

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 146 of 2019**

R.Vasantha Rajan
Rep. by power agent P.Vadivel Murugan ... Complainant

Vs.

M/s. Real Value Promoters (P) Ltd.,
Rep. by its authorized signatory, Kolappan Thanu Achari ... Respondent

Complainant : Rep. by Mr.L.Murali Krishnan, Advocate

Respondent : Rep. by Mr.P.Vinodh Kumar, Advocate

Heard on : 20.10.2020

Delivered on : 06.11.2020

ORDER

The above complaint by the complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the booked flat with interest, compensation 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 complaint, in brief, as follows:

(a) The complainant booked a flat with the respondent in their project namely "**Neel Kamal**" at Kazhipattur Village, Chengalpet Taluk, Kanchipuram District, Tamil Nadu.

(b) On 14.09.2011, the complainant entered into an agreement of project promotion and construction with the respondent. The respondent undertook to complete construction and deliver the flat on or before

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December 2013. The total cost of flat is Rs.31, 93,064/-. The complainant paid the entire sale consideration. On 16.11.2011, the respondent executed sale deed for the undivided share of the land in favor of the complainant.

(c) The flat was not constructed within the time limit agreed by the respondent. Till now, the construction was not completed. The complainant was put to hardship since the complainant availed bank loan and paying interest for the loan amount. Hence, the complainant withdraws from the project and seeks for refund of the amount with interest, compensation and cost.

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

(a) Except admitted, all the allegations are denied by the respondent. The complainant is to strict proof of all the allegations and averments.

(b) The complainant has not paid entire cost of flat as per the schedule and has paid Rs.31,93,064/- and the final installment was paid on 14.06.2016. There is pending stage wise payment from the other flat purchasers to the tune of Rs.1,50,00,000/- from the year 2012.

(c) The respondent conducted several meetings with the flat purchasers, and appraised them the situation faced by the respondent. Only after receipt of amounts due from all the other flat buyers, the respondent can continue with the construction of the project. So far as the flat of the complainant is concerned, only minor works have to be carried out.

(d) Only in case of willful delay, the respondent is liable to pay compensation. Due to the market down, the respondent cannot sell the flat to anyone. The complainant can identify purchaser for his flat after

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completion of construction. The complainant is not entitled for any relief. 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 amounts 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?

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

(a) The Learned Counsel for the complainant submitted that the complainant was allotted apartment in the project of the respondent on booking and the complainant made payment of amounts as agreed under Ex.A1 agreement and the respondent also executed the Ex.A2 sale deed for the UDS of land in favour of the complainant and under the agreement, the respondent undertook to complete the construction and to hand over possession of apartment on or before December 2013 and the flat was not constructed within the time limit agreed and the respondent failed to refund the amount and as per the provisions of the RERA Act, the complainant is entitled for refund of the amount paid to the respondent with interest, compensation and cost.

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(b) The learned counsel for the respondent submitted that the respondent admits that the complainant booked flat and paid the cost of the flat and entered into a construction agreement with the respondent and the respondent also executed sale deed and the respondent was not able to complete the construction of the flat as per the time limit prescribed under the agreement. The learned counsel further contended that the complainant has not paid the entire cost of the flat as per the stage wise payment schedule mentioned in the agreement and there is pending payment from all the other flat owners to the tune of Rs.1,50,00,000/- from the year 2012 and the respondent also conducted meeting with the flat purchasers and appraised them of the inability to complete the construction and the construction could not be made due to the delay in making stage wise payment and due to slug in real estate market and demonetization and the complainant has not approached this Forum with clean hands and the complaint is liable to be dismissed.

(c) Section 18 of the RERA Act gives an option to allottees / buyers to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails to complete or is unable to give possession of the apartment on the dates specified in the agreement. There is no dispute that as per ExA1, agreement for project promotion and construction, the respondent undertook to complete the construction and hand over possession of the apartment on or before December 2013 subject to force majeure conditions. Admittedly, the respondent has not completed the construction of the apartment till date.

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(d) The learned counsel for the respondent contended that the complainant has not made payments as per the demand raised by the respondent according to stage wise construction and the complainant is not eligible for compensation as per the clause no.5A of the construction agreement. Clause no. 5(i)(a) gives right to the respondent to terminate the agreement and forfeit the amount equivalent to 50% of the sale consideration if there was any delay and default in payment by the complainant. It is not case of the respondent that the complainant failed to make payment in spite of issue of any demand notice for payment on completion of the particular stage of construction. Therefore the contentions of the respondent are not acceptable.

(e) In the said circumstances and in view of the above discussion, it is held that 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 and conditions of the agreement. Thus, the point is answered accordingly.

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

(a) There is no dispute that the complainant paid Rs.31,93,064 /- to the respondent towards sale consideration of the flat. In view of the answer for Point No.(i), the complainant is entitled to refund of the amount of Rs.31,93,064 /- with interest and compensation from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. 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

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annum i.e., 10.05% per annum for the amounts paid from the dates of respective payments till repayment by the respondent. Apart from the above, considering the circumstances of the case, the compensation towards mental agony and inconvenience to the complainant and deficiency by the respondent is fixed Rs.50,000/- and towards litigation expenses, Rs.20,000/- is fixed. The complainant is entitled for the amounts as detailed above. Thus the point is answered accordingly.

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

- (1) The respondent shall pay the amounts at the interest rate, compensation and litigation cost as per the findings in answer for Point No.(ii), Para No.8 of this order within 60 days from the date of issue of the order.
- (2) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
- (3) The complainant shall execute cancellation of the agreement and sale deed, as the case may be, on satisfaction of his claim as per the order at the respondent's cost.

G. SARAVANAN
ADJUDICATING OFFICER

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LIST OF WITNESSES

CW-1 --- Vadivel Murugan

RW-1 --- Kolappan Thanu Achari

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
A1	14.09.2011	Construction agreement
A2	16.11.2011	Sale deed
A3	02.08.2017	Client Statement
A4	04.08.2017	Letter from Respondent
A5	20.11.2017	Letter from Respondent
A6	15.03.2019	Legal Notice
A7	06.10.2016	General Power of Attorney

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Nil

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY