

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 104 of 2019**

Veluthakkal Jayakumar ... **COMPLAINANT**

Vs.

M/s. Mahidhara Projects Pvt. Ltd.

Rep. by Chairman and MD, T. Prashanth Reddy ... **RESPONDENT**

Complainant : Mr. Mr. Namo Narayanan, Advocate
Respondent : Mr. G. Venkataramanan, Advocate

Heard on : 25.11.2019

Delivered on : 06.12.2019

ORDER

The above complainant filed the complaint seeking refund of the amounts paid to the respondent towards the purchase of the villa together with interest, compensation and costs 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 the villa with the respondent in their project namely "***Mahidhara Supreme***" and paid booking amount and further amounts. The total sale consideration for the construction of the villa is Rs.45,51,750/-.

(b) On 05.08.2014, the complainant entered an agreement of sale and on 06.08.2014 a construction agreement with the respondent. Total sum of Rs.45,51,750/- towards purchase of the villa was paid to the respondent.

(c) As per the agreement of construction, the respondent undertook to hand over the completed villa by 05.08.2016. Till date, the building work is not completed and the villa was not handed over to the complainant. The

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complainant lost hope that the respondent would complete the project in the near future. Hence the complainant withdraws the project and seeks refund of the amount paid by him to the respondent with interest compensation and costs.

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

(a) Except admitted, all the averments in the complaint are denied. DTCP approval was given to the respondent only after receipt of the completion certificate of development and also on execution of gift deed. Hence, the project does not fall under RERA Act.

(b) The complainant booked the plot No.190 in the layout and also entered agreement of sale on 05.08.2014 and the construction agreement on 06.08.2014. Sale deed was executed on 07.08.2014.

(c) The project is only a plotting venture and not a housing venture. Since the complainant insisted construction of villa, the respondent undertook to construct the villa. The total cost of the plot including construction is Rs.57,57,872/-

(d) Since the complainant has gone abroad and settled there, he is not having any interest to pay the balance amount. A balance of amount of Rs.13,80,122/- is due from the complainant. 95% of the construction work completed. Since the complainant is not willing to pay the balance amount, the villa was not handed over to him.

(e) As per the agreement, the respondent is entitled interest on the unpaid amount. The respondent also agreed to pay Rs.4,000/- per month in case of delay in construction but only on payment of full amount, the

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complainant is entitled for the said amount. Hence, the respondent prays for dismissal of the complaint.

4. On the side of the complainant, he filed proof affidavit with documents. In spite of sufficient time given, no evidences was produced by respondent.

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

- i. Whether the complainant is entitled for refund of the amount paid to the respondent with interest, compensation and costs on the ground of failure on the part of the respondent to complete the construction and deliver the villa booked by the complainant in accordance with the terms and conditions of the agreement?
- ii. Whether the complainant is entitled for all the reliefs as prayed for?

6. Answer for Point No.(i):

(a) The complainant submitted that he booked a villa with the respondent in their project namely "Mahidhara Supreme – Classic" and also entered into agreements of sale and construction separately on 05.08.2014 and 06.08.2014 respectively and the total amount of Rs.45,51,750/- was fully paid and the respondent failed to complete the construction of the villa by 05.02.2016, the date on which he agreed to hand over the villa as per the terms of the agreements and therefore the complainant withdraws from the project and seeks refund of the amount with interest compensation and costs.

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(b) In his counter affidavit, the respondent stated that the project is plotting venture for which approval was given by DCTP and since the complainant insisted for construction of the villa, the respondent undertook to construct the villa for him and the venture does not fall under RERA Act and the total cost of the villa including construction cost is Rs.57,57,872/- and the sale deed of the plot was executed on 07.08.2014 and the complainant is due of balance amount and he has not interested to pay the balance amount as he has gone and settled abroad and the complaint is liable to be dismissed.

(c) Ex.A3 sale deed was executed by the respondent on 07.08.2014 in favour of the complainant conveying the plot for the villa. As per clause 7 (iii) of the sale deed, the schedule property shall always be subject to the development scheme floated by M/s. Mahidhara Projects Private Limited, the respondent and no liberty is given to the complainant to engage any other developer except the respondent by way of stipulation in the sale deed. Therefore, the contention of the respondent that it is only a plotting venture and not a housing venture is not sustainable.

(d) As per the Ex.A2 construction agreement dated 06.08.2014, which is executed prior to the sale deed, the respondent undertook to complete the construction of the residential house unit and hand over the same to the complainant within 18 months with a grace period of 6 months from the date of the construction agreement. The due date for delivery of the villa including the grace period expired by 05.08.2016.

(e) Though the respondent stated that the complainant has paid only 85% of the total amount and balance is due and 95% of the construction

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has been completed, no documents such as demand note raised by them for balance amount has been filed by the respondent. It is admitted that the construction of the villa was not complete as on date of filing of the counter of the respondent.

(f) Section 18 of the RERA Act gives right to the home buyer to demand the amount paid by him towards the purchase of the residential property with interest and compensation on the ground of failure on the part of the respondent to complete the construction and hand over delivery of the residential unit as per the terms of the agreement.

(g) In the above circumstances, it is held with the complainant is entitled for refund of the entire amount paid to the respondent towards the purchase of the villa together with interest, compensation and costs. Thus the point is answered accordingly.

7. Answer for Point No.(ii):

(a) In view of the answer for point no.(i), the complainant is entitled for refund of the entire amount paid with interest, compensation and costs. As per the Ex.A4 receipts, the complainant paid Rs.45,51,750/-to the respondent towards the purchase of the villa. The complainant is entitled for refund of Rs.45,51,750/- with interest, compensation and costs.

(b) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 8.15% per annum which is currently the highest marginal cost of lending rate of interest of

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SBI plus 2% per annum i.e., 10.15% per annum for the amounts paid from the dates of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.2,00,000/- is fixed as compensation for mental agony and hardship payable by the respondent to the complainant. Towards cost of the litigation, a sum of Rs.20,000/- is fixed. The complainant is entitled for the amounts as detailed above. Thus the point is answered accordingly.

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

- (1) The Respondent shall pay the complainant the amounts at the interest rate, compensation and litigation cost as per the findings in the answer for Point No.(ii), Para 7 of this order within 30 days from the date of issue of this order.
- (2) The charge of the aforesaid amount shall be on the villa booked by the complainant till repayment.
- (3) The complainant shall execute the Cancellation of Agreement and Sale Deed of the plot, as the case may be, on satisfaction of the claim as per the order and at the cost of the respondent.

Sd/-06.12.2019
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- Joseph Michael, PoA of the complainant

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LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	--	Booklet (first two pages)
Ex.A2	06.08.2014	Construction Agreement
Ex.A3	07.08.2014	Sale Deed
Ex.A4	--	Receipts (5 nos.)
Ex.A5	--	Bank Pass Book Entries

LIST OF DOCUMENTS FILED BY THE RESPONDENT:

- NIL -

Sd/-06.12.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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N. Srinivasan
Administrative Officer