



**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.83 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 M. Soundara Pandian ... Complainant

**Versus**

M/s.BBCL VAJRA ... Respondent  
Represented by its Managing Director  
Mr. R. Vummidi Barath

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The issue on the maintainability of this Complaint came up for final hearing before the Authority in the presence of Mr.Ananda Gomathy Murugesan and K.Jayaganga – Counsel for the Complainant and of M/s. AAV Partners – Counsel for the Respondent and upon hearing the arguments of both the parties, this Authority passes the following order:

## **ORDER**

The Complainant has stated that the Respondent Promoter has executed the sale deed and the Construction Agreement on 28.12.2018 for an apartment in the Real Estate Project named "BBCL Vajra", Nolambur village, Ambattur, Chennai.

2. The Complainant has further stated that several common facilities in the common area have not been commissioned. The Complainant has sought the following reliefs:

### ***Reliefs Sought***

- a) not to interfere with the car parking already allotted to the Complainant.*
- b) to reimburse a sum of Rs.42,000/- to the Complainant towards the incomplete work of the Respondent.*
- c) to reimburse the maintenance charge compulsorily collected from the Complainant without proper completion of the works amounting to Rs.22,000/-*
- d) to complete the pending work in the apartment named BBCL Vajra, Nolambur.*
- e) to grant any other relief and further reliefs as may be deemed just and necessary in the facts and circumstances of the case.*

### ***Interim order, if prayed for***

- a) to direct the Respondent not to interfere with the car parking already allotted to the Complainant and pass such*

*further order or other orders may deem fit under the circumstances of the case and thus render justice.*

*b) to direct the Respondent not to collect maintenance or any charges from the Complainant till the disposal of the above case and pass such further order or other orders may deem fit under the circumstances of the case and thus render justice.*

3. The Complainant has also filed an Affidavit in this regard praying for the interim reliefs mentioned in the Complaint.

4. In the Counter Affidavit, the Respondent Promoter has submitted that this Complaint is neither maintainable in law nor on facts and the Respondent has filed the Counter Affidavit regarding the maintainability of the Complaint.

5. The Respondent has further stated that this project has been completed as early as May, 2017 and the Respondent had applied for Completion Certificate on 22.05.2017 and the Completion Certificate was issued by CMDA on 21.08.2018. This project has also finds place in Serial No.64 in the list of projects for which application for Completion Certificate has been applied with CMDA as per TNRERA Rules. Therefore, the Respondent Promoter has submitted that this project does not fall under the ambit of ongoing project and has prayed that the Complaint may be dismissed on the point of maintainability.

6. In the written arguments, the Counsel for the Complainant has argued that Section 3 of Tamil Nadu Real Estate (Regulation and Development) Act, 2016 has come into force on 01.05.2017. On this date of implementation of Section 3 of this Act, the Respondent did not make

any application for Completion Certificate before CMDA. The Complainant has also cited the judgment of Tamil Nadu Real Estate Appellate Tribunal in Mrs. Devinarayan Housing Board and Property Developments Private Limited Vs Manu Karan and Another. Further the Act prevails over the Rules and on the date when Section 3 of the Act came into force, the project was not completed. Therefore, the Complaint is absolutely maintainable.

7. In the written arguments, the Respondent has reiterated the earlier submissions and has cited the judgment of Tamil Nadu Real Estate Appellate Tribunal in Appeal No.02 of 2019 between M/s. SPR & RG Constructions Private Limited Vs Mrs. Subhashini Thulasiram in support of his contention.

8. This Authority has examined the contentions of the Complainant and the Respondent with reference to the maintainability of the Complaint carefully.

9. 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 22.05.2017 and the Completion Certificate was issued on 28.02.2018. Therefore, this Authority holds that this Real Estate Project is an ongoing project and the Complaint is maintainable.

10. Accordingly, the Authority directs the Respondent Promoter to file detailed Counter Affidavit with specific reference to the reliefs prayed for by the Complainant before 25.02.2021 with copy served on the Complainant.

11. The Authority posts next hearing of this Complaint through video conferencing at 5.30 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

  
ADMINISTRATIVE OFFICER  
