



**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.Nos. 211 & 212/2021**

**10<sup>th</sup> day of June, 2022**

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

1) Deiva Gandhi Kumar	211/2021	]	Complainants
2) Balaji Swaminathan	212/2021	]	

**Versus**

1) M/s. Green Choice Constructions Pvt. Ltd.	]	Respondents
Represented by its Chairman	]	
Tvl. P.R. Earnarst & C.K. Sridhar	]	
2) Thiru Devadoss	]	
3) Thiru S. Murugan	]	
4) Thiru S. Tamilselvan	]	

These Complaints came up for final hearing before this Authority in the presence of Ms. Hema Srinivasan and N.Umayaparvathi – Counsel for the Complainants and of the 1<sup>st</sup> Respondent Promoter represented by its Chariman Tvl.P.R.Earnarst and C.K.Sridhar and of M/s. V.J. Arul Raj, M.Kirubaharan and K.Backiaraj – Counsel for the 2<sup>nd</sup> Respondent and of M/s. S. Velmurugan - Counsel for the 3<sup>rd</sup> & 4<sup>th</sup> Respondents and upon

hearing the arguments of all the parties this Authority passes the following order:

### **FINAL ORDER**

The Complainants have submitted that the order dated 09.12.2020 passed by this Authority covers only 11 flat buyers who had filed the earlier Complainants and hence the Complainants herein are filing this instant Complaints praying for a direction to the Sub Registrar, Virugambakkam to register the undivided shares in favour of all the Flat Buyers of the project without insisting on life certificates from the Respondent Nos.2, 3 and 4.

2. The Complainants have further stated that the power of attorney issued by the Respondents-2, 3 and 4 to the 1<sup>st</sup> Respondent are valid in force and have not been revoked as on the date of filing these Complaints. As was held by this Authority in its order dated 09.12.2020, the Respondent Nos.2, 3 & 4 are indeed alive since notices sent by the earlier Complainants were delivered to them. Therefore, the Complainants have submitted that the present case is squarely covered by the decision of the Hon'ble High Court in Ozone Homes and since the Power of Attorney in favour of the 1<sup>st</sup> Respondent has not been revoked and since the land owners (Respondents-2, 3 and 4) are alive it becomes redundant to insist on a life certificate from the Respondents-2, 3 & 4.

3. The Complainants have prayed for the following reliefs:

- i. To direct the Sub Registrar Virugambakkam to effect the registration of UDS in favour of the Complainants herein without insisting upon the life certificates.



- ii. To direct the 1<sup>st</sup> Respondent to comply with all directions of the Sub Registrar Virugambakkam and register the UDS of the Complainants.
- iii. To pass any other orders at this Authority may deem fit in the circumstances of the case and thus render justice.

4. In the Counter Affidavit, the 2<sup>nd</sup> Respondent has submitted that the Complaint is not at all maintainable in law or facts and the 2<sup>nd</sup> Respondent is raising preliminary objection to the maintainability of the Complaint on the following grounds:

- i. That there is no privity of contract whatsoever between the Complainant and the 2<sup>nd</sup> Respondent.
- ii. That there is an arbitration clause in the Agreement between the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents and hence any grievance has to be settled as per Arbitration clause.
- iii. That the Complaint itself is not valid, legal or not tenable as the Power Agent of the Complainant has not adjudicated the Power of Attorney document before the competent Sub-Registrar. In the absence of adjudication and nonpayment of stamp duty and registration charges the Power of Attorney document is invalid as it is mandatory to adjudicate the said document.
- iv. This Authority has no power or jurisdiction to grant relief as prayed for, and only the High Court and Civil Courts has power to adjudicate this case.

5. The 2<sup>nd</sup> Respondent has further submitted that the 1<sup>st</sup> Respondent has not paid the agreed rental amount of Rs.10,000/- p.m. with effect from January, 2015. As on date, the 1<sup>st</sup> Respondent has to pay a sum of Rs.9,00,000/- as rental due, with interest at 12% per annum. The 2<sup>nd</sup> Respondent has further stated that the Builders/Construction Agreement is dated 08.06.2011, whereas his power of attorney is executed much later only during mid 2012. Hence, the 1<sup>st</sup> Respondent has no locus standi to enter into Builder Agreement dated 08.06.2011, with the Complainant. Therefore, the said Agreement is invalid and illegal.

6. In the Counter Affidavit filed on behalf of the 3<sup>rd</sup> & 4<sup>th</sup> Respondents, they have submitted that the 3<sup>rd</sup> & the 4<sup>th</sup> Respondents have registered a General Power of Attorney on 29.02.2012 in favour of the 1<sup>st</sup> Respondent. Before that they have not executed any deed or agreement in favour of the 1<sup>st</sup> Respondent in respect of the property. Without any deed or agreement, on behalf of these Respondents how the 1<sup>st</sup> Respondent and the Complainants had entered into a Builder's Agreement on 26.08.2011 in respect of the property? Therefore, the said Builders Agreement dated 26.08.2011 itself is not valid one as per law prevailing in the State and based on the Complaints filed by the Complainants claiming their rights itself is not valid one.

7. The 3<sup>rd</sup> & the 4<sup>th</sup> Respondents have further submitted that the 1<sup>st</sup> Respondent did not comply with the terms and conditions stipulated as per the Joint Development Agreement dated 29.02.2012. Also the 1<sup>st</sup> Respondent did not pay the monthly rental amount to these Respondents as per Joint Development Agreement dated 29.12.2012.



8. The Complainants have filed a Memo for withdrawal of Complaints stating that the UDS of Complainants has been registered with the Sub Registrar, Virugambakkam. Therefore, the present Complaints have become infructuous and may be withdrawn.

9. In the Objection to Memo for withdrawal of the Complaints, the 3<sup>rd</sup> and the 4<sup>th</sup> Respondent has submitted that without any order of this Authority or without issuing Life Certificate by the 3<sup>rd</sup> and the 4<sup>th</sup> Respondents, how the 1<sup>st</sup> Respondent Promoter had registered the said UDS in favour of the Complainants before the SRO, Virugambakkam.

10. In the Common Counter Affidavit, the 1<sup>st</sup> Respondent Promoter has submitted that during the time of negotiation for demolition and reconstruction of the property, the Respondents No.2 to 4 have asked for compensation to remove the illegally constructed shops. They had also approached the Court to stop the demolition and reconstruction. As an out of Court settlement, they had paid Rs.10,00,000/- to each shop owner and along with the allotment of one car park slot to each one in the western side of the project periphery.

11. 1<sup>st</sup> Responder Promoter has further submitted that after amicable settlements for these illegal shops, the Respondent Nos.2 to 4 have executed Joint Development Agreement and subsequently a Power of Attorney. The 1<sup>st</sup> Respondent has also submitted that as per normal procedure for redevelopment, they will negotiate with the clients and once they accept their proposal, they will first execute the Joint Development Agreement and subsequently register the Power of Attorney for getting

approval and sale of the balance undivided share of land. In this project also they have followed the same and started developing the project. The 1<sup>st</sup> Respondent has also submitted that due to various reasons, the project execution got delayed and once they restarted along with the joint effort of the Association, they constructed the building till fourth floor roof. The 1<sup>st</sup> Respondent has further submitted that when the time came for registration of Builders Agreement and the UDS, the Respondents 2 to 4 have refused to issue the required Life Certificate and this Authority in its order dated 09.12.2020 has ordered that without these three Life Certificates, registration of Builder's Agreement and the UDS to be done.

12. The 1<sup>st</sup> Respondent has also stated that along with great efforts of the Association, it has registered all the flat owners' Builder's Agreement and UDS. Due to the non co-operation of the Respondents 2 to 4, more than three years lapsed; however, they have successfully restarted the construction and in the process of completing the project and will be in a position to handover the project in six months' time.

13. In the written submission of arguments, the 3<sup>rd</sup> and the 4<sup>th</sup> Respondents have reiterated their submissions made in the Counter Affidavit.

14. The 1<sup>st</sup> Respondent Promoter and the 2<sup>nd</sup> Respondent have not filed any written submission of arguments in respect of these Complaints.

15. This Authority has examined the Complaints, the Counter Affidavit filed by the 2<sup>nd</sup> Respondent, the Counter Affidavit filed by the 3<sup>rd</sup> and the 4<sup>th</sup> Respondents and the Common Counter Affidavit filed by the 1<sup>st</sup>

Respondent Promoter and the arguments and the written submission of arguments carefully.

16. The Complainants have filed a memo for withdrawal of Complaints stating that the UDS of the Complainants have been registered with the Sub Registrar, Virugambakkam and therefore, the present Complaints have become infructuous.

17. The Complainants have prayed that this Authority may permit the Complainants to withdraw the Complaints.

18. Accordingly these Complaints are dismissed as withdrawn.

Sd/-...10.06.2022

Sd/-...10.06.2022


Sd/-...10.06.2022

MEMBER (M), TNRERA

MEMBR (J), TNRERA

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

  
ADMINISTRATIVE OFFICER

10  
10.6.22.