BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL (TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

(Under the Real Estate Regulation And Development Act 2016)

DATED 08.12.2020

Coram : Mr.Justice B.Rajendran, Chairperson
Mr.N.Balasubramanian, Judicial Member
Ms.Leena Nair, Administrative Member

Appeal No. 45 of 2020

M/s.Casagrand Builder Private Limited,
Represented by its Authorized Signatory
Y.Mohan Raj ...Appellant

..vs..

Mr.M.Ramesh ... Respondent

This appeal was filed against the order of the Regulatory Authority, Chennai in C.No.334/2019 dated 10.02.2020 and was taken on file on 08.07.2020 and came up for final hearing on 18.11.2020 in the presence of M/s.Ganesh and Ganesh, Counsel for the Appellant and Mr.S.Anbazhagan, Counsel for the Respondent. Having heard the arguments of both sides

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through video conferencing and having stood over for consideration till this day and this Tribunal delivered the following:

ORDER

Facts of the case:

1. The respondent/complainant wanted to buy a flat with the appellant/respondent with reference to the project advertised by appellant, made enquiries with the appellant, followed up with him for more than one month but to his shock and surprise when the respondent/complainant checked the website of the appellant for further details, it came to his knowledge that the appellant has published advertisements wherein they have promoted their new project "Supremus Phase III" in Thalambur, Tamil Nadu, and properties in Medavakkam and Perumbakkam, Tamil Nadu along with RERA Registration No.TN/01/Building/040/2018". However the registration number mentioned above is only for Supremus Phase-I, Thalambur. The appellant has misrepresented as if TN/01/Building/040/2018 is also for Supremus Phase III, Thalambur and properties in Medavakkam and Perumbakkam. The above mentioned projects are ongoing projects for which the appellant has not yet obtained registration under RERA and is falsely attaching the above mentioned registration number which was obtained by them for other completed project and not for their projects Supremus Phase III in Thalambur, properties in Medavakkam and Perumbakkam. Hence the appellant misrepresented the public. Therefore the respondent made a complaint

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before the Authority u/s 31 of Real Estate Act, 2016 R/W Rule 37 as the appellant had contravened Section 7 of the Real Estate Regulation Act and Rule 6 before the Regulatory Authority for the relief of setting aside the applications (if any) for registration before TNRERA with regard to project Supremus Phase III, Thalambur, Medavakkam, Perumbakkam as registered in TN/01/BUILDING/040/2018.

2. The appellant/respondent denied the allegations of the respondent/complainant on the ground that the respondent is a third party and no privity of contract exists between them and the respondent is neither an intending purchaser nor an allotteee. The said advertisement was published for marketing purpose with a view to attract and cover all the customers who stayed within 7 kilometers of radius around Thalambur and the appellant never misrepresented the RERA registration number. They have obtained registration bearing No.TN01/BUILDING/040/2018 for their project at Thalambur. The appellant further stated by way of additional affidavit that the respondent is not an aggrieved person as defined in Real Estate Act and its rules. The 3rd party wantonly with a malafide intention in order to reap undue advantage and enrichment at the cost of the appellant has filed the compliant with ulterior motive to tarnish the image and good will of the appellant. It is also based on his personal interest and not on the public interest.

3. After contest the authority found that the respondent is an aggrieved person and imposed penalty on the appellant to the tune of

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Rs.10 lakhs for contravening the provisions of Section 7 of the Act by the appellant. Aggrieved upon that the appellant has preferred this Appeal.

4. The appellant preferred this appeal on the facts narrated in para 2 alone and further disclosed in the MOA that they have obtained registration under RERA on 25.01.2018 for 40/2018, on 01.02.2018 for 41/2018, on 03.07.2019 for 101/2019, on 05.07.2019 for 102/2019. Further submitted that the error being alleged on the part of the appellant is hyper technical on the one hand and the same is an inadvertent occurrence on the other hand, therefore the same shall not amount to misrepresentation committed as erroneously held by the authority and the huge levy of penalty imposed by authority is wrong.

5. As per the Supreme Court decision reported in AIR 1976 SC 578 the respondent is not an aggrieved person hence he has no locus standi to put forth a complaint under Real Estate Act. In addition to that MAHARERA has also held in a case in its order dated 14.09.2017, when the complainant is not an allottee he has no locus standi to lay a compliant. Furthermore the authority has no jurisdiction to hear a complaint filed as public interest litigation.

5. Points for consideration:

1. Whether the complaint made by the Respondent/Complainant is maintainable?

2. Whether the appeal deserves to be allowed or not?

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Point No:1

6. The appellant issued attractive advertisements in news papers to invite the public/3rd parties to purchase houses, apartments offered by him for sale. According to the appellant by way of admissions in its counter at page No.2 in para No.9 that:

> ***"the said advertisement was publish for marketing purpose with view to attract and cover all customers who stayed within 7 kilometers of radius around Thazhambur village".***

It is an offer made by the appellant to 3rd parties to accept the offer of selling houses/apartments. The respondent, who saw the offer in the newspaper has proposed/intended to purchase an apartment from the appellant. Hence he was constrained to view the website of the appellant. If the respondent has not intended to purchase an apartment from the appellant there is no need or necessity for him to view the website of the appellant. While viewing the website the respondent found that the same RERA registration number finds a place for three different projects. According to the respondent he wanted to buy a flat with the appellant with reference to the project mentioned in the advertisement, followed up with him for more than one month and checked the appellant website and shocked that the appellant has misrepresented as if TN/01/Building/040/2018 is also for Supremus Phase III, Thalambur and properties in Medavakkam and Perumbakkam. Then he was constrained to make a complaint before the authority. But on the side of the appellant the

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Learned counsel vehemently would contend that the respondent has no locus standi to prefer the complaint on the grounds that he is a 3rd party, he is neither a purchaser nor allottee, no privity of contract exists between the appellant and respondent, hence complaint itself is not maintainable.

7. Before deciding the maintainability of the complaint we have to see what is meant by a complaint. The word complaint is not defined in the Real Estate Act 2016. In such circumstances to look into the word 'Complaint' in a literary manner and the word complaint employed in other Acts have to be analysed. It is relevant to extract the meaning of the word 'compliant' in Law Lexicon.

160th year of publications

WHARTON'S LAW LEXICON

Fifteenth Edition at page 354, 355

Complainant: one who urges a suit or commences a prosecution against another.

Complaint: This term is most generally used with reference to Courts of Summary Jurisdiction where proceedings are commenced 'on information', but is also sometimes used to describe a claim in an action of a civil or quasi-civil character. See STATEMENT OF CLAIM As to when a complaint made to a third person and not in the presence of the accused is admissible as evidence see K.V.Osborne, 1905 1 KB 551_and as to statements made n the presence of the accused, see K.V.Norton, (9010) 2 K3 496.

Means any allegation made orally or in wring to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report (Code of Criminal Procedure, 1975 (2 of 1974) S.2(d)

Means –

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act 1956 (1 of 1956) or under any other law for the time being in force or

(iii) the Central Government or any State Government who or which makes a complaint

(iv) one or more consumers, where there are numerous consumers having the same interest.

(v) In case of death of a consumer, his legal heirs or representative. [Consumer Protection Act, 1986 (68 of 1986), s.2(1)(b)]

The word 'complaint' has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. S.190(1) (a) of the Criminal Procedure Code. 1898 makes it necessary that the alleged facts must disclose the commission of an offence, Bhimappa Basappa Bhu Sannavar v. Laxman Shivarayappa Samagouda 1970 1 SCC 665, AIR 1970 SC 1153 (1971) 1 SCR 1.

The expression 'complaint' is not defined in the Post Office Act, 1989 but the 'complaint' contemplated under 5, 55 one that initiates a prosecution on the basis of which the accused if found guilty is punishable with imprisonment for a term which may extent to two years and also with a fine. That being so the expression" complaint" in s.72 cannot be equated to mere information or accusation. The context in which the expression is used in s.72 indicates that it is a formal document indicating an officer of the postal department for a criminal offence, Bholanath Amritlal Purohit v.State of Gujarat,(1970) 2 SCC 414: AIR 1971 SC 194 (195)(1971)1 SCR 817. (Post office Act (6 of 1898) s.72) 'Complaint' will include any allegation in writing made by a complainant that the services mentioned in the complaint suffer from deficiency in any respect" Om Prakash v.Asst Registrar, Haryana Agro Industries Corpn. Ltd.,(1994) 3 SCC 504(508).(Consumer Protection Act,1986,s(2)(1) (c) (ii))

A petition addressed to the Magistrate containing an allegation that an offence has been committed and ending with a prayer that the culprits be suitably dealt with, as in the instant case is a

complaint, Mohammed Yousuf v. Afaq jahan, AIR 2006 SC 705.(Criminal Procedure Code, 1882,s.2(d)).
Means any allegation in writing made by a complaint that-

(i) An unfair trade practice or a restrictive trade practice has been adopted by any trader;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods.

(v) goods.....goods, Delhi Vidyut Board v. Devendra Singh,(2006) 1 CPJ 377.

The meaning of the word 'complianant' is also described at page 354 of same book. 'Complainant' one who urges a suit or commences a prosecution against another.

8. Even though the word 'compliant' is not defined in Real Estate Act, 2016 but employed in Section 7 of the Act, and the relevant provision of the Act with regard to this point which runs as follows:

Section 7: Revocation of registration.

(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

Section 11: Functions and duties of promoter

11. (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—

(a) details of the registration granted by the Authority;

(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;

(c) quarterly up-to-date the list of number of garages booked;

(d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;

(e) quarterly up-to-date status of the project; and

(f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

Section 4: Application for registration of real estate projects.

(1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—

(a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;

Section 31: Filing of complaints with the Authority or the adjudicating officer.

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.
(2) The form, manner and fees for filing complaint

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under sub-section (1) shall be such as may be specified by regulations.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.

9. The conjoint reading of the above provisions of the Real Estate Act reveal that any contraventions of the Act, rules and regulations can be brought to the notice of the authority by way of a compliant or suo moto or on the recommendation of the competent authority. Who can make the complaint? Any aggrieved person may file a complaint for any violation or contravention of the provisions of the Act, rules or regulations against the three Real Estate related persons namely promoter, allottee or Real Estate Agent.

10. The learned counsel for the appellant would vehemently contend that the Act referred only to aggrieved persons those who makes an advance or deposit on the basis of the information contained in the advertisement and sustain any loss or damage and entitled for compensation u/s 12 of the Act. To strength his arguments also relied the following Supreme Court citation.

CDJ 1975 SC 206 (1976 AIR SC 578)

Jasbhai Motibhai Desai Vs Roshan Kumar, Haji Bashir Ahmed & Others

"The words 'person aggrieved' do not really means a man who is disappointed of a benefit which he might have received

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if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, `a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrong fully refused him something, or wrongfully affected his title to something."

Ex Parte Statement is another illustration of a person who had no legal grievance, nor had the sufficient interest in the matter.

On relying the above citation the learned counsel would submit that, to make a complaint there must be a legal grievance and sufficient interest in the matter. Here the respondent has no legal grievance since there is no privity of contract. How far the argument is sustainable has to be analysed.

11. The above judgment arose with regard to Bombay Cinema Rules 1954. In the above case respondents 1 and 2, who are the owners of site, applied for NOC to the location of a cinema Theatre at this site, the District Magistrate, Kaira made publication are called for objection if any from the public for issuing of NOC. Several persons lodged objections but the appellants who are the proprietors of Cinema house, nearby, were not among those objectors. Considering the objections the district magistrate recommended that NOC should be refused. The State Government did not agree and directed the District Magistrate to grant NOC. Accordingly NOC granted. Against that NOC orders the appellants preferred Writ of certiorari under Article 226 of Constitution. The Hon'ble High Court dismissed the Writ. Aggrieved upon that preferred appeal before Supreme Court and found that the appellants are not persons aggrieved. In the same judgment in para 8/11 and 9/11 the Hon'ble Supreme court says that

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The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule.

To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are:

- *Whether the applicant is a person whose legal right has been infringed?*
- *Has he suffered a legal wrong or injury, in the sense that his interest, recognized by law has been prejudicially and directly affected by the act or omission of the authority, complained of?*
- *Is he a person who has suffered a legal grievance, a person" against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something"?*
- *Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public?*
- *Was he entitled to object and be heard by the authority before it took the impugned action?*
- *If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority?*
- *Is the statute, in the context of which the scope of the words "person aggrieved" is being considered a social welfare measure designed to lay down ethical or professional standards of conduct for the community? or*
- *Is it a statute dealing with private rights of particular individuals?*

Now let us apply these tests to the case in hand. The Act and the Rules, with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression" person aggrieved" must receive a strict construction.

12) In the above said case writ appellants did not avail of their opportunity. He did not lodge any objection in response to the notice. No explanation for not objecting for NOC before District Magistrate or Government. Even if he had objected, the Act did not give him a right of appeal. Further lays down that the Act and Rules with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of individual to carry on a particular business in his property. In this context, the expression 'persons aggrieved' must receive a strict construction. Therefore the finding was with regard to Bombay Cinema Rules only and not under any General Rule or law. Hence the above finding in the above case is not applicable to the facts of this case.

13) The ultimate aim of the Real Estate (Regulations and Development) Act, 2016 is for Regulation and Promotion of Real Estate Sector and to ensure sale of Real Estate project, in an efficient and transparent manner and to protect the interest of the consumers in the real estate sector. Originally the real estate bill drafted in 2009 and introduced in Parliament in 2013 and was sent to Parliament Select Committee. The

Loksabha Standing Committee on Urban Development has filed its report (Thirtieth report of fifteenth Loksabha). In this draft report of the Real Estate (Regulation and Development) Bill 2013 in Chapter 1 the background of the bill is stated as follows:

> ***The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated. There is, thus, absence of professionalism and standardization and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is inadequate to address all the concerns of buyers and promoters in that sector. The lack of standardization has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasized in various forums. Though availability of loan both through private and public banks have become easier, the high rate of interest and the higher EMI has posed additional financial burden on the people with the largely unregulated Real Estate and Housing Sector. Consequently the consumers are unable to procure complete information or enforce accountability against builders and developers in the absence of an effective mechanism in place. At this juncture the need for the Real Estate (Regulation and Development) Bill is felt badly for establishing an oversight mechanism to enforce accountability of the Real Estate Sector and providing adjudication machinery for speedy dispute redressal.***

14) To eradicate unethical professionalism in the Real Estate Industry the Real Estate (Regulation and Development) Act 2016 was enacted. One of the salient features of the Act is Regulations starts at the inception of sale namely the advertisement for sale of flats. Any contravention of the

Acts, Rules or Regulations by the promoter, allottee and real estate agent dealt with by the authority on receipt of complaint or suo moto or by competent authority. That is why the Act has not defined the word complaint and complainant. The term compliant is not generally used with reference to courts of summary jurisdiction where proceedings are commenced 'on information'. In Section 7 of Real Estate Act, 2016, is also the word compliant used but not defined. The other Acts namely code of Criminal Procedure, Consumer Protection Act, the Post Office Act 1898, the terms compliant is used with a definition. But in this Real Estate Act, the term compliant is used but not defined hence it is used generally so as to mean 'on information'. Any contravention of Act, Rules and Regulations of Real Estate Act comes to the knowledge of the Authority by way of a compliant i.e. on information or suo moto or by competent authority, the authority will proceed to take necessary action.

15) In this case the specific contention of the appellant is that the respondent has no locus standi to file the complaint since he is not an aggrieved person. The appellant side cited Apex court verdict which relates to Bombay Cinema Rules 1954, So the above verdict is not applicable to this case. In this case in Section 31 of RERA Act specifically authorize the aggrieved persons to file a compliant with the authority for any violation or contravention of the provisions of this Act, Rules and Regulations. The intention of the legislature has to be taken into account for applying the meaning of the word 'Aggrieved person' to make a compliant. The word

complaint used in Section 7 itself is at the stage before commencing sale of the project. The legislature has not clarified who has to lodge complaint u/s 7 of the Act. Entire Section 7 dealt with the activities of the promoter before entering into sale. The proposed buyer can alone be able to make a complaint u/s 7. If sale is completed the buyer becomes allottee and entitled to invoke Sections 12,14, 18 and 19 of the Act. The legislature intended to enact Real Estate Act to ensure sale of real estate project in an efficient and transparent manner without any concealment. That is why they have incorporated the word complaint in Section 7 at the beginning itself. In Section 31 the word 'aggrieved person' employed for the purpose of achieving the object of any contravention and violation of Act, Rules and Regulations is to be dealt with by the Authority.

16) In this case the specific allegation of the respondent is that the appellant misrepresented that the RERA Registration No.40/2018 obtained for Thalambur project I is used for Thalambur phase III, and properties in Medavakkam and Perumbakkm. The above misrepresentation is the violation under Section 7(1)(A)(ii) and (iii). Since the respondent being a proposed purchaser who verified the website of the appellant with a view to buy the property and found the misrepresentation and has made the complaint.

17) The misleading advertisement of the appellant caused an impact on the mind of the respondent to approach each and every advertisement of the Real Estate with suspicious mind. There are a number of laws and

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regulations that prohibit false and misleading advertisements. These have been enacted to protect the consumers from various forms of exploitations. The major problem relates with the effective implementation of these Acts, as a result little or no action is taken. A voluntary body of all those involved in advertising, including advertisers, advertising agencies and the media ASCI has drawn up a comprehensive advertising code for self regulation, was established in 1985. But it was not effective since the delay and as a self regulating body, ASCI does not undertake to issue direction to corrective advertisement. Hence to avoid and eradicate such a lacuna the legislation after year long discussion enacted a self contained law to regulate the Real Estate Industry.

18) The respondent cannot be considered as a stranger as per the Apex Court verdict cited by the appellant himself. In the above citation at page 9/11 referred supra

> ***To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are:***
>
> - ***Is the statute, in the context of which the scope of the words "person aggrieved" is being considered a social welfare measure designed to lay down ethical or professional standards of conduct for the community? or***
> - ***Is it a statute dealing with private rights of particular individuals?***

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19) Now let us apply these tests to the case in hand. The Act and Rules with which we are concerned, are designed to set norms of moral or professional conduct for the community at large or even a section i.e. the Construction Industry and its consumers. In this context the expression "person aggrieved" need not receive a strict construction. So the respondent is not a stranger and he can be construed as an aggrieved person to make the complaint for violation or contravention of the Real Estate Act, Rules and Regulations. Therefore as per the above verdict of Apex Court the respondent is absolutely entitled to make complaint since the legislature intended the same and enacted Real Estate Act with caution to achieve the goal of ensuring efficiency and transparency in sale of Real Estate Project. Hence this point is answered as the complaint is maintainable.

Point No.2:

20. The respondent came forward with the complaint for the relief of setting aside the application of the appellant for registration (if any) before the Regulatory Authority. The respondent has not claimed any compensation. The specific contention of the appellant is that the said advertisement was published for marketing purpose with view to attract and cover all customers who stayed within 7 kilometers of radius around Thalambur village. The appellant has not denied the allegations that they have not used the same RERA Registration number for all the three projects. The appellant went to the extent of saying that advertisement was

issued only to attract customers. The appellant impliedly admitted the mentioning of RERA registration No.40/2018 for three projects. Hence the Authority found that it amounts to misrepresentation and imposed a penalty.

21. Now the appellant in the appeal before this Tribunal in page no.3 of Memorandum of Appeal Form 'L' has stated as follows:-

> ***"The error being alleged on the part of the appellant is hyper technical on one hand and the same is an inadvertent occurrence on the other hand, therefore the same shall not amount to misrepresentation committed as erroneously held by the Learned Authority and huge levy of penalty as imposed by the learned Authority is liable to be set aside"***

The plea of error and inadvertent occurrence was not taken by the appellant before the Authority. Only after imposing fine of Rs.10 lakhs the appellant has come forward with this plea. The appellant in his counter had admitted in para 9 the said advertisement was made to attract customers. The appellant has not bothered about the violation of provision of Section 7 of the Act. In the appeal Form 'L' itself the appellant has stated it is hyper technical.

22) As per Section 11(2) of the RERA Act the promoter is bound to mention registration number of the project. But the appellant mentioned the registration number of another project. For which he has stated reasons

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that it was published to attract customers. But now he changed the defence as it is an error as hyper technical and inadvertence. If really the error was occurred certainly he would have stated in the counter itself but he has not done so and it was voluntarily published for the purpose to attract customers. Hence the authority rightly concluded that it amounts to misrepresentation and clear violation of the Act and imposed penalty. Now the reason adduced by the appellant to set aside the order of the Authority is not sufficient. Furthermore it is the duty of the Regulatory Authority to implement the Act, Rules and Regulations in letter and spirit. Such a kind of attraction of the promoters could not be permitted on the ground of attracting customers.

23. Furthermore the appellant has not realized the mistake committed by him and went to the extent of attacking the respondent as stranger, no locus standi and no privity of contract. The advertisement was issued to the public for inviting the proposed buyers among the public. The proposed buyer, the respondent herein, made enquiries and after checking the website he found the misrepresentation and has made complaint. If the advertisement of the appellant was issued to some particular person only then the respondent has no locus standi. If the advertisement was issued to invite the public each and every person those who intend to purchase the property from the appellant is a proposed purchaser and he is entitled to get correct information about the real estate project which were registered with RERA as per Section 5 of the Act. If any discrepancy or

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misrepresentation is made in violation of the Act or Rules then the proposed purchaser can make a complaint under section 7 of the Act. After paying the advance money or booking money the proposed purchaser becomes an allottee. The ultimate object of the Act is to ensure transparency in sale of Real Estate Project. For the purpose of attracting customers misrepresenting or misleading advertisements certainly amounts to violation of the Act. It cannot be entertained. The violation or contravention of the Act or Rules can be complained by any public with regard to project registered with RERA. Hence the respondent, who is a proposed purchaser is entitled to make a complaint.

24. Therefore this Tribunal comes to a conclusion that there is no substance and merits in the appeal to interfere with the findings of the Regulatory Authority.

25. In the result this appeal is dismissed with costs. The order of the Regulatory Authority in C.No.334/2019 dated 10.02.2020 is confirmed. The connected Miscellaneous Applications are closed.

This order is directly dictated to the Stenographer and typed in the computer by her, corrected and pronounced by us in the open court on 8th Day of December 2020.

Sd/- XXXX
CHAIRPERSON

Sd/- XXXX
ADMINISTRATIVE MEMBER

Sd/- XXXX
JUDICIAL MEMBER

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