

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 107 of 2019**

M. Gopalakrishnan Complainant

Vs.

M/s. Sathyam Homes Private Ltd.,
Rep. by its MD, R. Kannan Nandhakumar Respondent
(Project not registered)

Complainant : Rep. by Mr. C. Shankar, Advocate.

Respondent : Rep. by Mr.M. Chinnadurai, Advocate.

Heard on : 01.04.2021
Delivered on : 29.04.2021

ORDER

The complaint by the above complainant claiming compensation for delay in handing over possession of constructed flat and other reliefs 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) In April 2014, the complainant was offered by the respondent sale of flat in their project namely, " Villa Shakunta", for a total sale consideration of Rs.66,00,000/-. Accepting the offer, on 15.04.2018, the complainant issued two cheques for a sum of Rs.2,07,000/- and also a sum of Rs.9,09,000/- in favor of the respondent. In pursuance of the payment, on 20.04.2018, an unregistered construction agreement was entered between the complainant and the respondent.

(b) At the time of execution of the agreement, the respondent informed that they are taking steps to register the project under RERA Act. The complainant availed bank loan for a sum of Rs.36,00,000/- and out of the total loan amount, a sum of Rs.32,40,000/- was dispersed to the

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respondent from the bank. On 04.06.2018, on receipt of the payment of Rs.41,49,000/-, the respondent executed the sale deed for UDS land in favor of the complainant. On the same day, the complainant issued two undated cheques, each for the value of Rs.10,00,000/-, for security purpose to show bonafide arrangement of the balance amount payable to the respondent. The respondent sought time to register the construction agreement, but later on, the respondent has not come forward to register the agreement and gave an evasive reply.

(c) On 27.06.2018, the complainant paid further a sum of Rs.7,02,000/- and in total, paid a sum of Rs.48,51,000/- to the respondent. The respondent undertook to hand over possession of the flat within 90 days from the date of the agreement. The due date was 20.07.2018. The respondent has not come forward to handover possession by due date and demanded the balance payment of Rs.17,49,000/-. The complainant was not inclined to release the balance amount. On 31.07.2018, the respondent issued arbitration notice, but subsequently, the arbitrator issued a letter stating that the arbitration was rescinded. Under the circumstances, the complainant requested the bank to stop the payment on two cheques issued to the respondent. But the respondent presented both the cheques on 30.10.2018 and the cheques were returned as "Payment Stopped by the Drawer". The respondent filed a criminal complaint under Section 138 of Negotiable Instruments Act.

(d) The complainant is always ready to pay the balance consideration as agreed by him. But due to the non compliance of mandatory provisions by the respondent, the complainant withheld the balance amount payable to

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the respondent. The complainant is entitled for compensation for the delay in handing over possession of the property.

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

(a) Except admitted, the respondent denies all the allegations and averments. The complainant has not approached this Forum with clean hands. The complainant is in due of balance payment. Hence, the complaint is not maintainable.

(b) The complaint in C.No. 242/2019 before the Authority was filed by the complainant for direction to register the project and also to hand over possession of the flat. The building is ready for occupation and the delay was due to non compliance on the part of the complainant. The respondent applied for TNRERA registration of the project which is pending. The complainant paid a sum of Rs.9,09,000/- towards purchase of land measuring 1200 sq.ft in plot no. H-2, and subsequently wanted to change to plot no.H-1. On 20.04.2018, the complainant entered into a sale construction agreement with the respondent for purchase of the residential house. The complainant in total paid a sum of Rs.48,51,000/-. The sale deed for the land was executed on 04.06.2018 and for the balance amount, the complainant issued two cheques, each for a sum of Rs.10,00,000/-, towards final settlement and both the cheques returned dishonored. The amount of Rs.20,00,000/- is still pending.

(c) The construction was completed in July 2018, except for few small finishing works and the residential house is ready for occupation. The complainant alone is responsible for the delay in taking over possession of the house. The respondent invoked the arbitration proceedings. The complainant raised the objection of the appointment of the arbitrator and

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the arbitrator suspended the proceedings. The respondent also filed private complaint against the complainant for the two cheques dishonored under Section 138 of the Negotiable Instruments Act. The complainant created mortgage of plot for availing loan from bank by executing the Memorandum of Deposit of Title Deed. The complainant also threatened the respondent and his staffs to hand over the possession of the residential house without paying the balance amount personally and also through e-mails. The complainant is not entitled for any reliefs and the complaint is liable to be dismissed with cost.

4. An attempt to settle the matter amicably has failed.
5. On the both sides, evidence on affidavits was filed and documents were marked.
6. On the basis of the rival contentions of the parties, the following points arise for determination:-
 - i. Whether the complainant is entitled for compensation for delay on the ground of delay in construction and handing over of apartment by the respondent?
 - ii. What are the reliefs, the complainant is entitled to?

7. Answer for Point No. (i)

(a) The learned counsel for the complainant filed written notes of arguments and contended that at the time of execution of the construction agreement, the respondent informed the complainant that they are taking necessary steps to register the project and the process would be completed in a short period and the respondent received payment on an unregistered construction agreement in spite of the request of the complainant to

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register the construction agreement and the respondent demanded further payments and the complainant paid a sum of Rs.48,51,000/- out of the total consideration of Rs.66,00,000/- and as per the construction agreement, the possession of the residential unit was to be handed over within 90 days of the agreement and the respondent has not come forward to handover possession by the due date and without following the mandatory procedures, the complainant was not inclined to release the balance amount and the respondent contravened the provisions of the RERA Act and the complainant is entitled for compensation. .

(b) The learned counsel for the respondent filed written notes of arguments and submitted that the complainant has not approached this Forum with clean hands and on his own admission the complainant is due of payment of balance amount to the respondent and the construction of the building was completed in July 2018 and is ready for occupation subject to payment of balance amount of Rs.20,00,000/- by the complainant and the complainant filed C.No.242/2019 before the Authority (TNRERA) and by order dated 30.01.2020, the Authority directed the respondent to hand over the completed house to the complainant before 29.02.2020 after collecting the balance amount due from and the complainant has not paid the balance amount and therefore, the complaint is liable to be dismissed with cost.

(c) Admittedly, the complainant preferred C.No.242/2019 before the Authority for direction to the respondent to register the project and also to hand over possession of the property to him. By Ex.B14, the order dated 30.01.2020, the Authority directed the respondent to handover the completed house to the complainant before 29.02.2020 after collecting the

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balance dues from the complainant. In pursuance of the order, the respondent has issued Ex.B15, the notice dated 13.02.2021 to the complainant requesting him to pay the balance amount. The complainant sent Ex.B16, the reply notice dated 27.02.2021, in which he stated that the balance sale consideration is ready and asked for the mode of payment and also to fix and inform a date to him for inspection of the villa to satisfy himself as to the completion of the entire construction. Where the promises are reciprocal, each party has the option to perform his part of contract but cannot insist on the other party performing his part without himself performing what he has agreed to do. Unless the complainant makes balance payment of sale consideration, the respondent will not be able to comply with the order of the Authority.

(d) Under Section 19(6) of the RERA Act, the obligation is on the complainant to make payments in the manner and within the time as specified in the agreement of sale and he has to pay at the proper time and place. Even though, the complainant has already made part of the sale consideration to the respondent, still he has not preferred to pay the balance amount in the same manner to comply with the direction of the Authority. Under Ex.A2, the construction agreement, at the stage of registration of land, the complainant is liable to make the entire amount of sale consideration, except a sum of Rs.50,000/- which can be retained by him for payment at the stage of handing over of the apartment. Ex.A7, the sale deed for the land was executed on 04.06.2018.

(e) On perusal of the record, it is seen that on 04.06.2018, the complainant has issued two cheques, each for a sum of Rs.10,00,000/-, to the respondent and subsequently instructed the bank to stop payments on the

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two cheques issued to the respondent. On return of the cheques, the respondent initiated criminal proceedings under Section 138 of Negotiable Instruments Act. The complainant claims to have issued the cheques for security purpose to show bona-fide arrangement of the balance amount payable to the respondent. When already the balance amount under the agreement was due and payable to the respondent, the contention of the complainant that the cheques were issued for security purpose is not acceptable in the absence of any evidence to corroborate the same. The circumstances clearly go to show that the complainant is wantonly and deliberately not making the balance payment and is not justified in delaying the balance payment to the respondent payable under the agreement on one pretext or another.

(f) Under Section 18 of the RERA Act, a promoter is liable to pay compensation to the flat purchaser only when he fails to complete or is unable to give possession of the apartment within time limit as specified in the agreement. As per Ex.A2, the construction agreement dated 20.04.2018, the respondent undertook to handover the constructed residential building to the complainant within 90 days from the date of the agreement. The complaint lacks specific pleading that construction of the dwelling unit was not completed within the time limit specified under the construction agreement. By Ex.B5, the arbitration notice to the complainant dated 31.07.2018, the respondent has claimed that the construction is completed and the building is ready for handing over keys with possession. The same was not seriously disputed and disproved by the complainant.

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(g) In the above facts and circumstances, it is held that the complainant is not entitled for any compensation. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

In view of the answer for the point No (i), the complainant is not entitled for any reliefs and the complaint is liable to be dismissed. Thus, the point is answered accordingly.

In the result, the complaint is dismissed. No cost.

**G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1--- M. Gopalakrishnan

RW-1--- R. Kannan Nandhakumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	15.08.2018	Receipt issued by the respondent
Ex.A2	20.04.2018	Construction agreement
Ex.A3 to Ex.A6	-----	Receipts issued by the respondent
Ex.A7	04.06.2018	Sale deed
Ex.A8	29.06.2018	Memorandum of deposit of title deeds.

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	12.06.2013	Gift deed
Ex.B2	20.04.2018	Sale cum construction agreement
Ex.B3	30.04.2018	Gift deed dated 30.04.2018

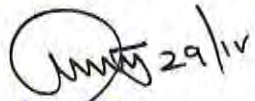
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Ex.B4	-----	E-mail communication
Ex.B5	31.07.2018	Arbitration notice to the complainant
Ex.B6	-----	Cheques and return memo
Ex.B7	----	Notice by arbitrator
Ex.B8	10.11.2018	Legal notice to complainant
Ex.B9	18.12.2018	Complaint in NIA
Ex.B10	19.03.2019	Complaint no. 242/2019 copy
Ex.B11	14.06.2019	Counter in complaint
Ex.B12	----	Acknowledgement issued by TNRERA
Ex.B13	19.09.2019	Reply from TNRERA
Ex.B14	30.01.2020	Copy of final order in C.No. 242/2019
Ex.B15	13.02.2020	Legal notice to the complainant
Ex.B16	27.02.2020	Reply of the complainant

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.


Secretary (Finance & Admn.)
TNRERA, Chennai - 8.