

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 103 of 2018**

A.R. Ravisankar

.... COMPLAINANT

Vs.

1. M/s. MARG Properties Ltd
2. The Managing Director
M/s. MARG Properties Ltd.
(TN/01/Building/0217/2018)

.... RESPONDENTS

Complainant : Rep. by Mr. Ralph V. Manohar, Advocate
Respondent : Rep. by Dr. S. Padma, Advocate

Heard on : 29.09.2020
Delivered on: 08.10.2020

ORDER

The above complaint by the complainant claiming refund of amounts paid to the respondents towards purchase of flat with interest, compensation and costs is filed under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. **Averments of the complainant in brief as follows:**

(a) The complainant booked a flat with the respondents in their project namely, "*Savithanjali*" at Kalavakkam Village, Thiruporur Panchayat, Chelgalpattu Taluk and paid amounts as agreed by him.

(b) On 24.09.2012, the complainant and respondents entered into an agreement of sale and also a construction agreement. The respondents undertook to deliver the constructed flat by December 2013 with a grace

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period of 3 month. The total sale consideration of the flat is Rs.44,00,535/-. The complainant had paid in total a sum of Rs.40,90,360/-.

(c) On 15.02.2013, the respondents executed sale deed for UDS in favour of the complainant. The respondents were delaying the construction of the apartments for one reason or other. The complainant came to know that the approval granted for the project has expired and the application for extension of time also was rejected and the authorities sealed the entire project. Therefore, the complainant approached the State Consumer Forum for refund of their sale consideration with interest and other reliefs in CC No.295 of 2015.

(d) Subsequent to the commencement and notification of the RERA Act, the complainant approached the TNRERA for registration of the project. The TNRERA dismissed the complaint by order dated 12.12.2017. However, in appeal by the complainant, the Appellate Tribunal in Appeal No. 1 of 2018 directed the respondents to register the project with TNRERA.

(e) Even thereafter, there was no progress in construction of the project. Therefore, the complainant issued legal notice dated 18.09.2015 to the respondents terminating the agreement. Then, the complainant filed the complaint in CCP No.103 of 2018 before this Forum. Since, the complaint before the State Consumer Disputes Redressal Commission was pending in CC No.295 of 2015, this Forum dismissed the complaint on the ground of maintainability. The complainant preferred an appeal before the TNREAT in Appeal No.3/2019.

(f) The Hon'ble TNREAT dismissed the Appeal on 25.04.2019 and confirmed the order of this forum. The complainant preferred second appeal in CMSA No. 31/2019 before the Hon'ble Madras High Court. By order dated

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28-11-2019, Hon'ble High Court was pleased to allow the appeal and set aside the order of the appellate authority confirming the order of this forum and to remand the matter to this forum to decide the complaint on merits. The complainant filed a memo to decide the matter on merit.

3. Averments of the respondents in counter and additional counter, in brief, as follows:

(a) The respondents deny all the allegations and averments except admitted and put the complainant to strict proof of the same. The complainant terminated the agreement and is not entitled to seek refund and other claims. The complainant paid Rs.40,90,360/- and is due of part payment of Rs.6,19,552 /-.

(b) The construction work of the project was in progress. The project is not abandoned. The respondent is not liable for any delay in completion of the construction of the apartment. The project got struck due to the stop notice issued by Pollution Control Board which is beyond the control of the respondents.

(c) The complainant has not made payments on time and has not paid 90% of the total sale consideration. The purchaser is entitled to possession of the apartment only after the payment of entire due amounts as agreed under the terms and conditions of the agreement.

(d) The complainant already filed consumer complaint in CC.No.295/2017 pending before the State Consumer commission for the same prayer and relief and cannot use the different form for the same relief. The respondents registered the project with TNRERA and the time granted for the completion of the project till December 2019. There was no delay in handing over the project. Extension of time for delivery of

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possession of the flat cannot be construed as delay. The agreements provide for extension of time.

(e) The respondent suffered lot of hurdles in the project and the delay was due to the delay in issuing the various approvals of statutory authorities which caused escalation due to steep increase in the cost of materials. The project was stalled by the act beyond the control of respondents. As per Section of 51 Indian Contract Act, the promisor is not bound to perform reciprocal promises unless the promisee is ready and willing the perform his part of the contract. The complainant has not made the demanded payment and also filed the Suit OS.No. 10/2017 before the District Munsif Court, Chengalpet. There is bar to file any suit before the Civil court under section 79 of RERA Act. The complainant also filed complaint before the State Consumer Commission. There was forum shopping by the complainant.

(f) The project as on today completed more than 85% and the apartments were symbolically handed over to the allottees. In the event of disputes, agreement contains arbitration clause and the same can be referred to arbitration. The Hon'ble Bombay High court held that the RERA authority and the Tribunal have to consider the delay on a case to case basis and not to cancel the projects where the delay was caused due to exceptional and compelling circumstances. Therefore, the complaint is liable to be dismissed.

4. In pursuance of the order of the Hon'ble Madras High Court in CMSA No.31 of 2019 dated 28.11.2019, the complaint was restored on file for disposal on merits.

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5. Both the parties have filed their respective evidence on affidavit with documents.

6. On the basis of the rival contentions of the parties, the following points arise for determination:

- i. Whether the complainant is entitled to get back the amount paid to the respondent with interest and compensation and other reliefs on the ground of failure on the part of the respondents to give possession of the apartment booked by him in accordance with the date and terms of the agreements for sale and construction?
- ii. What are the reliefs the complainant is entitled to?

7. **Answer for Point No.(i)**

(a) The learned counsel for the complainant submitted that the complainant booked the flat in the project of the respondent and entered into an agreement of sale and also a construction agreement with the authorized representatives of the respondents on 24-09-2012 and the respondents undertook to deliver and hand over the possession of the constructed flat by December 2013 with a grace period 3 months and also executed a sale deed for the UDS of land on 15-02-2013 and out of the total cost of the flat of Rs.44,00,535/-, the complainant paid Rs.40,90,360/- which is almost 90% cost of the apartments and even after the several years of the due date for handing over the flat, the respondents was not able to handover the flat and the complainant is entitled for the refund of the amount paid to the respondents with interest, compensation and other reliefs.

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(b) However, the learned counsel for the respondents contended that complainant was not making as per the payment schedule towards stage wise payment and paid only Rs.40,90,360/- and still due payment of Rs. 6,19,552/- and there was default of payment by the complainant and project is registered with TNRERA and as per the certificate issued by TNRERA, due date for delivery of flats in the project is granted till December 2019 and there was no delay and as per Section 51 of the Indian Contract Act, no promisor need to perform his part of contract unless the promisee is willing to perform his reciprocal promise and the complainant also filed a suit before District Munsif Court, Chengalpet and there is bar of Jurisdiction of civil court under section 79 of the RERA Act and the complainant indulged in forum shopping and also preferred a complaint before consumer state commission and the complaint is liable to be dismissed.

(c) As per the section 18 of RERA Act, the home buyer is entitled to seek refund of the amount paid to the promoter towards purchase of the flat together with interest including compensation, if the promoter fails or is unable to complete and deliver the completed flat to the home buyer as per the terms and conditions of the agreement. As per the Ex.A4 construction agreement dated 24.09.2012 entered between the complainant and respondent, the respondent undertook to deliver the possession of the apartment within December 2013 with a grace period of 3 months. Admittedly, till date the construction of the apartment is not completed.

(d) The respondent has paid Rs.40,90,360/- out of the total consideration of the flat i.e., Rs.44,00,535/-. When the project itself is delayed for several

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years beyond the promised due date for delivery of the flat, the complainant cannot be expected to make the entire payment without any progress of construction and wait for several years for delivery of the flat.

(e) In this regard, it is relevant to note that Hon'ble Supreme Court in Pioneer Urban Land & infrastructure Ltd., Vs. Govindan Raghavan and ors., reported in Manu/Sc//0463/2019 held that the builder could not seek to bind the buyer with one sided contractual terms and once the builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the respondent purchaser within the time stipulated in the agreement, or within a reasonable time thereafter, the respondent flat purchaser could not be compelled to take possession of the flat even though it was offered almost two years after the grace period under the agreement expired.

(f) It was pointed out by the respondent that agreement contains arbitration clause and the complainant also filed civil suit before the District Munisif Court at Chengalpet for permanent injunction and the complainant has chosen to file this complaint for refund of money which is contradictory.

(g) In the Pioneer Urban Land Case reported in *MANU/SC/1071/2019*, the Hon'ble Supreme Court examined the object of the RERA Act which protects the interest of the individual investor in real estate projects by requiring the promoter to strictly adhere its provisions and held that the remedies under CPA and RERA are concurrent remedies.

(h) Apart from the above, Section 88 of the RERA Act also makes it clear that the application of the provisions of the RERA Act are in addition to and

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not in derogation of other laws. Therefore, even if the agreement contains arbitration clause, the complainant can maintain this complaint for reliefs under the RERA Act. The suit is for permanent injunction against any alienation or encumbrance of the property. Section 79 of the RERA Act bars the jurisdiction of the civil court to entertain any suit or proceeding only in respect of any matter which the Authority or Adjudicating Officer is empowered by or under the Act to determine. Therefore, all the above contentions of the counsel for the respondent are liable to be rejected as not sustainable.

(i) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid by him towards purchase of the flat with interest, compensation and costs on the ground of failure on the part of the respondent to deliver the constructed flat as per the terms of the agreement. Thus the point is answered accordingly.

8. Answer for Point No.(ii)

(a) In view of the answer for point No. (i), the complainant is entitled for refund of the amount of Rs.40,90,360/- paid to the respondent with interest, compensation and cost.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% p.a for the entire amount paid from the dates of respective payment till repayment by the respondent.

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(c) The complainant claimed Rs.69,700/- towards the expenses of registration of the UDS of land. Admittedly on 15-09-2013 sale deed for UDS of land was executed by the respondent in favour of the complainant. As per the receipts in Ex.A5 sale deed, the complainant paid Rs.69,700/- to registration department for registration of the documents. Hence, the complainant is entitled for Rs. 69,700/- towards the cost of the registration of the sale deed.

(d) The complainant claimed Rs.5,25,100/- towards monthly rent paid by him. Only in the case of claim for delay compensation alone, the complainant will be entitled to claim rental compensation. The amount paid by the complainant is ordered to be repaid by the respondent with interest, as detailed above. Hence, the claim of complainant towards rental compensation is rejected.

(e) The complainant claimed Rs.25,00,000/- towards damages or compensation towards hardship and mental agony. Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed towards compensation for hardship and mental agony suffered by the complainant. Towards litigation expenses, a sum of Rs. 20,000/- is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:

- (1) The respondents shall pay the complainant the amounts at the interest rate, compensation, other charges and cost as per the findings in the answer for Point No.(ii), Para 8 of this order within 60 days from the date of issue of this order.

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- (2) The charge of the aforesaid amount shall be on the flat booked by the complainant till the repayment.
- (3) The Complainant shall execute the Cancellation of Agreements and Sale Deed of the UDS land, as the case may be, on satisfaction of his claims as per the order at respondent's cost.

**G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1 --- A.R. RAVISANKAR
RW-1 --- K.S. GAJENDRA BABU

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

| Ex.Nos | Date | Documents Name |
|--------|------------|-----------------------------------|
| A1 | -- | Lay out of the project |
| A2 | 05.05.2011 | Proceedings of the Town panchayat |
| A3 | 09.05.2011 | Email Communication |
| A4 | 24.09.2012 | Construction Agreement |
| A5 | 15.02.2013 | Sale Deed |
| A6 | --- | Payment details |
| A7 | 27.07.2015 | Notice issued to the respondent |
| A8 | 17.08.2015 | Email communication |
| A9 | 18.09.2015 | Email Communication |
| A10 | 15.10.2015 | Reply notice |
| A11 | ---- | Payment of Rent details |

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LIST OF DOCUMENTS FILED BY THE RESPONDENTS

| Ex.No. | Date | Documents Name |
|---------------|-------------|--|
| B1 | ---- | Consumer complaint in CC.No.295of 2017 |
| B2 | 24.09.2019 | Registration Certificate |
| B3 | 24.09.2012 | Part of the Construction Agreement |
| B4 | 02.07.2018 | Registration Certificate |
| B5 | 05.12.2019 | Registration Certificate |
| B6 | ---- | Photos of Construction |

**G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI**

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2.16.2020
**ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY**