

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 151 of 2019

P.Murugan ... **COMPLAINANT**

Vs.

M/s. Vivendi Ventures Padapai Projects (P) Ltd.
Rep. by Srinivas Anikipatti, Chairman/M.D. ... **RESPONDENT**

Complainant : Rep. by Mr. A.Karthikeyan, Advocate

Respondent : Rep. by Mr. Anil Relwani, Advocate

Heard on : 13.02.2020

Delivered on : 28.02.2020

ORDER

The above complaint by the complainant seeking refund of the amount paid to the Respondent towards purchase of flat in the project of the Respondent with interests , compensation and cost is filed under section 71 read with 31 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred as RERA ACT).

2. Averments of the complainant in brief as follows:

(a) The complainant booked a row house flat in the project of the Respondent namely, Villagio, Padapai project, Kanchivakkam Village, Kanchipuram Dist. and paid booking advance and further amount.

(b) On 03.06.2014 and 04.06.2014, the complainant entered into the sale agreement and construction agreement respectively with the Respondent. The Respondent undertook to complete the construction of the house and deliver the possession of row house within 18 months with a grace period of 3 months from the date of the agreements. The complainant paid full amount of sale consideration of Rs. 15,17,852/- . The due date for delivery including the grace period expired on 05.03.2016. The Respondent failed to handover possession of the flat as per the terms of the agreement.

(c) As per the provisions of the RERA Act, the complainant is entitled for refund of the amount paid to the Respondent with interest and compensation. Hence, the complainant withdraws from the project and filed the complaint for the above reliefs.

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

(a) The Respondent denies all the averments except admitted. It is admitted that the complainant and the Respondent entered into agreements for construction and sale of row house.

(b) The Respondent was unable to complete the construction in the stipulated period as per the agreement due to unforeseen circumstances. However, the Respondent provided temporary accommodation by handing over possession of another 2 bed rooms flat to the complainant in the year 2017. Till date the complainant is in possession of the flat. The complainant never sought any withdrawal from the project.

(c) As the row house is ready for occupation in March 2019, the respondent informed the same to the complaint and demanded to return the keys of the flat provided as temporary accommodation. Instead, the complainant asked for the flat provided as temporary accommodation for same price paid for the row house. The Respondent refused for the same.

(d) The Respondent has no objection to hand over the booked house on handing over key of the flat provided as temporary accommodation to the complainant. The complainant is filed with ulterior motive and only to enrich himself by the complainant. Hence the Respondent prays for dismissal of the complaint.

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 refund of the amount with other reliefs 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 agreements?

ii) Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) Section 18 of the RERA Act gives an option to allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter is unable to give possession of the flat on the date specified in the agreement.

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(b) As per the agreement entered between the complainant and respondent dated 04.06.2014, the respondent agreed to complete the construction and to hand over the apartment within a period of 18 months with a grace period of three months from the date of the agreement. According to the complainant, though he paid the entire amount, the respondent failed to complete and hand over possession of the row house as per the terms of the agreement.

(c) The respondent contended that the respondent was unable to complete the construction within the stipulated period as contemplated in the construction agreement due to unforeseen circumstances. The due date for delivery with a grace period as per the agreement expired on 05.03.2016. Even though the respondent stated that the row house was ready for occupation in March 2019, no documents filed by the respondent to prove that the completion of the row house was over and the row house is ready for occupation on the said date and the same was intimated to the complainant.

(d) It is contended by the respondent that they provided temporary accommodation to the complainant in the same project, a two bedroom flat bearing No.201 to the complainant in the year 2017. But the same was denied by the complainant. The learned counsel for respondent relied on Ex. B-2 and Ex.B3, whatsapp conversation with the complainant and stated that the complainant was occupying the flat as temporary accommodation. Even though, a bare reading of the messages reveals only that some goods were placed by the complainant in the flat provided as temporary accommodation, there is no evidence that the complainant is occupying the flat No.201 in the project.

(e) Though the respondent stated that the row house booked by the complainant was ready for occupation in March 2019 itself, Ex.A15 reveals that the respondent has sent messages regarding underground pipe laying work on 16.06.2019 and the EB works being carried on subsequently. Therefore it is clear that the row house booked by the complainant is not ready even after three years of due date for delivery as per the terms of the agreement.

(f) In this regard it is relevant to note that in Pioneer Urban Land & Infrastructure Ltd, Vs. Govindan Raghavan and Ors. reported in MANU/SC/0463/2019, the Hon'ble Supreme Court held as follows:

The Appellant-Builder failed 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,

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even though it was offered almost 2 years after the grace period under the agreement expired.

Considering the facts and circumstances of the case and the decision of the Hon'ble Supreme Court, it is held that the complainant is entitled for refund of the amount paid towards purchase of the row house with interest and compensation. Thus, the point is answered accordingly.

8. Answer for Point:ii

(a) There is no dispute on the amount paid by the complainant to the respondent. Therefore, the complainant is entitled for refund of the amount of Rs.15,17,852/- from the respondent with interest, compensation and cost.

(b) As per Rule 18 of the TNRERA, the rate of interest payable by the promoter to the allottees is to be State Bank of India's highest marginal cost of lending rate plus 2% per annum. The present rate of highest marginal cost of lending rate of interest of SBI is 8.15% p.a. The complainant is entitled for interest on the amount of Rs. 15,17,852/- at the rate of 10.15% per annum (8.15% +2%) from the date of respective payment till repayment by the respondent.

(c) The amount received from the complainant was utilized by the respondent for construction activities of the project. Considering the circumstances of the case, a sum of Rs.1,00,000/- is fixed as compensation towards mental agony undergone by the complainant and a sum of Rs.20,000/- is fixed towards litigation expenses. The complainant is entitled for the relief as detailed above. Thus the point is answered accordingly.

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

- 1) The respondent shall refund of the amount with interest compensation for mental agony and cost subject to deduction 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 row house booked by the complainant till the repayment.
- 3) The complainant shall execute the cancellation of agreements, sale deed and other documents, if any, as the case may be, on satisfaction of his claim at the respondent's cost.

Sd/- 28.02.2020
G. SARAVANAN
ADJUDICATING OFFICER

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LIST OF WITNESSES

CW-1 --- B.MURUGAN
RW-1 --- SRIRAMANA ANIKIPATTI

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	03.06.2014	Sale Agreement
Ex.A2	04.06.2014	Construction Agreement
Ex.A3	03.06.2014	Memo for Deposit of Title Deeds
Ex.A4	04.10.2017	Bank Loan Documents
Ex.A5	30.06.2019	Encumbrance Certificate
Ex.A6	-	Payment Receipts
Ex.A7	-	EMI Details
Ex.A8	03.06.2014	Receipt
Ex.A9	05.04.2014	Permission Letter for Mortgage
Ex.A10	-	Copies of pass book
Ex.A11	-	Copy of lump sum repayment to HDFC Bank
Ex.A12	25.05.2017	E-mail communication
Ex.A13		Copies of builders broucher while booking house
Ex.A14	04.04.2014	Allotment letter
Ex.A15		Whatsapp conversation
Ex.A16		Photograph of E.B & Water connection with C.D.

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos.	Date	Documents Name
Ex.B1	-	Photos of row house 201.
Ex.B2	18.03.2019	Watsapp message
Ex.B3	14.09.2019	Watsapp message
Ex.B4	-	EB Connection
Ex.B5	-	Photograph

Sd/ - 28.02.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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Administrative Officer