

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 134 of 2019**

1. P. Latha Devi
2. E. Gani ... **COMPLAINANTS**

Vs.

M/s. Amar Prakaash Developers Pvt. Ltd.
Rep. by MD, Mr. Aadarsh Surana ... **RESPONDENT**
(Project not registered)

Complainants : Rep. by Mr. R. Prabhakaran, Advocate

Respondent : Rep. by Ms. M. Alfiya, Advocate

Heard on : 02.12.2019

Delivered on : 16.12.2019

ORDER

The above complaint is filed by the complainants claiming compensation for the delay in construction and handing over the completed flat by the respondent and also for mental agony due to the delay 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 complainants in brief as follows:

a) The complainants booked a flat with the respondent in their project, namely "**PALM RIVIERA**" at Thirumudivakkam village, Sriperumbudur Taluk, Kanchipuram District and paid booking amount and further amounts.

b) On 30.07.2013, the complainants entered in to an agreement of project promotion and construction with the respondent. The total sale consideration of the apartment is Rs.43,48,725/-. The complainants paid in total a sum of Rs.46,09,393/-. As per the terms of the agreement, the respondent undertook to hand over the completed apartment on or before April, 2015.

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c) When the complainants approached the respondent for getting possession of the flat, they were asked to pay further sum of Rs.3,42,267/- for handing over of the keys of the flat. The complainants issued legal notice on 12.08.2017 to the respondent to hand over the keys of the flat. The respondent has not yet handed over the possession of the completed flat. The complainants were put to loss, hardship and mental agony as they are living in a rented house on a monthly rent of Rs.15,000/-. Hence, the complainants seeks compensation.

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

a) Except admitted, all the averments are denied. The complainants booked a flat in the project of the respondent, 'PALM RIVIERA' at Thirumudivakkam. The project has been completed and is exempted from registration with TNRERA. The Forum has no jurisdiction to entertain the complaint. The complaint is liable to be dismissed as not maintainable.

b) On 30.07.2013 the complainants and respondent entered in to an agreement of project promotion and construction. The complainants are to adhere the payment schedule as agreed by them. In case of delay in payment, the respondent is entitled for the interest at the rate of 24% per annum also to extend the time for delivery of the flat.

c) The reading of clauses 5,16, 39 and 43 of the agreement makes it clear that the complainants are not entitled to insist and press the stipulated time for handing over the flat. Payments relating to interest charges is due from the complainants. Therefore, the claim of possession of the apartment by the complainants was not permitted under clause 16 of the

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agreement. A sum of Rs.4,40,839/- remains as due to the respondent from the complainants on account of delay interest charges.

d) The flat booked by the complaints is completed and ready for occupation. The respondent undertakes to hand over possession subject to payment of outstanding delay charges. Hence, the respondent prays for the dismissal of the complaint with costs.

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

5. Both the parties have filed their respective evidence on affidavit and documents. On the side of the complainants, documents Ex.A1 to A5 are marked and no documents are marked on the side of the respondent.

6. On the basis of the rival contentions of the parties, the following points arise for determination:

- i. Whether the complainants are entitled for compensation for the delay in completion and delivery of the possession of the completed flat by the respondent as per the terms of the agreement?
- ii. What are the reliefs, the complainants are entitled for?

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

a) The learned counsel for the complainants submitted that as per the terms of the agreement, the total cost of the construction is Rs.32,83,443/- and the sale consideration of the UDS land is Rs.4,13,000/- and on various dates, the complainants made payments in total of Rs.46,09,393/- and the respondent undertook to hand over and deliver the constructed flat on or before April, 2015 and there was delay in completing the construction of

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the flat and the respondent demanded further amounts to hand over the keys of the flat and the terms of the agreement are one sided and only in favour of the respondent builder and the complainants are living in a rented house and therefore they are entitled for compensation.

b) However, the learned counsel for the respondent submitted that there was default in payment of dues by the complainants and the flat is ready to occupy and as per the terms of the agreement, the complainants are not entitled for compensation when the delay is not attributable to the respondent and the complainants are liable to pay the interest amount for the delay in payment of dues as per the schedule and the complaint is liable to be dismissed.

c) As per the terms of the Ex.A1 agreement, the respondent undertook to complete the construction and deliver the flat on or before April, 2015. Even though in the counter and also the proof affidavit , the respondent stated that the apartment forms part of the project and the same has been exempted from registration with TNRERA and this Forum has no jurisdiction, the respondent has not given the date of completion of the project. As per section 3 of the RERA Act, the projects that are ongoing on the date of the commencement of the Act for which the completion certificate has not been issued, the projects need to be registered under RERA Act. The respondent has also not produced any completion certificate with regard to the completion of the project as on date of commencement of the RERA Act. Admittedly, till date the completed flat was not delivered to the complainants. Therefore, the contention of the respondent that this Forum has no jurisdiction is not sustainable.

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d) It is the contention of the respondent that they are entitled for interest at the rate of 24% per annum in the event of default in making payment as per agreed payment schedule. As per the counter of the respondent, the sum of Rs.4,40,839/- is due as delay interest charges. No document is filed by the respondent regarding any demand made by the respondent for such amount or calculation as to how the amount was arrived at. The payment schedule in Ex.A1 agreement is linked with different stages of construction, which have no specific dates. It is not the case of the respondent that the complainants were informed of the completion of the stage wise construction with a demand note for the amount due.

e) As per the terms of the agreement, the respondent is entitled for delay interest charges from the date of default till the date of actual payment by the complainants. But the liability to pay delay interest charges for default in payment by the complainants would arise only on due intimation of the date of completion of the stage of construction with due date for payment.

f) Ex.A4 payment ledger statement issued by the respondent to the complainants reveals that the amount due on account of the complainants is Rs.43,48,725/- and the same was recorded as received. In the columns for number of days and interest, the number of days and the amount of interest are entered for the each date of realisation of the amount and the total amount of interest is arrived at Rs.4,40,839/-. There is no mentioning of the actual date of completion of the construction of particular stage with date of intimation to the complainants or any demand note made to the complainants. When the project itself was delayed for more than 3 years from the due date, it is clear that irrespective of the delay their part, the

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respondent has calculated as there was delay in payment and claimed interest charges.

g) The terms of the agreement reveal that the promises between the parties are reciprocal. Where the promises are reciprocal, each party has the option to perform his part of contract but cannot insist on other party performing his part without himself performing what he has agreed to do. Therefore, after payment of the full sale consideration, the claim of the respondent as interest charges on delay for payment by the complainants is liable to be rejected.

h) The learned counsel for the complainants relied on the decisions of the Hon'ble Supreme Court in "Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan in Civil Appeal No.12238 of 2018 and Kolkata West International City Pvt. Ltd. Vs Devasis Rudra in Civil Appeal no.3182/2019 in support of his contention that the terms of the agreement are one sided, unfair and unreasonable and the terms of such agreement is not final and binding if it is shown that the flat purchaser had no option but to sign on the dotted line and contract framed by the builder. In the above decisions, it was held that the incorporation such one sided clauses in an agreement constitutes an unfair trade practice as per section 2(r) of the Consumer Protection Act, 1986.

i) However, the learned counsel for the respondent contended that under section 18 of the RERA Act, this Forum cannot decide on the nature of the agreement and the matter is to be adjudicating only before the Civil Court or before the arbitration proceedings. The RERA Act is a special enactment for a speedy dispute redressal between the home buyers and the

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promoters. The clause for arbitration is not a bar to seeking relief under the RERA Act. Under section 79, there is bar of jurisdiction of Civil Court with respect to matters which the Authority or the Adjudicating Officer is empowered under the RERA Act to determine. Hence, the contentions of the counsel for respondent are not acceptable.

j) In view of the above circumstances, it is held that the complaints are entitled for compensation for the delay in handing over possession of the completed flat to the respondent. Thus the point is answered accordingly.

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

a) The learned counsel for the complainants submitted that the complainants parted with huge amount of their savings for the purchase of the flat and availed loans paying monthly interest and are living in a rented house even after the payment of full sale consideration of the flat, due to the unfair and arbitrary attitude of the respondent and are entitled for compensation as prayed by them.

b) As per Rule 4(1), Explanation (I) of the TNRERA Rules, any agreement already entered between the promoter and the allottee before the commencement of the rules shall not be affected. It is not in dispute that the agreement in this case was entered between the complainants and the respondent prior to the commencement of the rule, i.e. 22.06.2017. Therefore as per the rule, the complainants are entitled for compensation only as per the terms of the agreement to which they are parties and put the signature accepting the terms and conditions of the agreement.

c) As per clause 19 of the agreement, the respondent undertook to pay compensation for delay at the rate of Rs.10/- sq.ft. on the super built up

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area per month. The due date for delivery as per the agreement was April, 2015. Till date the possession was not handed over by the respondent to the complainant. As per schedule 'C' of the agreement, the super built up area is 982 sq.ft. Therefore the complainants are entitled for compensation at the rate provided under the agreement, i.e., $982 \times 10 = \text{Rs.}9,820/-$ per month. At the rate of Rs.9,820/- per month from May, 2015 till November, 2019, the respondent is liable to pay Rs.5,40,100/- to the complainants and at the same rate per month till the possession of the flat is handed over to the complainants.

d) Considering the facts and circumstances of the case a sum of Rs.2,00,000/- is fixed as compensation towards mental agony hardship and inconvenience caused to the complainants. Towards litigation expenses a sum of Rs.25,000/- is fixed . The complainants are entitled for the reliefs as detailed above. Thus the point is answered accordingly.

In the result, the respondent is directed as follows:-

1. The compensation for delay, at the rate of Rs.9,820/- for the period from May, 2015 to November, 2019, which comes to a sum of Rs.5,40,100/- and the compensation for mental agony and the cost shall be paid by the respondent to the complainants within 30 days of the issue of this order.
2. The respondent shall pay the complainants the compensation as provided under the agreement at the rate of Rs.9,820/- per month from December, 2019 till the possession of the completed flat is handed over to the complainants.

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Sd/-16.12.2019
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- E. Gani
 RW-1 --- R. Solaiyappan

List of documents filed by the complainants

Ex.Nos.	Date	Documents Name
Ex.A1	30.07.2013	Agreement of project promotion and construction
Ex.A2	--	Statement of Receipts details
Ex.A3	01.07.2017	Payment Remainder Letter
Ex.A4	04.08.2017	Payment Ledger Statement
Ex.A5	12.08.2017	Legal notice sent by complainant through counsel

List of documents filed by the respondent

S. Nos.	Date	Documents Name
1	23.02.2015	Sale Deed
2	--	Copy of Proof affidavit
3	--	Interest Working Sheet

Sd/-16.12.2019
 G. SARAVANAN
 ADJUDICATING OFFICER
 TNRERA, CHENNAI

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N. [Signature]
 16/12/19
 Administrative Officer