

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 105 of 2019**

1. T.C.Ravindran
2. Suresh Ravindran ... **COMPLAINANTS**

Vs.

1. M/s. Unitech Ltd.
2. M/s. Unitech Builders & Projects Ltd.
3. M/s. Unitech Build-Tech Ltd.
4. M/s. Boomfield Developers Pvt. Ltd.
5. M/s. Sankoo Builders Pvt. Ltd.
6. M/s. Unitech Golf Resorts Ltd.

All acting through its Authorized Signatory

J.D. Kishore Walter, CEO

(Regn. No.TN/01/Building/0019/2018) ... **RESPONDENTS**

Complainants : Rep. by M/s Raj & Raj Associates, Advocates

Respondents : Rep. by Mr. Manoharan, Advocate

Heard on : 10.12.2019

Delivered on : 24.12.2019

ORDER

The complaint is filed by the above complainants seeking refund of the amounts paid to the respondents towards purchase of flat with interest and compensation 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 complainants in brief as follows:**

(a) On 10.02.2015, by transfer of fund from sister concern of the first respondent, the complainants approached the respondent for purchase of flat in their project, namely "Unihomes" at Nallambakkam, Chengalpattu Taluk.

(b) The complainant entered in to agreement of sale and also construction agreement separately on 30.03.2015 with the first respondent on paying

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entire sale consideration. The respondent undertook to complete the construction and hand over the flat within 36 months from the date of the agreement with a grace period of 6 months. The time limit expired on 30.09.2018. The complainants paid in total Rs.33,93,277/-.

c) The complainants came to know that there is no progress of construction. Therefore the first complainant sent letters to the respondents on 02.05.2018 and 04.01.2019 asking the respondents to complete the building or refund the amount. There was no reply from the respondents.

d) As per the provisions of RERA Act, the complainants are entitled for refund of the amount with interest and compensation. Hence the complainant prays for the reliefs in the complaint.

3. Counter averments of the respondents in brief, as follows:

a) By order dated 30.10.2017, the Hon'ble Supreme Court observed that no coercive steps should be taken for executing the orders and by order dated 20.11.2017, it was also clarified that all the Forums are restrained from taking any coercive measures against the directors of the first respondent company.

b) By order dated 13.12.2017, the Hon'ble Supreme Court also issued directions to the NCLT. The Apex Court seized of all the matters relating to various projects of the first respondent.

c) It is admitted that the complainants and the respondents entered into an agreement of sale for UDS land and also construction agreement on 30.03.2015. The total sale consideration of the flat is Rs.32,67,220/-. Out of the total sale consideration, the complainants paid a sum of Rs.28,23,497/-.

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d) The complainants have no right to claim interest at 18% for their payments. As per clause 8 of the construction agreement, the respondents are liable to pay only Rs.5/- per sq.ft. of the super built up area to the complainants. Due to various reasons, there has been a lull in bookings of flats. The respondents have been in the process of completing the project. Therefore the complaint is liable to be dismissed or left to be decided by the Apex Court and be put on abeyance till the outcome of the decision of the Apex Court.

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

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 complainants are entitled for refund of the amounts paid to the first respondent towards purchase of the flat with interest and compensation on the ground of failure on the part of the respondents to complete the construction and deliver the flat as per the terms of the agreement?
- ii. Whether the complainants are entitled for all the reliefs as prayed for?

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

a) The learned counsel for the complainants submitted that the complainants booked a flat in the project of the first respondent and by transfers of funds from a sister concern of the first respondent, the complainants paid Rs.27,50,000/- and subsequently an additional payment

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of Rs.6,40,277/- towards the purchase of the booked flat and also entered into agreements for sale and construction with the respondents on 30.03.2015 and the respondents undertook to complete the construction of the flat and to hand over possession by the end of 36 months from the date of agreements and time limit had already expired on 30.09.2018 and there has been absolutely no construction of particular tower in which the complainants were allotted flat and therefore the complainants seek refund of the amount with interest and compensation.

b) However, the learned counsel for the respondents submitted that the Apex Court seized of all the matters relating to the various projects of the first respondent including the petition project and judicial and quasi-judicial authorities ought to seek leave of the Apex Court before proceeding further against the respondents and the complainants paid only a sum of Rs.28,23,497/- and not the amount alleged by the complainants and due to various reasons, there was delay in construction and the project is nearing completion and the complaint is liable to be dismissed.

c) Ex.B1, is the copy of the Hon'ble Supreme Court in Petitions for Special Leave to Appeal (crl.) Nos. 5978-5979/2017 dated 16.02.2018 wherein it is directed that no other court or authority shall take coercive steps against petitioner No.3 and its subsidiary companies except for production of petitioner Nos. 1 and 2 in the concerned criminal courts. Ex.B2 is the copy of the order in Petitions for Special Leave to Appeal (crl.) Nos. 5978-5979/2017, wherein, it was clarified that the order for no coercive steps for execution is binding all the forums. In the counter, it is stated by respondents that the matter before the Apex Court arose out of order of

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NCLT on a petition by the Union of India against petitioners before the Hon'ble Supreme Court. Adjudicating the claims of the compensation does not involve passing of any coercive order for execution against the petitioners in the orders of the Hon'ble Supreme Court.

d) Ex.A2 is the sale agreement of UDS land executed by all the respondents through their authorized signatory. Ex.A3 construction agreement between the complainants and the first respondent dated 30.03.2015 in which the first respondent undertook to complete the construction and hand over the flat by the end of 36 months from the date of agreement. The time limit including the grace period expired on 30.09.2018. Admittedly, till date, respondent has not completed the construction of the flat.

e) As per the section 18 of the RERA Act, the home buyer is given a right to demand the refund of the purchase money on the ground of failure as the part of the promoter to complete the construction and deliver the flat as per the terms and conditions of the agreement. In the above circumstance, it is held that the complainants are entitled for refund of the amount paid to the respondents towards the purchase of the flat with interest and compensation. 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 the amounts paid to the respondents towards purchase of the flat with interest and compensation. There is dispute with regard to the amount paid to the first respondent. According to the respondents, only a sum of Rs.28,23,497/- was paid by the complainants. However, the complainants stated that they paid Rs.33,93,277/-. No documents are filed by the

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complainants to prove the additional amount paid by them to the respondent. Therefore, it is held that the complainants are entitled for refund of sum of Rs.28,23,497/- from the respondents with interest and compensation.

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 8.15% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.15% p.a. for the entire amount paid i.e. Rs.28,23,497/- from the date of payment till repayment by the respondents.

c) Considering the facts and circumstances a sum of Rs.1,00,000/- is fixed as compensation towards mental agony, hardship and inconvenience caused to the complainants. Towards litigation expenditure a sum of Rs.25,000/- is fixed. The complainants are entitled for the relief as detailed above. Thus the point is answered accordingly.

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

- i) The respondents, either jointly or severally, shall pay the complainants the amounts at the interest rate, compensation and litigation cost as per findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.
- ii) The charge of the aforesaid amount shall be on the flat booked by the complainants till the repayment.

Sd/-24.12.2019

G. SARAVANAN
ADJUDICATING OFFICER

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LIST OF WITNESSES

CW-1 --- T.C. Ravindran
 RW-1 --- J.D. Kishore Walter

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	10.02.2015	Agreement for transfer of funds
Ex.A2	30.03.2015	Agreement for sale
Ex.A3	30.03.2015	Construction agreement
Ex.A4	02.05.2018	Letter to respondents
Ex.A5	04.01.2019	Letter to respondents

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Ex.No.	Date	Documents Name
Ex.B1	20.11.2017	Order of Supreme Court
Ex.B2	09.04.2018	Order of Supreme Court

Sd/-24.12.2019
 G. SARAVANAN
 ADJUDICATING OFFICER

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N. Praveen
 24/12/19
 Administrative Officer