

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**

**SR No. 0002 of 2018**

**in**

**Unnumbered CCP of 2018**

Mrs. Subashini Thulasiram,  
W/o Thulasiram,  
Rep. by her PoA Mrs. B. Jayalakshmi ..... Applicant

**Vs.**

M/s. SPR & RG Constructions Pvt Ltd.,  
Rep. by its Directors,  
Mr. Hitesh Kumar, P. Kawad & Mr. M. G.Surendranatha ..... Respondent  
**(Unregistered Project)**

Complainant : Represented by M/s. S. Shahul Hameed **AND**  
L.F. Shika, Advocates

Respondent : Represented by M/s. John Zachariah,  
M.V.V.N.Sivanthy **AND** Ms. R.S. Pornima Advocates

**Heard on : 19.12.2018**

**Delivered on : 20.12.2018**

**ORDER**

The complaint filed by the above named complainant u/s 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) seeking direction to the Respondent to pay Rs.20,00,000/- as compensation together with interest @ 24% p.a from 31.03.2015 till the date of refund as per Section 18(3), Section 14 in violation of sanction plans and approvals and Section 19(1) of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA Act) for not providing the information as to the status of the environmental clearance.

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2. Regarding the maintainability of the petition both sides were heard.
3. Averments of the Complainant in brief as follows:

The Complainant purchased a flat from the Respondent and the said flat was part of the multistoried building project known as "**Osian Chlorophyll**" and the flat bearing No.9131, 13<sup>th</sup> Floor, Block 9, measuring 1592 sq.ft. The proportionate undivided share of land is about 418 sq.ft. The total cost of the land is Rs.11,49,500/- which was paid by the Complainant. A sum of Rs.81,85,380/- was to be paid towards the cost of construction. Out of the amount, the Complainant paid Rs.75,18,367/-. The balance of Rs.6,67,013/- is being withheld by the Complainant for the reason that the Respondent should take the approval from the Authorities. As per the agreement of sale and construction executed between the Complainant and the Respondent on 27.11.2012, the possession of the flat is to be handed over within 36 months from 31.03.2012 i.e., on 31.3.2015. The Respondent assured that all the approvals for the construction were obtained and the construction was made in conformity of the approvals. However, no such approvals were obtained by the Respondent and there were legal proceedings before the Authorities and the possession of the flat was not made as per the terms of the agreement. There is violation of Section 841 of the RERA Act. There is violation of the provisions of the RERA act. In the above circumstances, the Complainant is withdrawing from the project and seeking reliefs as prayed for.

4. **Counter Averments in brief:**

The complaint is liable to be dismissed as not maintainable due to lack of jurisdiction. Rule 2(h) (ii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as RERA Rules),

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specifically excludes those projects in Chennai Metropolitan Area for which the application for completion certificate has been filed prior to the date of the notification of the Rules.

The residential project of the Respondent "**Osian Chlorophyll**" was completed as early as 03.04.2017 and the application for completion certificate with the CMDA was filed on 29.05.2017 and the completion certificate was granted by CMDA. Therefore, by virtue of rule 2(h) (ii) of the RERA Rules, the project does not fall within the ambit of ongoing project and hence does not require registration u/s 3 of the RERA Act. The complaint does not fall within the jurisdiction of the Learned Adjudicating Officer. If the complaint is found maintainable, the Respondent is to be permitted to file detailed counter statement on merits. Hence, prays for the dismissal of the complaint.

5. The point arises for the determination is :-

(1) Whether the petition for compensation is maintainable?

6. Answer to Point (1): The Learned Counsel for the Complainant/Petitioner submitted that the Adjudicating Officer of this Forum has got jurisdiction to decide the compensation u/s 71 of the RERA Act, which came into force on 01.05.2016 and as per the first proviso of the sub section 1 of Section 3 of RERA Act the projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter has to apply for registration of the project and the promoter has not registered under the RERA Act and the Rule 2 (h) (ii) of the RERA Rules, which was relied by the Respondent is in contravention of the Section 3 of the RERA Act and the Act will prevail over the Rules framed under the Act and therefore

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the Authority or Adjudicating Officer has jurisdiction in the case and the complaint is to be numbered and decided on merits. The Learned Counsel also relied the following decisions in support of his contentions.

1. *Avinash Saraf, Neha Duggar Saraf vs Runwal Homes Pvt Ltd., in Complaint No.CC0032000000000032 – MahaRERA.*
2. *Ms.Poonam Devnani and Another vs M/s. Emaar MGF Land Pvt Ltd., in Complaint No. 118 of 2018 - HARERA*

7. However, the Learned Counsel for the Respondent contented that the complaint is liable to be dismissed in limine as not maintainable for want of jurisdiction and the project of the Respondent made application for completion certificate by the CMDA prior to the notification of the Rules and Rule 2 (h) (ii) of the RERA Rules, 2017, which excludes the projects in the Chennai Metropolitan Area for which application for completion certificate has been filed prior to the date of notification of the Rules and the project of the Respondent completed as early as 03.05.2017 and the application for completion certificate with this CMDA was filed on 29.05.2017 and the completion certificate was also granted by the CMDA on 06.09.2018 and therefore it is not an ongoing project, which require registration u/s 3 of the RERA Act. The Learned Counsel also relied on the orders of the Tamil Nadu Real Estate Regulatory in the following cases.

1. *Chippada Sivarama Krishna vs M/s. Radiance Realty Developers India Ltd., in Complaint No.007 of 2018*
2. *Thiru Arun Suryanarayan Iyer vs M/s. Amarprakash Developers Pvt Ltd., in Complaint No.76 of 2018*
3. *Letter dated TNRERA/774/2018 dated 12.04.2018 of the Authority.*


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8. It is not in dispute that the first proviso to sub section (1) of Section 3 of the RERA Act requires the promoter to make an application to the Authority for registration of the Project that are ongoing on the date of the commencement of the RERA Act and for which completion certificate has not been issued. It is also not in dispute that Rule 2(h) (ii) excludes the projects in Chennai Metropolitan Area for which application for completion certificate has been filed with CMDA on the date of coming into force of sub section (1) of Section 3 of RERA Act. Admittedly, on the date of commencement of the Act i.e., 01.05.2016, the project of the Respondent was not given completion certificate. Therefore, as per the first proviso to sub section (1) of Section 3 of the RERA Act, the project needs to be registered under the RERA Act. Even under Rule 2(h) (ii) of the RERA Rules, the crucial date for the exclusion of the projects for which application for completion certificate is being filed with CMDA is the date on which the section came into force i.e., 01.05.2016. It is obvious the date on 01.05.2016, even according to the Respondent the application for completion certificate was not at all made to CMDA by the Respondent and the project was an ongoing project. Therefore, the contention of the Learned Counsel for the Respondent that the project does not fall within the ambit of ongoing project and does not require registration under Section 3 of the RERA Act is not acceptable. In this regard, it is relevant to note that in Joan Disouza v. Deepak Karnik & Ors in Complaint No. CC006000000000181, the Maharashtra Real Estate Regulatory Authority (MahaRERA) held as follows:

“Section 3 of the RERA specifies the Real Estate Projects, which require the registration. RERA Authority gets jurisdiction over all the real estate projects which are eligible for registration irrespective of the fact as to whether they are registered or not. From 01.05.2017 when RERA came into force in Maharashtra, MahaRERA gets the jurisdiction over all the real estate project which are eligible for registration u/s 3 of RERA.

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If the cause survives after coming into force of RERA, MahaRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects. The on-going projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and The Indian Contract Act and MOFA in particular. Section 79 of RERA bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under RERA to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under MOFA also and is equally competent to grant the relief under the said statute. This view gets the support from Section 88 of REERA which provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. MOFA has not been repealed. In this context, Section 71 of RERA can be looked into. It provides that for the purpose of adjudicating compensation u/ss. 12, 14, 18 & 19, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matter covered u/ss. 12,14,18 and 19 is pending before the consumer disputes redressal forum, consumer disputes redressal commission or national consumer dispute redressal commission on or before the commencement of RERA he may, with the permission of the said forum withdraw the complaint pending before it and file it before the Adjudicating Officer under RERA. This provision therefore, indicates that RERA is retroactive. Considering all these aspects, I find that the Authority has jurisdiction to entertain this complaint”.

In the other decisions relied by the Learned Counsel for the complainant also, the same view was taken by the MahaRERA and HARERA.

9. In view of the above decision, it is clear that the project of the Respondent was eligible for registration when the RERA Act came into force in Tamil Nadu. Tamil Nadu RERA gets jurisdiction over the project of the Respondent irrespective of the fact as to whether it was registered or not. In the above circumstances, I am of the view that the

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Complaint filed by the Petitioner for compensation is maintainable and has to be tried on merits of the case. The decisions relied by the Learned Counsel for the Respondent are not applicable to the facts of the case. Thus, the point is answered accordingly.

10. In the result, the complaint is ordered to be numbered, if found, otherwise proper.

**Sd/- (G.SARAVANAN)  
ADJUDICATING OFFICER  
TNRERA, CHENNAI**

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**ADMINISTRATIVE OFFICER,  
TNRERA**

  
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