

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 102 of 2019**

Pradipta Kumar Das

..... COMPLAINANT

Vs.

M/s. Real Value Promoters Private Limited
Rep. by Director V.S. Suresh
(Regn. No.TN/01/Building/0149/2018)

..... RESPONDENT

Complainant : Represented by Mr. T. Raghavan, Advocate
Respondent : Represented by Mr. P. Vinod Kumar, Advocate

Heard on : 13.02.2020

Delivered on: 25.02.2020

ORDER

The above complaint by the complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent 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 respondent in their project, namely 'PADMALAYA APARTMENT' at Pudupakkam Village, Thiruporur Taluk, Kancheepuram District.

(b) The respondent allotted flat No.6C, in 'A' Block to an extent of 933 sq.ft in the 6th floor on payment of advance amount. The complainant entered into agreements for sale and construction on 30.09.2013 and made further

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payments. The complainant made a total sum of Rs.23,77,417/- to the respondent.

(c) As per the construction agreement, the due date for completion of construction is 30 months plus grace period of 6 months from the date of agreement. There was no progress of construction.

(d) The complainant paid the entire sale consideration. Even after several years from the date of agreement, the flat is not ready for delivery. Hence the complainant withdraws from the project seeking refund of the amount paid with interest, compensation and cost.

3. **Counter Averments of the respondent in brief as follows:**

(a) All the allegations, except admitted specifically, are denied and the complainant is put to strict proof of all the allegations. The complaint is not maintainable. There is no deficiency of service on the part of the respondent. The complainant opted for purchase of a flat from the respondent in their project.

(b) Subsequent to the execution of sale and construction agreement, the customers have not paid the further amount according to the stages of construction. The complainant made imaginary allegations. The construction was started without any delay. Hence, the respondent prays for the dismissal of the complaint.

4. An attempt to settle the matter amicably has failed.

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

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6. On the basis of rival contentions of the parties, the following point arises for determination:-

- i. Whether the complainant is entitled for refund of the amount paid to the respondent towards purchase of the flat with interest and compensation on the ground of failure on the part of the respondent to deliver the completed flat in accordance with the terms of the agreements.
- ii. Whether the complainant is entitled for any reliefs?

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

(a) Section 18 of the RERA Act gives an option to the allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the completed flat on the dates specified in the agreement.

(b) As per the Ex.A2, construction agreement dated 30.09.2013, the respondent undertook to complete the construction of the flat within 36 months including the grace period from the date of obtaining all statutory approvals. In the counter filed by the respondent, the respondent has not disputed the amount paid by the complainant.

(c) In the counter, the respondent stated as there was no delay in construction. The due date for delivery expired in 2016. Even though the construction agreement was entered on 30.09.2013, till the date of the filing of the counter i.e., 01.11.2019, the construction of the flat is not completed. Therefore the contentions of the respondent that there is no delay in construction are not sustainable.

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(d) In the above circumstances, it is held that the complainant is entitled to get back the amount paid to the respondent with interest, compensation and cost on the ground of failure on the part of the respondent to give possession of the apartment booked by him in accordance with the terms of the agreement. Thus the point is answered accordingly,

8. **Answer for Point No.(ii)**

(a) There is no dispute on the amount paid by the complainant to the respondent. Therefore, the complainant is entitled for refund of the amount of Rs.23,77,417/- from the respondent with interest, compensation and cost.

(b) As per Rule 18 of the TNRERA, the rate of interest payable by the promoter to the allottees is to be State Bank of India's highest marginal cost of lending rate plus 2% per annum. The present rate of highest marginal cost of lending rate of interest of SBI is 8.15% p.a. The complainant is entitled for interest on the amount of Rs. Rs.23,77,417/- at the rate of 10.15% per annum (8.15% +2%) from the date of respective payment till repayment by the respondent.

(c) The amount received from the complainant was utilized by the respondent for construction activities of the project. Considering the circumstances of the case, a sum of Rs.2,00,000/- is fixed as compensation towards mental agony undergone by the complainant and a sum of Rs.20,000/- is fixed towards litigation expenses.

The complainant is entitled for the relief as detailed above. Thus the point is answered accordingly.

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In the result, the respondent is directed as follows:-

- 1) The respondent shall refund of the amount with interest compensation for mental agony 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.
- 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 other documents, if any, as the case may be, on satisfaction of his claim at the respondent's cost.

Sd/ - 25.02.2020
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- PRADIPTA KUMAR DAS
RW-1 --- R. RAVICHANDRAN

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

| Ex.Nos | Date | Document |
|--------|------------|------------------------|
| Ex.A1 | 30.09.2013 | Agreement for Sale |
| Ex.A2 | 30.09.2013 | Construction Agreement |
| Ex.A3 | 03.08.2017 | Letter from Respondent |
| Ex.A4 | 24.08.2017 | Receipt |
| Ex.A5 | 24.08.2017 | Receipt |
| Ex.A6 | -- | Interest Calculation |

LIST OF DOCUMENT FILED BY THE RESPONDENT

| Ex.Nos | Date | Document |
|--------|------|----------------------------|
| Ex.B1 | -- | Proof of non- payment list |

CERTIFIED TO BE TRUE COPY

N. Arumugam
25/2/2020
Administrative Officer

Sd/ - 25.02.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI