

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 143 of 2019

R. Anurag **COMPLAINANT**

Vs.

M/s. Amar Prakash Developers Pvt Ltd.,
Rep. by its Managing Director Aadarsh Surana
(PROJECT NOT REGISTERED) **RESPONDENT**

Complainant : In Person
Respondent : Remained absent

Heard on : 24.09.2019
Delivered on: 11.10.2019


ORDER

The above complaint by the complainant claiming the refund of the entire amount paid to the respondent towards the purchase and construction of booked apartment 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) The complainant booked a flat with the respondent in their project, namely "**AMAR PRAKASH TEMPLE WAVES**" at Kundrathur, Chennai and paid advance amount and further amounts.
- (b) On 14.09.2016, the complainant entered into an agreement of project promotion and construction with the respondent. On 07.10.2016, the respondent executed sale deed of UDS land in favour of the complainant.
- (c) As per the terms and conditions of the agreement, the respondent undertook to deliver the apartment on or before December 2017. Out of the total sale consideration of Rs.37,39,502/-, the complainant paid Rs.35,67,844/-. The respondent has not completed the apartment and

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handed over the apartment to the complainant till date. The complainant availed bank loan to pay the respondent.

(d) As per the provisions of the RERA Act, the respondent is liable to return the amount with interest, compensation and cost to the complainant. Hence the complainant withdraws from the project and seeks full refund of the entire amount with interest, compensation and cost.

3. In spite of service of notice and appearance through counsel, the respondent has not filed counter and remained absent.

4. The complainant filed his evidence on affidavit with documents.


5. On the basis of contentions of the complainant, 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 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 of the agreement?
- ii. Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The complainant submitted that he booked apartment in the project of the respondent, namely, "AMAR PRAKASH TEMPLE WAVES" at Kundrathur and entered into an agreement with the respondent, in which, the respondent undertook to complete the construction and hand over the apartment by December 2017 and the respondent also executed sale deed for UDS land and even though the complainant paid almost the entire amount, the

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respondent failed to hand over the apartment as per the terms and conditions and therefore he is entitled for refund of the amount paid with interest and compensation and cost.

(b) Under clause 17 of the Ex.A-1 agreement, the respondent undertook to deliver the completed apartment on or before December 2017. As per Ex.A-6, payment request letter dated 03.06.2019 containing payment details, the complainant paid Rs.35,67,844/-. Through notices dated 27.12.2018 and 25.01.2019, the complainant was seeking refund of the amount with interest and cost. Therefore, it is held that the complainant is entitled to get back the amount paid to the respondent with interest, compensation and cost on the ground of failure on the part of the respondent to give possession of the completed apartment booked by him in accordance with the terms and conditions of the agreement. Thus the point is answered accordingly.

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

(a) In view of the answer for Point No.(i), the complainant entitled to recover the amount paid to the respondent with interest, compensation and cost. As per the evidence, the complainant paid to the respondent a sum of Rs.35,67,844/-. The complainant is entitled for said amount with interest, compensation from the respondent.

(b) As per rule 18 of the TNRERA rules, the complainant is entitled to interest for the amount paid to the respondent at the rate of highest marginal cost of lending rate of interest of SBI plus 2% per annum. The present rate of highest marginal cost of lending rate of interest of SBI is 8.15% per annum. Therefore, the complainant is entitled for the interest

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on the amount paid to the respondent at the rate of 8.15% plus 2% per annum i.e., 10.15% from the date of payments till repayment by the respondent. The complainant has claimed Rs.1,20,000/- as compensation towards mental agony and stress. The claim is found reasonable and therefore the complainant is entitled to a sum of Rs.1,20,000/- as compensation for mental agony and stress. Towards legal expenses a sum of Rs.25,000/- is fixed. The complainant is entitled for 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 and other charges as per the findings in the answer for Point No.(ii), Para 7 of this order within 30 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 the agreement and sale deed of UDS land on satisfaction of his claim as per the order at the respondent's cost.

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Sd/- 11.10.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

N. Purnima
11/10/2019
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

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11/10/2019