

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 131 of 2019**

Vaithiyanathan R **COMPLAINANT**

Vs.

M/s. R.M. Builders,
Rep. by R. Murugesan, Proprietor,
(PROJECT NOT REGISTERED) **RESPONDENT**

Complainant : Represented by Mr. Abishek Jenasenar, Advocate

Respondent : Represented by Mr. Kingston Jerold, Advocate

Heard on : 24.09.2019

Delivered on: 16.10.2019

ORDER


The above named complainant filed the complaint claiming refund of the amounts paid to the respondent towards purchase and construction of flat 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) The complainant booked a flat with the respondent in their project, namely "ROYAL NAGAR" at Kovur Village, Sri Perumbuthur Taluk, Kancheepuram District and paid the advance amount and further amounts.

(b) On 19.08.2012, the complainant entered into a sale cum construction agreement with the respondent for the purchase of the flat. The total sale consideration of the flat is Rs.26,00,000/-. The complainant paid in total Rs.21,00,000/-. As per the terms and conditions of the agreement, the respondent undertook to complete the construction and hand over the flat within 15 months from the date of the agreement. The respondent also

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executed a sale deed for the UDS land on 12.03.2014. Even after the expiry of the due date and till date, the construction of flat was not completed and the flat was not handed over to the complainant.

(c) The complainant approached the respondent for refund of the amount paid with interest. Though the respondent agreed to refund the amount within 6 months, till date, the respondent has not paid any amount to the complainant. The complainant is entitled for refund of the amount with interest, compensation and expenses for registration of the documents and cost of litigation.

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

(a) All the averments and allegations except admitted are denied. The complainant approached the respondent for purchase of the flat. The total sale consideration of the flat was fixed at Rs.26,00,000/- and the complainant paid Rs.20,00,000/-.

(b) Due to rise in the guideline value, the value of the property increased and the sale consideration was revised at Rs.26,90,000/- and the complainant also agreed to pay the revised sale consideration. The respondent also entered a sale agreement with the complainant and also executed sale deed for UDS land. The registration charge was paid to the registration department.

(c) Under clause 12 of the agreement, the respondent is not liable for any delay due to the reasons beyond his control. The complainant instructed the respondent to do the plastering work with river sand. The raw-material were not available. The complainant also received monthly rent for waiting period from the respondent.

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(d) The complainant suppressed the facts before this Forum. It is wrongly stated that the respondent agreed to refund the amount. Only due to the attitude of the complainant, the project was delayed. The project was delayed due to act of god and there is no deficiency of service by the respondent. The complainant is not entitled for reliefs as prayed for.

4. An attempt to settle the matter amicably has failed.

5. The complainant filed his evidence on affidavit with documents. No evidence was produced on behalf of the respondent.


6. On the basis of the 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. Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The learned counsel for the complainant submitted that both the complainant and the respondent entered into a sale cum construction agreement on 19.08.2012 and the complainant paid Rs.21,00,000/- out of the total sale consideration of Rs.26,00,000/- and the respondent undertook to complete the construction of the flat and hand over the flat within 15 months from the date of agreement and the respondent failed to hand over the constructed flat as per the terms and conditions of the

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agreement and the complainant is entitled for refund of the amount with interest, compensation and costs.

(b) However, the learned counsel for the respondent submitted that the complainant paid Rs.20,00,000/- out of the total sale consideration of Rs.26,00,000/- and subsequently the sale consideration was increased to Rs.26,90,000/- due to change in guideline value and the complainant also agreed to pay the increased amount and the delay was caused due to reasons beyond the control of the respondent and under the agreement, the respondent is entitled for extension of time and presently the construction is completed and the complainant can take possession of the flat and therefore the complainant is liable to be dismissed.

(c) Under clause 11 of the Ex.A1 sale cum construction agreement dated 19.08.2012, the respondent undertook to construct and hand over the flat within 15 months from the date of the agreement. The due date for handing over the flat expired by November 2013. The respondent stated that under the Clause 12 of the agreement, extension of time is available in case of delay in completion due to reasons beyond the control of the respondent. Admittedly, from November 2013 to till date, the completed flat was not handed over to the complainant. The reasons stated by the respondent are general and vague and cannot be attributed for the inordinate and unreasonable delay in completion of the construction for more than 5 years from the date of the due date.

(d) In this regard, it is relevant to note that Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors.*, reported in Manu/SC/0463/2019 held that *once the builder failed*

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to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the respondent-purchaser within the time stipulated in the agreement, or within a reasonable time thereafter, the respondent flat purchaser could not be compelled to take possession of the flat even though it was offered almost two years after the grace period under the Agreement expired.

(e) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid with interest, compensation and costs on the ground of failure on the part of the respondent to give possession of the apartment booked by him in accordance with the terms and conditions of the agreement of sale cum construction. 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 paid by him to the respondent towards the purchase of the flat together with interest, compensation and costs. The respondent claimed that the complainant paid only Rs.20,00,000/-. As per Ex.A3, payment receipts, issued by the respondent. The payments were made by the complainant either by cheques or net banking transfer and the receipts issued are for a total sum of Rs.21,00,000/-. Therefore, it is proved by the complainant that he paid Rs.21,00,000/- to the respondent towards the purchase of the flat. Hence, the complainant is entitled for refund of Rs.21,00,000/- from the respondent with interest.

(b) The respondent also contended that the complainant was receiving from him Rs.3,000/- per month in connection with rent on account of delay

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and he has paid Rs.4,50,000/- for such rent. There was specific denial of receiving rental compensation from the respondent by the complainant in his rejoinder statement. Any amount paid as rental compensation on account of delay in construction is liable to be deducted subject to production of documentary evidence. But the respondent has not produced any evidence for payment of rental to the complainant.

(c) 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.

(d) The complainant claimed Rs.5,00,000/- for mental agony and harassment. Considering the facts and circumstances of the case, a sum of Rs.2,00,000/- is fixed as compensation towards mental agony and inconvenience. Admittedly, the complainant paid Rs.1,00,000/- towards registration of the sale deed of UDS land to the respondent in his favour. The respondent contended that the complainant is not entitled for the said amount, which was paid for registration of the sale deed.

(e) The complainant incurred the expenses for registration only on the promise of the respondent to complete the construction and hand over the flat as per the terms of the agreement. Since the respondent was unable to complete the construction as agreed by him or within a reasonable time from the due date, the complainant is entitled for expenses incurred by him

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towards registration of sale deed. Hence the complainant is entitled for Rs.1,00,000/- from the respondent paid for registration expenses. Apart from the above, the complainant is entitled for litigation expenses Rs.20,000/-. As discussed above, the complainant is entitled for the reliefs. 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 costs 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 of the UDS land, as the case may be, on satisfaction of his claims at respondent's cost.

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Sd/- 16.10.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


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