



**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.44 of 2020**

**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**

Thiru C.Balasubramanian ... Complainant

**Versus**

M/s. Dugar Housing Limited ... Respondent  
Chennai

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The issue on the maintainability of this Complaint came up for final hearing before the Authority in the presence of M/s.R.Munuswamy, E.Prabu and V.Surya Sankar – Counsel for the Complainant and of M/s. K.V.Bhashyam Chari and P.Vijay – Counsel for the Respondent and upon hearing the arguments of all the parties, this Authority passes the following order:

## ORDER

The Complainant is the allottee of Flat No.101, Tower-10 of "Sky Dugar" project vide allotment letter dated 24.12.2014. The Agreement for sale of undivided share as well as the Construction Agreement have been registered on 09.09.2015. This Real Estate project is in Rajankuppam village, Ayanambakkam, Ambattur Taluk, Chennai.

2. The Complainant has stated that several amenities are either yet to be provided by the Respondent Promoter or incomplete. The Complainant has sought the following reliefs:

- a) The Respondent be directed to register this project "Sky Dugar" under RERA immediately.*
- b) The Builder should provide all the amenities as pointed out in his complaint and also make improvements wherever it is deficient or of poor quality. The project is now 6 years old from the date of commencement and more than a year old from the date of obtaining of Completion Certificate. So there has been enormous delay and eventually we, the owners may have to get all that done at our cost if the Builder is not held accountable. The compliance shall be time bound.*
- c) The continuance of the Owners Association formed and conducted by the Builder is not in the best interest of the real owners and he apprehend misuse of their hard earned money. The quantum of funds collected is huge and so the Builder be directed to hold the meeting for election of new office bearers*

*immediately. They should also render audited accounts of the association. The corpus funds collected should be intact in the form of investment as FD in a Bank or institution of financial repute.*

*(d) the Builder should not get relieved from this project till their compliance of the project related issues and also the issues related to the Owners Association to their satisfaction.*

3. In the Counter Statement cum Preliminary Objection challenging the maintainability of the Complaint, the Respondent has stated that the application for the Completion Certificate in respect of this project was filed before CMDA on 29.05.2017. The Respondent has further submitted that this Authority has already dismissed the Complaint No.401 of 2019 filed by one Mr.K.Mahendran against the Respondent whose flat is also in "Sky Dugar" project. The Completion Certificate for this project has also been issued by Chennai Metropolitan Development Authority on 17.10.2018. Therefore, the Respondent has prayed that the Complaint may be dismissed.

4. In the written submission of arguments, the Counsel for the Complainant has argued that the recent judgment dated 15.09.2020 passed by the Division Bench of the Hon'ble High Court of Madras in CMSA No.22 of 2019 in Subashimi Thulasiram Vs M/s. SPR & RG Constructions Private Limited is squarely applicable to the facts and circumstances of this case.



5. In the written submissions of arguments, the Respondent has argued that the orders of this Authority passed on 19.03.2020 in Complaint No.401 of 2019 operates as Judgment in Rem under Section 41 of Indian Evidence Act thereby binding all the third party owners of the flats situated in "Sky Dugar" project. The Respondent has also cited the Rajasthan High Court's judgment passed in Ganesh Singh Vs Hari Singh and Others published in RLW 2003 (3) Raj 1853 and another judgment passed by the Rajasthan High Court in Ram Vs Prabhu Dayal and Others published in 1972 AIR (Raj) 180 in support of his contentions.

6. This Authority has examined the contentions of the Complainant and the Respondent regarding the maintainability of the Complaint carefully.

7. As rightly pointed out by the Complainant, the recent judgment dated 15.09.2020 passed by the Division Bench of the Hon'ble High Court of Madras in CMSA No.22 of 2019 in Subashini Thulasiram Vs M/s.SPR and RG Constructions Private Limited holds the field. The Rule gives an exemption only to the Developers who applied for Completion Certificate on or before 01.05.2017. In respect of this project, the application for Completion Certificate has been filed on 29.05.2017. Therefore, this Real Estate Project has to be considered as an ongoing project only, as per the ruling of the Division Bench of the Hon'ble High Court of Madras. Therefore, this Authority holds this Complaint is maintainable.

8. Accordingly, this Authority directs the Respondent Promoter to file detailed Counter Affidavit with specific reference to the reliefs sought for

by the Complainant before 25.02.2021 with copy served on the Complainant.

9. The Authority posts next hearing of this Complaint through video conferencing at 5.15 p.m. on 04.03.2021.

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

*N. Anand*  
ADMINISTRATIVE OFFICER  
*11.2.2021*