



**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.142/2020

19th day of July, 2021

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

Tmt. S. Krishnaveni ... Complainant

Versus

M/s. Brigade Enterprises Ltd. ... Respondent

This Complaint came up for final hearing before this Authority in the presence of the Complainant appeared as party in person and of Thiru P.V.Sajiv Kumar of M/s. Dua Associates – Counsel for the Respondent and upon hearing the arguments of both the parties, this Authority passes the following order:

FINAL ORDER

The Complainant Tmt. S.Krishnaveni has submitted in the Complaint about the discrepancy in the undivided share of land (UDS) pertaining to an apartment purchased by her in Cluster-I of the project "Cluster-I Aspiro" developed by the Respondent at Nolambur village, Ambattur Taluk. As per

Schedule B of Agreement for sale the undivided share of land (UDS) is 974.10 sq.ft. But the UDS as per the information shown in TNRERA website is 615.07 sq.ft. The Complainant has further submitted that as per Sub Clause 6.9 of Clause 6 of Agreement for sale, the sale consideration has to be proportionately changed if there is any change in UDS. The undivided share of land (UDS) submitted with TNRERA is approved by CMDA, the authorized regulatory by the Government and hence the UDS provided in TNRERA considered as authenticated.

2. The Complainant has sought for the following reliefs:

The sale consideration should be reworked according to the authenticated UDS as per sub clause 6.9 of Clause 6 of Agreement for sale. The reworked sale consideration is Rs.26,78,630/- the workings as follows:

Sale consideration for UDS – 974.10 sq.ft. is	Rs.42,42,206/-
Per sq.ft. Sale consideration is	Rs.4,355/-(Rs.42,42,206/974.10sq.ft
Corrected UDS Sale consideration for 615.07sq.ft.	Rs.26,78,756/-

Therefore, the agreement for sale should be made for an amount of Rs.26,78,756/-

3. In the Counter Affidavit, the Respondent has submitted that the project developed by the Respondent on a plot admeasuring about 33.65 acres, in a total of four clusters, Cluster-I, II, III, IV and Commercial Block I & II. The land covered in Cluster I was approximately 6.42 acres. The present dispute pertains to an apartment booked in Cluster I of the Project

"Cluster I Aspiro". The Respondent has further stated that it appears that the only grievance of the Complainant is the alleged discrepancy in the UDS referred to in the TNRERA website and that mentioned in the Agreement for sale dated 20.01.2020 entered into between the landowner and the Complainant which is denied as false, baseless, untenable. The UDS, pertaining to apartment No.A1 – 006 (A1-G06), as reflected on the TNRERA website is 90.50 sq.m. which is 974.13 sq.ft. and proportionate area in club house. Therefore, the present Complaint is baseless and is liable to be dismissed.

4. The Respondent has also submitted in the Counter Affidavit that an Agreement for sale of an undivided share (UDS) of 974.1 sq.ft. of the extent of land covered in Cluster I Aspiro was entered into between the Complainant and the landowner on 20.01.2020 (Agreement for sale). The parties agreed that the compensation for the said UDS would be Rs.42,42,206/- excluding tax and other charges. The Respondent has also stated that an Agreement for construction was also entered into on 20.01.2020 between the Complainant and the Respondent, wherein the Respondent agreed to construct a 3BHK apartment viz. apartment No.A1-006, on the Ground Floor of Block A of Cluster I Aspiro for a consideration of Rs.40,55,895/- excluding tax and other charges (construction agreement). Therefore, the total consideration payable by the Complainant was Rs.82,98,101/- plus other charges and tax towards the cost of construction and the undivided share in the land.

5. The Respondent has further submitted that as on date, the Complainant has only made 10% of the payments to the extent of Rs.8,29,810/- towards the Apartment and the same is evident from the

statement of Accounts maintained by the Respondent (Exhibit R-3). Despite several demand letters and requests made to the Complainant to pay the subsequent installments (Exhibit R-4), the Complainant failed to make even a single payment towards the consideration agreed for the Apartment. As on date, the total outstanding payable to the Respondent by the Complainant towards the Apartment is Rs.79,99,368/- excluding tax and other charges.

6. The Respondent has also stated that in February 2020, the Complainant raised the issue of mismatch between the UDS value contained in the Agreement for sale and the value reflected on the TNRERA website. The Respondent informed the Complainant that the updated UDS was already submitted to the TNRERA (Exhibit R-5). Therefore, again in November 2020 the Complainant once again and as an afterthought raised the issue of a mismatch between the UDS value contained in the Agreement for Sale and the UDS value reflected on the TNRERA website. Despite being informed that the updated UDS was already submitted to the TNRERA (Exhibit R-6), the Complainant proceeded to file the present Complaint to mask her delays in making payments towards the Apartment. The Respondent has also stated that the revised UDS has already been updated on the TNRERA website, and the present Complaint is infructuous and consequently without any basis. The updated UDS as per TNRERA website is being filed herewith as Exhibit R-7.

7. The Respondent has also stated that timely payment of the installments by the purchaser was the essence of the Contract. Despite the negligible payment (i.e. 10%) of the purchase consideration by the Complainant, and the hardships faced due to the Covid-19 pandemic, the

Respondent had, using their funds completed the Apartment of the Complainant, and the same is ready for handing over. However, the Complainant is still evading payment of almost the entire purchase consideration being the outstanding amount of Rs.79,99,368/- excluding tax and late payment interest. As on date, a total sum of Rs.91,28,553/- is due and payable by the Complainant towards the Apartment. The Respondent has further submitted that the present Complaint is infructuous, as the UDS value for the Apartment has already been updated on the TNRERA website. Therefore, the relief sought by the Complainant no longer survives.

8. In response to the Counter Statement of Respondent, the Complainant has submitted that in the TNRERA website under the 'Registered Project (Tamil Nadu) 2017', in the column "other details", under the "carpet area" of project Registration No.:TN/02/Building/0016/2017 dated 17.08.2017, the UDS was shown as 615.07 sq.ft. for unit A1-G006 (refer page 49 of Complainant documents or Review Sheet 1) till 30.12.2020. After the first hearing dated 30.12.2020, the Respondent has managed to update new "carpet area" in TNRERA website, now the UDS shows as 90.50 sq.mtr., therefore, the Respondent wanted to dismiss the Complaint. The Complainant has further submitted that the Respondent sent a PDF file on 28.11.2020, stating that a revised UDS file was submitted with TNRERA on 19.09.2018 (page 17, Exhibit B5 of Respondent documents, review Sheet 2 for ready reference), then the Complainant immediately responded after referring it with TNRERA, stating that in TNRERA website, it was not updated and UDS showing in TNRERA was authenticated record than the information provided by the Respondent and

how and why the revised new UDS submitted with TNRERA was not updated even after two years and there was no proper response from the Respondent. Moreover, the Respondent submitted new UDS with TNRERA on 18.09.2018, which has measuring area in the unit sq.ft., but the new UDS showing in TNRERA website, the measuring area is in the unit of sq.mtr. (page No.18 & 29 of documents submitted by the Respondent or Sheet 3 to 5 for ready reference).

9. In the written submission of arguments, the Respondent has submitted that the Complainant has raised the issue of the mismatch between the UDS value contained in the Agreement for Sale and the UDS value reflected on the TNRERA website for the first time in February 2020. The Respondent clarified to the Complainant (page 28 of the Compilation of Documents filed by the Respondent) that the UDS on the TNRERA website had been subsequently revised, and that the revised UDS details were submitted to the TNRERA on 19.09.2018 (page 17 of the Compilation of Documents filed by the Respondent), the same was much prior to the Agreement for Sale dated 20.01.2020. In any event, the revised UDS has been updated on the TNRERA website (serial No.6, page 29 of the Compilation of Documents filed by the Respondent), and the present Complaint is infructuous and consequently without any basis.

10. The Respondent has also submitted that as per the interest chargeable on the delayed payments, a total of Rs.91,28,553/- is due and payable by the Complainant towards the Apartment.

11. The Respondent has further stated that the present Complaint has been filed in the context of the submissions made here in above, as an afterthought and with the mala fide intention to delay/avoid payments due

towards the cost of the Apartment on account of the admitted financial constraints faced by the Complainant. In any event, the present Complaint is infructuous, as the UDS value for the Apartment has already been updated on the TNRERA website. Therefore, the relief sought by the Complainant no longer survives and the Complaint is liable to be dismissed.

12. This Authority has examined the Complaint, Counter affidavit filed by the Respondent Promoter, response to counter affidavit/written arguments filed by the Complainant and the written arguments of the Respondent Promoter carefully.

13. The agreement for sale entered between the Complainant allottee and the Respondent Promoter is binding on both the parties relating to the sale of the apartment along with undivided share of lands agreed to be conveyed. In the agreement for sale, 974.10 sq.ft. has been agreed to be conveyed. Even though this extent was not reflected in the carpet area statement furnished by the Respondent Promoter initially, the Promoter has subsequently revised and updated the undivided share which is equal to 90.50 square meter in the RERA website as well. 90.50 square meter is equal to 974.10 sq.ft. Therefore, there is no discrepancy now and hence the prayer for reworking of sale consideration does not arise. Accordingly this Authority dismisses this Complaint.

Sd/-...19.07.2021

MEMBER (M), TNRERA

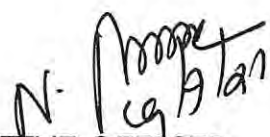
Sd/-...19.07.2021

MEMBER (J), TNRERA

Sd/-...19.07.2021

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N. 
ADMINISTRATIVE OFFICER

19-7-21

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