

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

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

CCP No. 109 of 2019

N. Prem Anand Complainant

Vs.

M/s. Sheltrex Developers Private Limited
rep. by its Chairman Rajesh Krishnan,
(Regn. No.TN/01/Building/0238/2017) Respondent

Complainant : Represented by Ms. K. Srimathi, Advocate

Respondent : Represented by Mr. S.B. Viswanathan,
Advocate

Heard on : 20.08.2019

Delivered on : 30.08.2019


ORDER

The above complainant filed the complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent 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 complaint in brief as follows:**

(a) The complainant booked a flat with the respondent in their project at Maraimalai Nagar, on 29th May 2013 and paid booking advance amount of Rs.3,29,841/-. The respondent allotted a flat and promised construction and delivery of the flat by December 2015. There was no progress at project site till April 2014.

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(b) The complainant was called for a meeting on 12.04.2014 and was told that the project was shifted to Oragadam. With no other choice, the complainant agreed for shifting of allotment. The respondent credited interest calculated at Rs.49,771/- for the amount already paid and Rs.3,79,592/- was taken on initial payment and a fresh allotment was also made.


(c) Even subsequently there was no progress. Hence, the complainant requested for refund of the amount. However, the respondent has not made any refund of the amount till date. As per the provisions of the RERA Act, the respondent is liable to return the amount with interest, compensation and costs to the complainant. Hence the complaint.

3. Counter averments of the respondent in brief as follows:

(a) The complaint is not maintainable in law or on facts. All the allegations except admitted specifically are denied. The respondent came to know about disputes relating to title of land in Maraimalai Project of M/s. Sheltrax Housing Pvt Ltd., which was stalled. The name of the promoter of the respondent company was used by M/s. Sheltrax Housing Pvt Ltd., for marketing and sales activities. The complainant approached the respondent for help.

(b) Due to pressure of the complainant and other customers of the said company, the promoter of the respondent company arranged for a meeting and he was forced to offer transfer of booking to respondent company in their project. There was no transfer of money received from the complainant to respondent company. The respondent is a separate legal

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entity. There was no agreement between the complainant and the respondent.

(c) The complainant cannot seek refund of any amount from the respondent. Only on humanitarian grounds the respondent sent allotment letter to the complainant. The project was progressing. However the complainant cancelled the allotment and claimed refund paid to M/s. Sheltrax Housing Pvt Ltd. Hence the respondent prays for the dismissal of the complaint with cost.

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 rival contentions of the parties, the following points arise for determination:-

- i. Whether the complainant is entitled to get back the advance booking amount paid to M/s. Sheltrax Housing Pvt Ltd., from the respondent with interest on the ground of failure on the part of the respondent to commence and complete the project in accordance with the date agreed by the respondent?
- ii. To what reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that the complainant booked a flat with the respondent at Maraimalai Nagar and paid an amount of Rs.3,29,841/- and the allotment of flat was also made and subsequently the complainant was told that the respondent was not

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able to continue development of the project and there was shifting of the project to Oragadam and the complainant agreed to take a flat in the project and the amount already paid with interest till 30.03.2014 to the tune of Rs.3,79,592/- was taken as initial payment for fresh allotment and even thereafter there was no progress of construction and therefore the complainants cancelled the allotment, which was accepted by the respondent and the complainant is entitled for refund of the amount with interest and compensation.

(b) The learned counsel for the respondent contended that the complaint is not maintainable and the complainant never paid any amount to the respondent and the amount was paid to M/s. Sheltrax Housing Pvt Ltd., and due to some dispute, the project was stalled and the name of the promoter of the respondent company was used by M/s. Sheltrax Housing Pvt Ltd., and due to pressure, the respondent offered to transfer the booking of the complainant to their project at Oragadam and there was no transfer of money received by M/s. Sheltrax Housing Pvt Ltd., from the complainant to the respondent and there was no agreement between the complainant and the respondent and the complainant cannot seek any refund from the respondent and the complaint is liable to be dismissed with costs.

(c) As per Ex.A-1, allotment letter, the complainant paid Rs.3,29,841/- to M/s. Sheltrax Housing Pvt Ltd., towards purchase of flat in their project at Malaimalai Nagar. Ex.A-2 is the letter sent by the respondent in which the respondent confirms allotment of new apartment in Oragadam project and the respondent also gave credit to the amount paid to M/s. Sheltrax

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Housing Pvt Ltd., with interest calculated till 31.3.2014 at Rs.49,771/- and acknowledged the receipt of Rs.3,79,592/- as the total amount received from the complaint.

(d) In their counter, the respondent stated that the complainant approached the respondent and one Mr. Rajesh Krishnan, who was the promoter of the respondent company was forced to offer transfer of booking of the complaint to their project and the transfer was made on humanitarian basis and there was no actual transfer of money from the complaint to the respondent and there was no agreement between them. But the evidence proves that the said Rajesh Krishnan, is the Chairman of the Sheltrax Group of about the Companies including the respondent company and the transfer of apartment in the new project was made between group companies.

(e) Admittedly, the respondent company is incorporated under the Companies Act, 1956 as a private limited company and is bound by the provisions of Companies Act. The respondent company was under no legal obligation to take responsibilities and liabilities of another company, namely, M/s. Shreltrax Housing Pvt Ltd., on the grounds alleged by the respondent. The respondent produced Ex.B-2 certificate of change of name of M/s. Sheltrax Housing Pvt Ltd., as MMN Housing Pvt Ltd., with effect from 09.03.2010. Ex.B-3 is the certificate of incorporation of respondent company. The respondent has not filed any other documents to show who are all the Directors of both the companies and the Chairman of group of companies. By Ex.A-5, the respondent promised to refund the amount as

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soon as possible. The respondent cannot deny their liability to pay the amount.


Considering all the above circumstances, it is held that the respondent is liable for the amounts paid by the complainant. Thus the point is answered accordingly.

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

(a) There is no dispute on the amount paid by the complainant. In Ex.A-5, is the respondent stated as they received a sum of Rs.3,28,841/- and promised to refund the entire amount. But in Ex.A-2, the respondent already acknowledged Rs.3,78,592/- as the total amount received by giving credit of interest earned on the original amount paid by the complainant. Hence the complainant is entitled for refund of Rs.3,78,592/- from the respondent.

(b) As per Rule 18 of the TNRERA, the rate of interest payable by the promoter to the allottees shall 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 8.60% p.a. The complainant is entitled for interest on the amount of Rs.3,78,592/- at the rate of 10.60% per annum (8.60% +2%) from 01.04.2014 till repayment by the respondent. Apart from the above, the complainant is entitled to Rs.30,000/- towards compensation for mental agony and inconvenience and Rs.20,000/- towards legal expenses incurred by him. The complainant is entitled for reliefs as detailed below. Thus, the point is answered accordingly.

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In the result, the respondent is directed as follows:

- (1) The respondent shall pay the complainant the amounts at the interest rate, compensation and other charges as per the findings in the answer for Point No.(ii), Para 8 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 flat booked by the complainant till their repayment.

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Sd/- 30.08.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

N. Nataraj
30/8/19
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


30/08/2019