



The issue on the maintainability of these Complaints came up for final hearing before the Authority in the presence of Complainants having appeared party in person and of Mr. G.A. Bhaskara Rajan and Mr. Deepak A Poonamiya – Counsel for the Respondents and upon hearing the arguments of both the parties, this Authority passes the following order:

### **ORDER**

The Complainants are allottees of "SANTORINI" project developed by the Respondent Promoter M/s.Tata Value Homes Limited in Kuttambakkam Village, Poonamallee Panchayat Union.

2. The Complainants have stated that the plan approval was obtained as a single project from Chennai Metropolitan Development Authority (CMDA) with Planning Permit for 17 residential blocks comprising 1136 dwelling units, a Club House block and a Primary School block.

3. The Complainants have sought the following reliefs:

***Relief(s) sought:***

- a) The entire "SANTORINI" project to be registered with RERA*
- b) All the benefits of RERA registration for the already completed 6 blocks of "SANTORINI" project to be ensured.*
- c) Approval of planning permit for the project was given with specific conditions under letter No.B3/16272/2013, dated 27.01.2014 by the Member Secretary, Chennai*

*Metropolitan Development Authority, Chennai. But the builder has willfully deviated from the plan approval as below:*

- i. By encroaching upon Pond Area and Temple Land even after giving the undertaking deed. The Respondents should not encroach the above said areas to avoid future complications and dispute.*
- ii. Stilt car park roof open terrace is only temporary and not permanent structure as per the original approval. Contrary to this even after giving the undertaking Deed, the builders converted the said temporary terrace into podium garden for marketing purpose without the consent of the allottees.  
Hence the Respondents should get the necessary approval for the podium gardens to avoid future complications and dispute.*
- iii. The 2 wheeler parking as shown in the approved plan is allotted to some of the allottees as car parking areas, so far they have not provided 2 wheeler parking. Most of the allottees being from the low income group and middle income group, the 2 wheelers parking area mentioned in the approved plan has to be allotted to these allottees.*
- iv. The Respondents while advertising for marketing purpose in the media and brochures stated that they obtained OC/CC for 6 already constructed blocks and*

*Club House, which is absolutely false. They received only partial Completion Certificate for 6 Blocks and no OC/CC from the Competent Authorities. This misleads the public who are interested in buying apartments in "SANTORINI" project. The Respondents should not publish false information in the media.*

***Interim order, prayed for:***

- i. An interim order is requested not to form Owners Welfare Association / RWA in phased manner as the common amenities are not provided in full as per the construction agreement and sale deed. The available amenities and infrastructure would not have been a 100% sharing mode without restrictions and reservations of any manner. Owners Association shall be formed after completion of entire project or on occupation of majority of the Allottees provided the Respondents furnish the contact details of all apartment owners 90 days in advance. The Respondents shall help the Allottees to form the Association with their own bye laws and deed of apartment.*

4. The Respondents have challenged the maintainability of the Complaints. The Respondent Promoter M/s.Tata Value Homes Limited has taken up the construction and development of "SANTORINI" project in

phases and in furtherance of such development, they have completed the construction and handover of the apartments in Phase-1A in the year 2017-18. The Respondents have also stated that they had applied for Completion Certificate for 5 Blocks namely Block 3, 5, 11, 12 and 17 on 23.11.2016 and got Partial Completion Certificate in respect of these Blocks on 18.05.2017 and therefore, the Promoter Company is not required to register these 5 Blocks with TNRERA. In respect of Phase-1B Block 7, 8, 9 and 16, registration with TNRERA has been obtained.

5. The Respondents have further stated that in respect of Block 10, Completion Certificate was obtained on 10.08.2017 for which the application for Completion Certificate was filed on 22.06.2017. The Respondent Promoter has also placed reliance on the orders of this Authority in Complaint No.163 of 2018 in this regard.

6. The Respondent Promoter has also cited Clause-K of the Agreement for Sale and Clause-J of the Construction Agreement entered with the Complainants which read as below:

*Recital "J" and "K" of Agreement for Sale and Construction Agreement:*

*"Developer will have the right to carry out a phase wise construction. All the buildings may not be constructed simultaneously. The Complex will be developed in various construction phases and availability of few common amenities, services and Club will be dependent on the construction phase and may get ready at the time which the last phase is completed or and at the end of the Complex"*

7. The Respondents have also stated that the Respondent Promoter Company is not required to register Block-10 with TNRERA since they have applied for Partial Completion Certificate with CMDA on 22.06.2017 prior to commencement of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017.

8. In the common written arguments, the Complainants have argued that they are the allottees in the entire project with an extent of 18 Acres and 87.5 cents. Therefore, they have every right to raise objections to the project being split into phases. The Complainants have also submitted that this entire project has a single Planning Permission as well as Environmental Clearance. The Complainants have also reiterated that there are deviations to the approved plan.

9. The Respondent Promoter in the written arguments has challenged the maintainability of the Complaints primarily on the ground that there is no cause of action accrued to the Complainants since Phase-1A is a non RERA project wherein the Completion Certificate was received prior to notification of RERA Rules in Tamil Nadu on 22.06.2017. They have reiterated their contentions made in the Counter Affidavit regarding maintainability of the Complaints.

10. This Authority has examined the Complaints, Counter Affidavit of the Respondent Promoter and the written arguments of both sides carefully with reference to the maintainability of these Complaints.

11. The Complainants are Allottees of this Real Estate Project called "SANTORINI" developed by the Respondents. Their main grievance is that the entire project has to be registered with TNRERA. The Complainants

have also prayed for ensuring the benefit of RERA registration for the already completed 6 Blocks of this project. They have also alleged that the Respondent Promoter has deviated from the approved plan.

12. As far as exemption from registration of this real estate project is concerned, 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. holds the field. The Division Bench of the Hon'ble High Court of Madras has held that the Rule gives an exemption only in respect of projects for which application for Completion Certificate have been filed on or before 01.05.2017 the date of commencement of Section 3 of the Act.

13. Therefore, the 5 Blocks namely Block 3, 5, 11, 12 and 17 in this Real Estate Project for which application for Completion Certificate was filed on 23.11.2016 are exempted from registration with this Authority. Block 10 for which application for Completion Certificate was filed on 22.06.2017 is not exempt from registration as per the Ruling of the Division Bench of the Hon'ble High Court of Madras.

14. Also the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in its order in Appeal No.75/2019 dated 09.11.2020 in Olympia Grande Apartment Owner's Welfare Association Vs. M/s. KSM Nirman Private Limited has held that the RERA provisions specifically contemplated with regard to redressal of grievances under the RERA Act irrespective of their registration since the jurisdiction of Civil Court is also barred.

15. The Complainants have alleged deviations in the approved plan and formation of Association of Allottees in a phased manner.

16. Therefore, this Authority holds that the Complaints are maintainable and the Respondent Promoter is directed to file a detailed Counter Affidavit regarding the reliefs sought by the Complainants including the interim order prayed for by them within two weeks from the date of pronouncement of this Order.

17. The next hearing in these Complaints through video conferencing will be intimated separately.

Sd/-...10.03.2021

Sd/-...10.03.2021

Sd/-...10.03.2021

MEMBER (M), TNRERA

MEMBER (J), TNRERA

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N.  10/3/21  
ADMINISTRATIVE OFFICER

M  
10-3-21