

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 110 of 2019**

Adnan

... COMPLAINANT

Vs.

M/s. Emaar MGF Land Limited
Rep. by Director Shravan Gupta

... RESPONDENT

Complainant : M/s. Nathan and Associates, Advocates
Respondent : Remained absent

Heard on : 20.12.2019

Delivered on : 03.01.2020

ORDER

The above complainant filed the complaint seeking refund of the amounts paid to the respondent towards the purchase of flat together with interest, compensation and litigation 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 flat with the respondent in their project, namely "***the avenues AT the Esplanade***" at No.75, Vaidyanathan Street, Tondiarpet, Chennai-81 and paid booking advance and further amounts. The total sale consideration of the flat is Rs.41,19,167/-.

(b) On 25.03.2013, the complainant entered into an agreement for sale and also a construction agreement with the respondent for the purchase of the flat. The complainant has paid in total a sum of Rs.40,27,075/- .

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(c) As per the terms of the agreement for construction, the respondent undertook to complete the construction and deliver the flat within 24 months with grace period of 6 months from 01.07.2011. The respondent failed to complete the construction and hand over the possession of the flat as per the terms of the agreement.

(d) On 02.09.2016, the complainant sent a legal notice to the respondent to complete the construction and deliver the flat stating his willingness to pay the balance amount of the total consideration. But till date, the construction of the flat is still pending. Hence, the complainant withdraws from the project and seeks refund of the entire amount paid to the respondent compensation with interest and costs.

3. The service of notice to the respondent at the project address was returned as unclaimed after delivery of intimation. Hence, the complainant was ordered to effect service of private notice and also notice by publication in newspaper. The respondent remained absent.

4. On side of the complainant, evidence on proof affidavit with documents were filed and marked.

5. On the basis of contentions of the complainant, 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 flat booked by the complainant in accordance with the terms and conditions of the agreement?

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- ii. Whether the complainant is entitled for all the reliefs as prayed for?

6. Answer for Point No.(i):

(a) The learned counsel for the complainant submitted that the complainant booked a flat with the respondent in their project namely "*the avenues AT the Esplanade*" and also entered into agreements for sale and construction separately on 25.03.2013 with the respondent and out of the total sale consideration of Rs.41,19,167/-, the complainant paid Rs.40,27,075/- and as per the agreement for construction, the respondent undertook to complete the construction and deliver the flat within a period of 30 months including six months grace period from 01.07.2011 and till date the construction is not complete and therefore the complainant is entitled to the refund of the amount with interest, compensation and costs.

(b) Ex.A1 is the construction agreement entered between the complainant and the respondent. Under clause 3.2 of the agreement, the respondent undertook to deliver possession of the completed apartment within a period of 24 months with a grace period of 6 months commencing from 01.07.2011. The due date for delivery of the flat expired by January 2014. As per Ex.A4, series of payment receipts and Ex.A5 statement of accounts, the complainant has paid in total a sum of Rs.40,27,075/-. In his evidence, the complainant stated that till date the construction is still pending and there is a delay of more than 53 months.

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(c) Section 18 of the RERA Act gives right to the home buyer to demand the amount paid by him towards the purchase of the flat with interest and compensation on the ground of failure on the part of the promoter to complete the construction and hand over the delivery of the flat as per the terms of the agreement. The complainant proved that the respondent failed to complete the construction and to deliver the flat as per the terms of the agreement.

(d) In the above circumstances, it is held that the complainant is entitled for refund of the entire amount paid to the respondent towards the purchase of the flat 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 Ex.A4, series of payment receipts and Ex.A5 statement of account, the complainant paid Rs.40,27,075/-to the respondent towards the purchase of the flat. The complainant is entitled for refund of Rs.40,27,075/- 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 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.

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(c) Considering the facts and circumstances of the case, a sum of Rs.2,00,000/- is fixed as compensation for mental agony, hardship and inconvenience caused 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 flat booked by the complainant till repayment.
- (3) The complainant shall execute the cancellation of agreements, as the case may be, on satisfaction of his claim as per the order and at the cost of the respondent.

Sd/-03.01.2020
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- Adnan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	25.03.2013	Construction Agreement
Ex.A2	25.03.2013	Agreement for sale
Ex.A3	29.11.2013	Deed of Hiba / Gift
Ex.A4	--	Payment Receipts (18 nos.)

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Ex.A5	09.03.2016	Statement of Account
Ex.A6	02.03.2013	Welcome letter
Ex.A7	12.07.2013	Payment request letter
Ex.A8	30.08.2013	Allotment details
Ex.A9	31.08.2013	Final Notice
Ex.A10	09.10.2013	Payment request reminder 1 & 2
Ex.A11	20.11.2013	Final Notice
Ex.A12	27.11.2013	Payment request letter
Ex.A13	14.06.2016	Legal Notice
Ex.A14	12.10.2016	Reply Notice
Ex.A15	04.12.2018	Maintenance Bill Nos.4
Ex.A16	21.02.2019	Handing over of the operations and maintenance services of Phase-II
Ex.A17	--	Demand Notice from CMWSSB
Ex.A18	--	Email Communications
Ex.A19	--	Identity proof of the appellatant

Sd/-03.01.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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N. Anand
 3/1/2020
 Administrative Officer