

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP Nos. 115 of 2019**

S. Sankar Raman

COMPLAINANT

**Vs**

Evocon Private Ltd.,

Rep. by S.C.P. Dhanapal, Chairman and Managing Director

**(PROJECT NOT REGISTERED)**

RESPONDENT

Complainant : Represented by Mr. D. Abdullah, Advocate

Respondent : Represented by Mr. Edwin Solomen, Advocate

**Heard on : 16.10.2019**

**Delivered on : 25.10.2019**

**ORDER**


The above complaint by the complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the booked flat with interest, compensation, premium charges on home insurance and costs is filed u/s 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 a flat with the respondent in their project, namely, "**EDEN GARDEN**" at Puthur Village, Kattangulathur, Kancheepuram District and paid advance amount and further amounts.

(b) On 23.01.2015, the complainant entered into an agreement of construction with the respondent for the purchase of the flat. On the same day, the sale deed for UDS land was executed in favour of the complainant. The total sale consideration of the flat is Rs.55,55,600/-. The complainant paid in total Rs.34,97,064/-.

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25/10/2019

(c) As per the terms and conditions of the agreement, the respondent undertook to complete the construction and hand over possession of the flat within 16 months from the date of the construction agreement with a grace period of 90 days. The time limit expired by May 2016 and the grace period also expired by August 2016. The work of construction of the project was stopped in February 2016. Hence, the complainant withdraws from the project seeks full refund of the entire amount with interest.


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

(a) All the averments and allegations except admitted are denied. The complaint is not at all maintainable. The RERA Act came into force in the year 2016 without any retrospective effect. The complainant in the flat association group filed complaint before the National Company Law Tribunal (NCLT) and the matter has been stayed by the Hon'ble Supreme Court. The complainant cannot claim any remedy before this Forum. The complainant booked the residential flat in the project and paid the amounts. The project was started in the year 2014 after the approval of plan in 2013.

(b) The progress of the construction of the project was affected due to cyclone in 2015, demand of labours and materials, which are beyond the control of the respondent and acts of god. The respondent invested heavy amounts in this scheme. The flat purchasers failed and neglected to pay their dues as per contract in time.

(c) As per Section 19 of the RERA Act, the purchasers are responsible to make necessary payment as per the agreement. The complainant is not entitled for return of the registration charges since the title over the properties was conveyed to him. The respondent is ready to complete the project subject to payment of dues as per the schedule in the agreement by

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25/10/2019

the complainant. There is no violation or deviation on the part of the respondent. The complainant is not entitled for any reliefs. Hence the respondent prays for the dismissal of the complaint with exemplary 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 for refund of the amount with interest, compensation and cost on the ground of failure on the part of the respondent to complete construction and hand over possession of the flat booked by him in accordance with the date, as per the agreement?
- ii. What are the reliefs, the complainant is entitled for?

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

(a) The learned counsel for the complainant submitted that there is no dispute on the amounts paid by the complainant and the delay in completing the construction of the flat in the project and handing over the flat to the complainant and the complainant is entitled for the reliefs as prayed for and the complaint is maintainable before this Forum and the Supreme Court of India only stayed the proceedings before the NCLT and Section 88 of the RERA Act makes it clear that the remedy before this Forum is in addition to and not interrogation of the provisions of any other law. The learned counsel also relied on the decision of the Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors.*, reported in Manu/SC/0463/2019 in support of his contentions.

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 25/10/2019

(b) However, the learned counsel for the respondent submitted that the project was delayed due to various reasons beyond the control of the respondent and acts of god and the flat purchasers association group filed complaint before the NCLT and as per the orders of the NCLT dated 29.05.2019, Insolvency Resolution Process is ordered and IRP is appointed to take charge of the management of the respondent company and institution of suits and continuation of suits against the respondent in any court of law, tribunal, or other authorities are prohibited and therefore the complaint is liable to be dismissed.

(c) As per Ex.B1, order of the NCLT, Chennai Bench, dated 29.05.2019, Insolvency Resolution Process is ordered against the respondent company in the application filed by Eden Garden Residential Owners Association. The learned counsel pointed out as per para 13 of the order, the continuation of the proceedings by this Forum is prohibited. The learned counsel for the complainant point out that as per Section 88 of the RERA Act, this Forum can proceed with the case. In this regard, it is relevant to note that in the decision of the Hon'ble Supreme Court dated 09.08.2019 in *Pioneer Urban Land & Infrastructure Ltd., and another vs. Union of India and Ors.* (W.P (Civil) No.43 of 2019), it is held as follows:

*The fact that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies. Also, it is important to remember that as the authorities under RERA were to be set up within one year from 1<sup>st</sup> May 2016, remedies before those*

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
*authorities would come into effect only on and from 1<sup>st</sup> May, 2017 making it clear that the provisions of the Code, which came into force on 1<sup>st</sup> December 2016, would apply in addition to the RERA.*

In view of the above decision of the Hon'ble Supreme Court, it is obvious that there is no conflict between RERA Act and IBC and the home buyers could pursue parallel proceedings against the builders under both the laws.

(d) As per Section 3 of the RERA Act, the project that are on-going on the date of commencement of the Act and for which the completion certificate has not been issued, the project requires to be registered under the Act. The RERA Authorities gets jurisdiction over all the Real Estate Projects, which are eligible for registration irrespective of the fact as to whether they are registered or not. Admittedly, as on date, the construction of the project of the respondent has not been completed. Therefore, the project of the respondent, as an on-going project, comes under the purview of the RERA Act. Therefore, the contention of the counsel for the respondent on the application of the RERA Act is not sustainable.

(e) Section 18 of the RERA Act gives right to the home buyers to withdraw from the project and demand their amounts back with interest and compensation, if the promoter fails or is unable to give possession of the flat on the date specified in the agreement. In the present case, there is no dispute between the parties on the point that the respondent failed to deliver possession of the flat within the time limit prescribed under the construction agreement. In the above circumstances, it is held that the complainant is entitled to get refund of the amount paid by him to the respondent with interest, compensation and cost on the ground of failure on

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25/10/2019

the part of the respondent to give possession of the completed flat as per the terms of the agreement. Thus, the point is answered accordingly.

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


(a) It is not in dispute that the complainant paid total sum of Rs.34,97,064/- to the respondent. In view of the answer for Point No.(i), the complainant is entitled for refund of the amount paid by him to the respondent towards purchase of the flat together with interest, compensation and cost.

(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 from the date of respective payment till repayment by the respondent.

(c) The complainant claimed Rs.1,13,081/- towards payment made on premium on housing insurance on availing home loan. As per the policy schedule, the complainant paid Rs.1,13,081/-. Since the complainant incurred the payment on account of flat purchase, he is entitled to claim the said amount from the respondent. Hence the complainant is entitled to Rs.1,13,081/- as expenses incurred towards home insurance.

(d) As a result of the delay, the amount of disproportionate gain or unfair advantage to the respondent is not quantifiable exactly. Considering the facts and circumstances of the case, Rs.2,00,000/- is fixed compensation for mental agony and inconvenience caused to the complainant and towards litigation expenses a sum of Rs.25,000/- is fixed as payable by the respondent

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25/10/2019

to the complainant. The complainant is entitled for the reliefs 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 8 of this order within 60 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 the repayment.
- (3) The complainant shall execute the cancellation of agreement and sale deed, as the case may be, on satisfaction of his claims at the cost of the respondent.

**G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI**

**List of documents filed by the complainant**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	12.11.2013	Flat booking receipt
Ex.A2	23.02.2015	sale deed
Ex.A3	23.01.2015	construction agreement
Ex.A4	21.01.2015	Details of housing loan from HDFC Bank
Ex.A5	---	Details of amount paid to builder
Ex.A6	20.06.2017	Statement of loan repayment and interest paid certificates for the period 01/2015 to 03.2019 from HDFC Bank

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25/10/2019

Ex.A7	----	Complaint and subsequent notice sent by TNRERA to builder including direction from TNRERA to approach adjudication office for refund with compensation, interest etc.,
Ex.A8	12.02.2016	Communication received from the builder confirming the delay from their end due to statutory issue and non availability of funds.
Ex.A9	---	Key communication letter sent to respondent by other owners
Ex.A10	---	Photograph of project about the current stage and quality issues;
Ex.A11	---	Calculation showing the loss by way of rent due to non-construction of apartment.
Ex.A12	---	Calculation of loss and compensation payable by the respondent
Ex.A13	12.12.2013	Unregistered deed of agreement of sale and construction agreement
Ex.A14	15.02.2014	Unregistered Agreement of construction and Deed of Agreement of Sale dated
Ex.A15	17.05.2014	Unregistered deed of agreement of sale
Ex.A16	15.09.2014	Unregistered agreement of construction
Ex.A17	---	Unregistered sale deed and construction agreement dated 17.05.2014 and 15.09.2014

**List of documents filed by the respondent**

Ex.Nos	Date	Documents Name
Ex.B1	29.05.2019	Case documents of Single Bench, NCLT
Ex.B2	30.05.2019	Order of Supreme Court of India
Ex.B3	---	Payment receipt from CMDA along with CMDA Letter dt.09.05.2019, City Homes Letter dt. 06.03.2019, Dept. of H&UD Letter dt. 07.02.2019 & 05.02.2018, CMDA Letter dt.14.05.2018, City Homes Letter

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 25/10/2019



		dt.07.05.2018 and Letter dated 21.02.2018 from K. M. Sadhanandh to The Member Secretary.
Ex.B4	---	Demand Draft along with acknowledgement for submission of project registration, Affidavit cum declaration, Application for registration of project
Ex.B5	---	Ledger account of respondent from 1 <sup>st</sup> April 2012 to 31 <sup>st</sup> March 2017

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Sd/25.10.2019  
**G. SARAVANAN**  
**ADJUDICATING OFFICER**  
**TNRERA, CHENNAI**

*N. Pradeep Kumar*  
 ADMINISTRATIVE OFFICER  
 TN REAL ESTATE REGULATORY AUTHORITY

*25/10/2019*