

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

**CCP Nos. 142 of 2019**

Jatin M. Kikani

**COMPLAINANT**

**Vs**

- (1) MCB Developers  
Represented by M.C. Venketeswara Babu, Proprietor
- (2) MCB AASSETZ,  
Represented by Vinod Venkateswara Babu Mukara, Partner
- (3) M/s. AASTHA HOMES,  
Represented by Ramachandran V, **AND**  
Thaigarajan S, Partners  
**(PROJECT NOT REGISTERED)**

**RESPONDENTS**

Complainant : Represented by Mothilal & Goda, Advocates  
Respondents : Remained Absent

**Heard on : 14.10.2019**

**Delivered on : 29.10.2019**


**ORDER**

The above complaint by the complainant claiming compensation for delay in construction and delivery of the villa and also for incompleting works and mental agony 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) On 14.03.2013, the complainant booked with the respondents for the purchase of the sites and construction villa in their project, namely, "PINWOODS" Ooty and paid advance amount and further amounts.

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(b) On 25.04.2013, sale deed for the site was executed by the respondents and an agreement for construction of the villa was entered between the complainant and the respondents. On 22.11.2013, sale deed for another adjacent site which is planned to be kept vacant was executed by the respondents. As per the terms of the agreement, the respondents undertook to deliver the villa before 31.03.2014.


(c) All the payments were made by the complainant as and when the demand was made by the respondents. The project was not completed as per the terms of the agreement. On 02.04.2016, the complainant requested the respondents for refund of the amount. Till 27.11.2016, there was no progress of the work.

(d) The complainant issued legal notice for refund of the amount with interest. In their reply, the respondents committed to deliver the villa on or before 31.01.2017. On 14.09.2018, there was a demand for property tax by the Panchayat Office. On 25.09.2018, the complainant paid property tax. The construction of the villa was made with poor quality of work. Hence, the complainant seeks the relief as prayed for.

3. The notice addressed to 1<sup>st</sup> and 2<sup>nd</sup> respondents were returned as "*unserved*". Hence private notice by the complainant was ordered. The complainant also took private notice to his known address of R1 and R2 and filed the returned covers. Hence notice to R1 and R2 by publication was ordered and effected. Notice to R3, was served and R3 remained absent.

4. On the side of the complainant, the complainant filed evidence on affidavit and documents.

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5. On the basis of contentions of the complainant, the following points arise for determination.

- i. Whether the complainant is entitled for compensation on various grounds such as delay in delivery, incomplete work, for mental agony and costs from the respondents?
- ii. What are the reliefs, the complainant is entitled?


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

(a) The learned counsel for the complainant submitted that the complainant booked the villa and entered into a construction agreement with the 1<sup>st</sup> respondent for construction of the villa and the sale deeds for the sites were executed by the 3<sup>rd</sup> respondent in favour of the complainant and the villa was constructed with poor quality of work and the complainant has been put to hardship since he had to attend the repair work in the villa at his own cost and therefore the complainant is entitled for the compensation.

(b) As per Ex.A-6, the construction agreement dated 25.04.2013, the 1<sup>st</sup> respondent undertook to complete the construction and delivery the houses on 31.03.2014. Ex.A-4, sale agreement dated 25.04.2013 and Ex.A-5- sale deed dated 22.11.2013, were executed by the 3<sup>rd</sup> respondent for 2 house sites. The house or the villa was, to be constructed by the 1<sup>st</sup> respondent as per the construction agreement in one of the sites covered under Ex.A-4, sale deed.

(c) Ex.A-10, legal notice to the 2<sup>nd</sup> respondent and the 3<sup>rd</sup> respondent was issued by the complainant on 27.11.2016. By Ex.A-11 reply letter, the 3<sup>rd</sup> respondent repudiated the claim of the complainant on the ground that they were only selling the land and sale deeds were executed and they have not

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entered into any activities of construction of villa with the complainant. However, by Ex.A-12 reply letter, the partner of the 1<sup>st</sup> respondent, admitted the delay in the work of construction of villa and promised to hand over the villa on or before 31.01.2017.

(d) Ex.A-1, site brochure and Ex.A-6, agreement reveal that the project is a team work of all the respondents. The agreement refers the villa as premises and provides for cancellation of premises along with the land or site conveyed to the buyer. Therefore, all the respondents are liable for the delay in construction, completion and handing over of villa to the complainant.

(e) As per Rule 4(1), Explanation – I of 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 the case was entered between the complainant and the respondents prior to the commencement of the rules, i.e., 22.06.2017. Therefore, as per the rule, the complainant is bound by the terms of the agreements to which he as one of the parties put his signature accepting the terms and conditions of the agreement.

(f) The complainant claimed compensation for delay in delivery at Rs.24,30,110.28 on the basis of calculation on the principle amount at the rate of 10.75% under section 18 of the RERA Act. The agreement does not provide for such claim of compensation or damages. As per clause 3(c), the complainant is not entitled to claim any damages or losses against the developer. Clause 4(a) also provides for interest on delay payments by the complainant to the promoter. Therefore, the claim of compensation of Rs.24,30,110.28 is liable to be rejected and not sustainable.

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(g) So far as the compensation for attending the pending work of the villa is concerned, the 1<sup>st</sup> respondent expressed difficulty in getting labour for attending the labour work in his email dated 02.04.2016 and also asked the complainant to bring the labour to get the pending works done. Hence the complainant is entitled for compensation for completing pending works. There cannot be any dispute that due to the delay in construction and handing over of the apartment, the complainant is put to mental agony and inconvenience, for which, he is entitled for compensation under non-pecuniary head.


(h) In the above circumstances, it is held that the complainant is entitled for compensation for the expenses for completing the pending work and also compensation for mental agony and cost of the litigation. 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 compensation for completion of the pending work in the villa, compensation for metal agony and also cost of litigation. So far as the completion of the pending work is concerned, the complainant produced Ex.A-14 consolidated statement supported by Ex.A-15 series of cash vouchers, bills and receipts etc., Therefore, the complainant is entitled to Rs.6,20,000/- claimed by him as compensation for completion of the pending works of the villa by him.

(b) Considering the facts and circumstances of the case, towards compensation for mental agony, a sum of Rs.1,00,000/- is fixed and towards litigation expenses a sum of Rs.25,000/- is fixed. The complainant is entitled for reliefs as detailed above. Thus, the point is answered accordingly.

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**In the result, the respondents are directed as follows:**

- (1) The respondents, either jointly or severally, shall pay the complainant the compensation and litigation expenses as per the findings in the answer for Point No.(ii), Para 7 of this order within 60 days from the date of issue of this order.
- (2) If the compensation is not paid within 60 days of the date of issue of this order, the amount will carry interest @ 9% per annum from the date of the order till payment of the amount to the complainant by the respondents.

Sd/-29.10.2019  
**G. SARAVANAN**  
**ADJUDICATING OFFICER**  
**TNRERA, CHENNAI**


**List of Witnesses**

CW1 - Jatin M Kikani – the complainant

**List of documents filed by the complainant**

| <b>Ex.Nos</b> | <b>Date</b> | <b>Documents Name</b>                             |
|---------------|-------------|---|
| Ex.A1         | ---         | Brochure of the project with the site layout plan |
| Ex.A2         | ---         | Booking forms                                     |
| Ex.A3         | 18.03.2013  | Receipts  |
| Ex.A4         | 25.04.2013  | sale deed   |
| Ex.A5         | 22.11.2013  | Sale deed   |
| Ex.A6         | 25.04.2013  | Construction agreement                            |
| Ex.A7         | ---         | Payment list with date and practice               |

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|        |            |   |
|--------|------------|---|
| Ex.A8  | 02.04.2016 | Mail from respondent to complainant               |
| Ex.A9  | 03.04.2016 | Mail sent from complainant to respondent          |
| Ex.A10 | 27.11.2016 | Legal Notice to respondents from complainant      |
| Ex.A11 | 02.12.2016 | Reply notice from the 3 <sup>rd</sup> respondent. |
| Ex.A12 | ----       | Reply notice from the 1 <sup>st</sup> respondent  |
| Ex.A13 | ----       | Photos – copies                                   |

**List of documents filed by the respondents**

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Sd/-29.10.2019  
**G. SARAVANAN**  
**ADJUDICATING OFFICER**  
**TNRERA, CHENNAI**

*N. Anand*  
 29/10/19  
**ADMINISTRATIVE OFFICER**  
**TN REAL ESTATE REGULATORY AUTHORITY**

*[Signature]*  
 29/10/2019