

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

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

CCP No. 130 of 2019

Rajmohan Murugesan,
Rep.by POA N.Murugesan

.... COMPLAINANT

Vs.

Sare Jublee Shelters Pvt Ltd
Rep by its Director C.Saravanan

.... RESPONDENT

Complainant : Party in person
Respondent : Rep.by Mr.G.Sriram, Company Secretary.

Heard on : 01.10.2020

Delivered on : 14.10.2020

ORDER

The above complaint by the complainant claiming refund of amounts paid to the respondent towards purchase of flat with interest, compensation and costs 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 August 2011, the complainant booked a residential apartment with the respondent in their project, namely, Crecent parc Dewy Terraces at OMR Chennai and paid advance amount and further amounts. The total sale consideration of the flat is Rs.29,25,724/- which includes all taxes.

(b) The complainant entered into a sale and construction agreement with respondent on 10.02.2012. As per the terms of the agreement, the respondent undertook to complete the construction of the apartment and deliver the flat within 24 months from the date of obtaining the building plan sanction with a grace period of 3 months. The building plan was approved on 11-06-2012.

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(c) On 28-11-2014, the respondent sent a letter of offer of possession demanding payment of 10% of the final payment. The complainant visited the property and came to know, that there was no progress in construction from December 2013. The complainant made payment of 100% of consideration. On 12.06.2015, respondent executed the sale deed for the UDS of land in favour of the complainant. The respondent received a total sum of Rs.29,50,596/-.

d) Since there was no progress of construction, the complainant requested to terminate the agreement and refund of the entire amount with interest and compensation. Subsequently, the complainant also caused to issue a legal notice to the respondent. But, no action was taken by the respondent. As per the provisions of RERA Act, the complainant is entitled to refund of entire amount with interest, compensation and cost.

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

(a) The complaint is false, frivolous and untenable on facts. All the allegations are denied and the complainant is to strict proof of the same. The project was given a completion certificate as on the date of commencement of the RERA Act and was not an ongoing project.

(b) The complainant already filed a case before the consumer court and was indulging in forum shopping. There is an arbitration clause in the agreement. There is no jurisdiction for this forum entertaining the complainant.

(c) The complainant booked a flat in the project of the respondent and entered in to an agreement of sale and construction on 10.02.2012. The complainant has no right to agitate based on the promotional assurances. The respondent agreed to complete the construction of the flat on

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31.05.2015 including the grace period. The respondent is not liable for any delay in completion of the project. The time frame for the possession is tentative and subject to force majeure conditions.

d) The project is completed of 90% and only final works to the extent of 10% is pending. Any order for refund at this stage will affect the advanced stage of construction. The complainant is eligible for delay compensation. 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 the rival contentions of the parties, the following points arise for determination:

i. Whether the complainant is entitled to get back the amount paid to the respondent with interest and compensation and other reliefs on the ground of failure on the part of the respondent to give possession of the apartment booked by him in accordance with the date and terms of the agreements for sale and construction?

ii. What are the reliefs the complainant is entitled to?

7. Answer for Point No.(i)

(a) The complainant submitted that he booked the residential apartment in the project of the respondent in the year of 2011 and entered in to an agreement of sale and construction agreement on 10.02.2012 and due date for delivery of the flat was within 24 months from the date of obtaining building plan sanction with a grace period of 3 months and the

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building plan was approved on 11.06.2012, and even after the expiry of the due date for several years and inspite of the entire payment of sale consideration, the respondent was not able to handover possession of the constructed flat and complainant is entitled for the reliefs.

(b) However, the authorized representative of the respondent company contented that the complaint is not maintainable and the completion of the block concerned is in the final stage of construction and the delay was due to reasons beyond the control of the respondent and the project is expected to be completed in 10 months and there was an attempt to settle the matter and compromise memo was entered with the complainant and there was no settlement due to the attitude of the complainant and the complaint is liable to be dismissed.

(c) The respondent filed a reply statement on 05.07.2019 in which the delay in construction and completion of the block concerned in the project was admitted due to reasons beyond the control of the respondent. Subsequently, the respondent filed additional reply statement on 19.07.2019 raising various objections to the complaint as a completion certificate of the project was issued as on the date of the commencement of RERA Act and the complainant already filed a case before the Consumer Redressal Forum at Chennai and indulged in forum shopping and the agreement contains arbitration clause for reference to arbitration and this forum has no jurisdiction.

(d) Admittedly, till date the construction of the particular block in the project is not complete and possession of the constructed flat was not handed over to the complainant by the due date of delivery as per the

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terms of the agreement entered between the respondent and the complainant. Eventhough it was stated by the respondent that completion certificate was issued, no such certificate was produced by the respondent.

(e) The Hon'ble Supreme Court in M/s. Emaar MGF Land Limited Vs. Aftab Singh I(2019)CPJ5(SC) has laid down the law that the arbitration clause in the agreement does not bar the jurisdiction of the consumer Fora to entertain the complainant.

(f) The RERA Act which is a special statute is enacted in the larger interest of the consumers who are home buyers. Section 88 of the RERA Act makes it clear that the provisions of the RERA Act is in addition to, and not in derogation of, the provisions of any other law for the time being in force. Therefore, the filing of any complaint before the consumer forum or any the clause in the agreement for arbitration is not a bar to seek remedy under the RERA Act.

(g) As per the section 18 of RERA Act, the home buyer is entitled to seek refund of the amount paid to the promoter towards purchase of the flat together with interest including compensation, if the promoter fails or is unable to complete and deliver the completed flat to the home buyer as per the terms and conditions of the agreement. As per the Ex.A1 agreement for sale and construction dated 10.02.2012, entered between the complainant and respondent, the respondent undertook to deliver of possession of the apartment within 24 months from the obtaining building plan with a grace period of 3 months. Ex.A3 building plan approval is dated 11.06.2012. Admittedly, the construction of the apartment was not completed till date.

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(h) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid by him towards purchase of the flat on the ground of failure on the part of the respondent to deliver the constructed flat as per the terms of the agreement. Thus the point is answered accordingly.

8. 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.29,50,596/- paid to the respondent with interest, compensation and cost. In Ex.B2 statement memo issued by the respondent, the total amount of Rs.29,50,596/- paid by the complainant is admitted by the respondent.

(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 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% p.a for the entire amount paid from the dates of respective payment till repayment by the respondent.

(c) The complainant claimed Rs.47,355/- towards the expenses of the registration of the UDS of land. Admittedly on 22.06.2015 sale deed for the UDS of land was executed by the respondent in favour of the complainant. As per the receipt filed with the sale deed, the complainant paid Rs.47,355/- to registration department for registration of the document. Hence, the complainant is entitled for Rs.47,355/- towards the cost of the registration of the sale deed.

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(d) Towards mental agony and inconvenience caused to the complainant, a sum of Rs.50,000/- is fixed considering the facts and circumstances of the case. Towards litigation expenses, a sum of Rs. 25,000/- is fixed. 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 amounts at the interest rate, compensation, other charges 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 Agreements and Sale Deed of the UDS land, as the case may be, on satisfaction of his claims as per the order at respondent's expense.

G. SARAVANAN
ADJUDICATING OFFICER

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LIST OF WITNESSES

CW-1 --- N.Murugesan
 RW-1 --- P.S. Srinivasan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
A1	10.02.2012	Agreement of sale and construction
A2	---	Clause 5.1 of Agreement
A3	11.06.2012	Building Plan Approval
A4	---	Payment details
A5	---	Payment details
A6	22.06.2015	Sale Deed
A7	08.11.2019	Joint Memorandum of Compromise
A8	---	Interest working sheet

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Ex.No.	Date	Documents Name
B1	08.11.2019	Joint Memorandum of Compromise
B2	---	Statement memo
B3	28.11.2019	Draft Sale deed
B4	---	E-mail copies

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(For) ADMINISTRATIVE OFFICER
 IN REAL ESTATE REGULATORY AUTHORITY

G. SARAVANAN
 ADJUDICATING OFFICER
 TNRERA, CHENNAI