

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 108 of 2019**

P. Soundararajan ... **COMPLAINANT**

**Vs.**

M/s. RVS Developers Pvt. Ltd.

Rep. by MD, R.V. Suresh ... **RESPONDENT**

Complainant : Mr. Krishna Soundararajan,  
Authorised Representative

Respondent : Mr. P. Sri Ganesh, Advocate

**Heard on** : 20.11.2019

**Delivered on** : 29.11.2019

**ORDER**

The above complainant filed the complaint seeking refund of the amounts paid to the respondent towards the purchase and construction of the flat 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) On 26.06.2014, the complainant booked two flats with the respondent in their project namely "MONTANA" and paid advance amount and further amounts.

(b) With regard to one of the flats No.102 in Alberta Block booked with the respondent, the complainant paid Rs.13,07,625/- which is the total basic cost of one flat. The total cost of the flat is Rs.16,68,705/-.

(c) On 11.08.2014, an agreement was entered between the complainant and respondent for construction of the flat and the respondent undertook to get the building plan approval from the concerned authority and also to execute separate sale and construction agreements.

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(d) Since, the construction works were not yet started, the complainant withdraws from the project and seeks refund of the entire amount with interest at the rate of 18% per annum which is agreed to be paid by the respondent under the agreement. Hence the complaint.

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

(a) All the averments, except admitted, are denied. The complainant approached the respondent for construction of two flats at Alberta Block of the project. The complaint is made with regard to one of the flats No.102. Out of the total sale consideration of Rs.16,68,705/-, the complainant paid Rs.13,07,625/- on the basis of memorandum of agreement entered between the complainant and the respondent.

(b) The respondent applied for building plan approval before the concerned authority. The Director of Town and Country Planning gave clearance for the planning permission to the Regional Deputy Director on 03.03.2016. The respondent can get the approval only after completing the special conditions.

(c) The delay in the project is neither willful nor wanton. The respondent is yet to obtain the plan approval. Only after the receipt of the same, the respondent can raise the structure. The project need not be registered under the TNRERA. Hence, the respondent prays for the dismissal of the complaint.

4. The complainant filed his proof affidavit with documents. The respondent has not produced any evidence.

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

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- i. Whether the complainant is entitled to get back the amount paid to the respondent with interest, compensation and costs on the ground of failure on the part of the respondent to commence the construction work for delivery of the constructed flat in accordance with the terms and conditions of the memorandum of agreement?
- ii. Whether the complainant is entitled for any reliefs as prayed for?

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

(a) The authorized representative of the complainant submitted that the complainant booked two flats and paid the full amount for construction of the flats and the complaint is with regard to one of the flats and so far construction has not yet started by the promoter and the promoter is liable to refund the amount with interest at the rate of 18% promised by him and therefore the complainant is entitled for all the reliefs as prayed for.

(b) In his counter affidavit, the respondent admitted that the complainant booked two flats and out of total sale consideration of Rs.16,68,705/- for each of the flats, the complainant paid Rs.13,07,625/- for each of the flats as total basic cost and the agreement was also entered on 11.08.2014 and the delay was not willful nor wanton and the respondent was not able to obtain the plan approval so far and only after getting the approval of the authority, he can raise the structure and the project need not be registered with TNRERA.

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(c) It was also represented on behalf of the complainant that pending complaint before this Forum the respondent sold part of the project land to a third party. Ex.A3 of the proceedings of the Director of Town and Country Planning dated 03.03.2016 reveals that the respondent got clearance for the project for the land in S.Nos. 391/1, 2A, 2B, 2C, 2D, 385/1A, 1B, 2A, 2B, 2C, 123/2A, 2B1, 2B2, 5A, 5B1A, 5B1B, 5B1C, 5B2, 5C – 34659.19 sq.mts. of Ninnakarai village of Chengleput Taluk. Ex.A6 certificate of encumbrance of the property reveals that the respondent sold part of the project land to third parties. It is obvious that the respondent proceeds to alienate the project land to the third parties.

(d) Ex.A2, the memorandum of agreement was entered between the complainant and the respondent on 11.08.2014 for the construction of the flats and the amounts were paid for the construction of the two flats as early as 12.08.2014 and 26.06.2014 by Ex.A1, receipts. Admittedly, the respondent has not obtained the plan approval till date and he will be in a position to construct a flat only after getting approval from the authority. Under Ex.A2 agreement, time is essential of contract for construction of flats. In the agreement itself, the respondent undertook to repay the entire amount received with interest at the rate of 18% in case on delay beyond 6 months. Therefore, the complainant is entitled for the refund of the money with interest at the rate of 18% from the respondent. 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 amount of Rs.13,07,625/- paid by him towards purchase of

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one of the flats with interest at the rate of 18% from the date of payment till the date of this order. However, from the date of the order till repayment of the amount, the complainant is entitled only at the rate of 10.15% per annum since the rule 18 of TNRERA Rules contemplates interest payable on the amount only at the highest marginal cost of lending rate of the SBI plus 2%.

(b) Considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed as compensation towards mental agony and inconvenience to the complainant. The litigation cost is fixed at Rs.15,000/-. The complainant is entitled to relief 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 amount at the interest rate, compensation and 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 as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The charge on the project property under this order shall be intimated to the Sub-registrar concerned of the Registration Department by the office of the TNRERA.

Sd/-29.11.2019  
G. SARAVANAN  
ADJUDICATING OFFICER

**LIST OF WITNESSES**

**CW-1 --- P. Soundararajan**

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**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	--	Receipts (2 Nos.)
Ex.A2	11.08.2014	Memorandum of Agreement
Ex.A3	03.03.2016	DTCP Approval Copy
Ex.A4	12.07.2017	Letter from the respondent
Ex.A5	14.09.2017	Letter from the respondent
Ex.A6	29.08.2019	Certificate of encumbrance

**LIST OF DOCUMENTS FILED BY THE REPOENDENT:**

- NIL -

Sd/-29.11.2019  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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*N. Anand*  
29/11/19  
Administrative Officer