting with physical possession and encumbering the property more fully described in the schedule annexed herewith; also for direction for production of copies of Joint Development Agreement or any other Agreement, if the Respondents entered with any other persons involving the schedule mentioned property; for production of copy of Deed of General power of Attorney dated 09.11.2011 registered as Doc.No.1458/2011 in the SRO, Thiruporur executed by the 2nd and 3rd Respondents in favour of 1st Respondent; also for production of copy of the Deed of General power of Attorney dated 18.04.2013 bearing adjudicating

No.393/2013 adjudicated in the SRO, Periamet executed by the proposed 2nd and 3rd Respondents in favour of the 1st Respondent.

2. The Petitioner Association averred in their petition that the 2nd to 4th Respondents being land owners cancelled the Power of Attorney Deed vide Doc.No.14034/2019 on 17.10.2019, on the file of Sub Registrar, Thiruporur.

3. The Petitioners also filed Photostat copy of the Doc.No.14034/2019 in their typed set in support of their contention that the schedule mentioned properties are part and parcel of the project site. The Petitioners further stated in their petition that the members of the petitioners association paid about Rs.22.00 crores to the 1st Respondent being 70-80% of the total consideration.

4. The construction of the project has not reached even 40% of the total construction work, but proportionate undivided share in the subject land which belongs to the 2nd Respondent partnership firm was not conveyed to the purchasers / petitioners who have paid huge sum to the Respondents.

5. The Petitioners also averred that based on the deed of General power of Attorney dated 09.11.2011 executed by the 2nd and 3rd Respondents in favour of the 1st Respondent who entered into construction agreement with the members of the petitioners and agreement as mentioned in Clause 5 of the Construction Agreement for sale of proportionate undivided share in the subject land.

6. The Petitioner further stated that during the pendency of the complaint, the Respondent time and again reported before this Authority that a total sum of about Rs.40.00 crores is needed to complete the pending construction, but a sum of Rs.3.00 crores is only pending due from the members of the petitioners' association.

7. For the shortfall amount to fill the gap for the cost of construction, the Respondent repeatedly informed the complainant association and the Authority that they sought finance from outside source and on the basis of this reason they sought adjournment from the Authority.

8. The Petitioner averred that had the Respondent applied the entire amount of sale consideration paid in excess of Rs.20.00 crores, the project would have been completed upto 70-80% stage, that did not even cross 40% of construction milestones.

9. The Petitioner stated that in the counter affidavit filed in the main complaint, the Respondent distorted the facts grossly and portrayed as if the members of the Complainants Association failed to make payments based on the construction milestones.

10. 2nd to 4th Respondents cancelled the General Power of Attorney as said supra for the grounds (a) undue delay in construction of apartments; (b) complete halt of construction activity; (c) non maintenance of proper accounts; (d) non rendering of accounts and report to the principals and (e) various other reasons.

11. The 2nd Respondent also issued notice to the 1st Respondent on 06.10.2019 intimating the cancellation of the deeds of power of Attorney.

On receipt of such notices, the 1st Respondent had clear knowledge of the fact of cancellation of Deeds of General Power of Attorney, as early as 17.10.2019. The 1st Respondent deliberately failed to bring the fact to the Authority in the subsequent hearings on 18.10.2019 and 20.11.2019, after cancellation of Deeds of General Power of Attorney by the 2nd to 4th Respondents. With ulterior motive on the part of the 1st Respondent misled the Authority and it was an abuse of the process of law.

12. The Petitioners also averred that the act of the Respondents 2 to 4 is unilateral and arbitrary in cancelling the Deeds of General Power of Attorney and it is illegal since the petitioners are stakeholders of the schedule mentioned property.

13. In view of the cancellation of Deeds of General Power of Attorneys as stated supra, there is ample chance of disposal of the schedule mentioned property by the Respondents 2 to 4 to the third parties.

14. If the Respondents are allowed to proceed further in this regard, the same would cause grave irreparable prejudice and hardship to the home buyers.

15. Under such circumstances, the Petitioners sought to implead the 2nd to 4th Respondents herein as 2nd to 4th Respondents in the main complaint.

16. Under Section-2(zk) of the Act, in the definition clause, the Act provides for joint responsibility for the Builder as well as the land owner who develops land into real estate project jointly with the builder. The

landowner is also deemed to be Builder and Promoter as per the definition of the Act.

17. On perusal of Affidavits filed by the Petitioner's Association and documents in support of their plea, the Authority has come to conclusion in the interest of justice and for the protection of home buyers as mandated by the Act, it is necessary to implead the 2nd to 4th Respondents in the main complaint No.C.No.20/2018 and the Authority passes the following Order:

- i. The 2nd to 4th Respondents are impleaded as Respondents 2 to 4 to the pending Complaint.
- ii. The Complainant shall file a clean copy of the Complaint showing 2nd to 4th Respondents.
- iii. The Authority further restrains the 2nd to 4th Respondents from selling, mortgaging, leasing, parting with physical possession, encumbering with schedule mentioned property in any manner.
- iv. The Authority directs the Respondents to produce the following documents:
 - (a) To produce copy of Joint Development Agreement or any other agreement entered into between the 1st Respondent and 2nd to 4th Respondents to the authority within 10 days time from the date of receipt of this order with copy served on the Complainants' Association.

(b) Copy of Deed of General Power of Attorney vide Doc.No.1458/2011 dated 09.11.2011 on the file of SRO, Thiruporur executed by the 2nd and 3rd Respondents in favour of the 1st Respondent.


- v. Further, considering the urgency and plight of the home buyers, the Authority directs the concerned SRO not to register any transaction relating to this Schedule mentioned property until further orders.

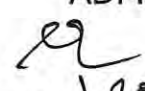
Sd/-...30.01.2020
MEMBER (M), TNRERA

Sd/-...30.01.2020
MEMBER (J), TNRERA

Sd/-...30.01.2020
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER


30/1/2020