

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP Nos. 169 of 2019**

N. Dinesh

..... Complainant

**Vs.**

M/s. Akshaya Private Limited  
Rep. by Jayashankar Jayaraman  
DGM – Customer Relations  
**(Project not registered)**

..... Respondent

Complainant : Represented by Ms. Smrithi Anandan, Advocate  
Respondent : Represented by Mr. Mani Sundar Gopal, Advocate

**Heard on : 02.03.2020**

**Delivered on : 23.03.2020**

**ORDER**

The above complaint by the complainant seeking refund of amount paid by him to the respondent towards purchase of 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 complainant in brief as follows:**

(a) The complainant booked a flat with the respondent in their project, namely, "**AKSHAYA TODAY**", OMR Road, Chennai and paid Rs.2,00,000/- on 25.12.2012 and Rs.1,91,690/- on 21.01.2013 and in total Rs.3,91,690/- to the respondent.

(b) The total sale consideration of the flat is Rs.19,58,450/-. The respondent promised delivery of the flat in 2016. The complainant is also entitled for referral bonus for referring four buyers at Rs.25,000/- for every referral booking.

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(c) There was no progress in the construction of the flats in the project. The complainant stopped making further payments. There was no proper response from the respondent regarding the progress of the project.

(d) The complainant demanded the return of the amount. But the respondent evaded to refund the amount. As per the provisions of the RERA Act, the complainant is entitled for refund of the amount paid towards purchase of the flat with interest, compensation and cost.

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

(a) The complaint is not maintainable on law or facts and is liable to be rejected. The averments in the complaint do not attract the provisions of sections 31, 71 and 18 of the Act.

(b) The project was launched in November 2012. On booking, the complainant was allotted a flat on 28.11.2012. The complainant and the respondent entered into the agreement of sale and construction on 05.12.2013. The total sale consideration of the flat is Rs.19,58,450/-. Except, a sum of Rs.2,00,000/- on 25.12.2012 as booking advance and a further sum of Rs.1,91,690/- on 21.01.2013, the complainant has failed to make payments as per the schedule of payment in the agreement.

(c) The respondent requested the complainant to make further stage wise payments. Since the complainant had not effected payments, the respondent was constrained to issue a notice for cancellation dated 24.06.2014 and email dated 25.06.2014.

d) Since the complainant failed to make further payments, the allotment was cancelled and the apartment was re-allotted to another home buyer. It is denied that the complainant is entitled for referral bonus. In order to avail

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referral bonus, the persons should be an existing customer of the project and the amount could only be set off against the payments by the customer.

(e) The complainant had not contacted the respondent for return of money and filed this complaint after more than 5 years of the cancellation of the allotment. A clause in the agreement stipulates that the amount paid by the customer can be refunded without interest only after deduction in 10% cost of construction and also the expenses for reconveyance of the apartment to 3<sup>rd</sup> parties. The complaint is liable to be dismissed as not maintainable.

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 to complete the construction of the flat in accordance with the date and terms of the agreements?
- ii. What are reliefs, the complainant is entitled to?

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

a) The learned counsel for the complainant submitted that the complainant booked a flat in the project, namely, "Akshaya Today" at Chennai for a total cost of Rs.19,58,450/- and paid Rs.3,91,690/- to the respondent and the complainant is also entitled for a referral bonus of Rs.1,00,000/- for booking reference of other flats and he referred 4 buyers in the project and there was delay in construction of the project and the complainant is entitled for refund

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of the amount paid to the respondent with interest, compensation and litigation expenses.

b) The learned counsel for the respondent admitted that the complainant booked a flat with the respondent in their project and paid a sum of Rs.3,91,690/- but contended that the complainant has not paid any further amounts subsequent to 21.01.2013 in spite of several demands made by the respondent and failed to adhere the payment schedule and the allotment was cancelled by the respondent and the apartment was re-alloted to another buyer and the complainant is not entitled for referral bonus and the return of the amount, since the claim made after 5 years of payment is barred under law of limitation and is liable to be dismissed as not maintainable.

c) The respondent produced Ex.B14 email communication dated 25.07.2014 and also 27.06.2014 wherein it is intimated that notice for cancellation of the apartment booked by the complainant was sent to the complainant. Ex.B15 is the notice for cancellation dated 16.07.2014 in which the respondents stated as follows:-

*"In the circumstances, please treat this communication as Letter of Cancellation of your allotment. As per terms and conditions of Agreement for Sale and Construction Agreement dated 05.02.2013, an amount of Rs.2,20,051/- would be forfeited towards liquidated damages. The balance amount will be refunded to you after finding an alternate buyer and receipt of sale consideration from the new purchaser.*

*You are hereby requested to return the original Allotment letter and Agreements, Document book and receipt in original to enable us process the refund as mentioned above."*

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Perusal of the Ex.B-15 reveals that it is not a notice of cancellation of allotment but it is only a notice for cancellation of apartment, whereby the respondent requested the complainant to treat the communication as letter of cancellation of the allotment, and further to return the original allotment letter and documents to process the refund. Admittedly, the complainant has not responded to Ex.B-15 by treating the same as notice of cancellation of apartment and also has not contacted the respondent for return of money.

d) On the own version of the respondent in the counter, subsequently the complainant agreed to release the stage wise payments and directed the respondent to carry out UDS registration and the respondent sent email listing the requirements for registration of the agreement. Ex.B-16 is the email communication dated 02.09.2014 by the respondent calling the complainant to fix and confirm the date for registration of document. It is obvious that the respondent as well as the complainant have not treated the agreement between them as cancelled on issue of notice for cancellation of the apartment. By issue of Ex.B-16, email letter, the respondent has made it clear that the agreement is kept alive.

e) It is not the case of the respondent that any notice of cancellation was sent to the complainant subsequent to Ex.B-16. Article 55 of the Limitation Act prescribes limitation of 3 years for claim of compensation for breach of any contract. The time from which the period of limitation begins to run is prescribed as when the control is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases. Admittedly, the construction of the project was not complete as on the due date for delivery promised under the agreement or till date.

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f) In *Parvathamma v. Lokanath* (ILR 1992 Kant 644), the Division Bench of Hon'ble Karnataka High Court, in a case, where a period of one year was fixed for performing the agreement, but the promisor did not execute the sale deed within said period and he executed a will in which he referred to the agreement for sale and stated that after receiving from the purchaser the balance amount, sale has to be executed, held that the agreement was kept alive and the limitation did not start to run. In the present case, the agreement is kept alive and the successive breaches of reciprocal obligations by both the parties have not ceased till the filing of the complaint. Therefore, the contention of the learned counsel for the respondent that the claim is barred by the limitation is not sustainable.

g) Even though the construction of the project was not complete as per the time limit specified in the terms of the agreement, admittedly the complainant also did not make further payments except the payment of the admitted amounts. The second part of the Rule 19(2) of TNRERA Rules reads as follows:

*"The entitling allottee shall get full refund at any time if the builder has not followed the time schedule. The builder shall not keep 10% of the booked value of the property. If the allottee defaults in making timely payment as per terms of the agreement, the allottee shall not have the right of claiming any interest or compensation from the promoter."*

Therefore the complainant cannot claim interest for the amount till the filing of the complaint and compensation.

h) The contention of the counsel for respondent that the flat was allotted to another buyer and the complainant is no longer an allottee as defined under the Act also does not hold water since there was no termination of agreement

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and any aggrieved person can maintain a complaint in view of section 31 of the RERA Act.

(i) In view of the above facts and circumstances it is held that the complainant is entitled to repayment of the entire amount paid to the respondent without any deduction and is not entitled to claim any interest or other compensation for the amount paid till the date of filing of the complaint. The complainant is entitled to claim interest for the amount paid only from the date of filing of the complaint till repayment of the amount by the respondent. Thus the point is answered accordingly.

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

(a) As per the Ex.B-17 ledger account of the respondent, the amount paid by the complainant is Rs.4,16,690/-. Even though the complainant claimed referral bonus of Rs.1,00,000/- for referring the 4 customers, the respondent has stated that a sum of Rs.25,000/- was credited to the account of the complainant and to avail referral bonus the person should be an existing customer of the project. In view of the credit of Rs.25,000/- to the account of the complainant by the respondent along with the amounts paid and the account of the complainant is not closed by terminating the agreement and considering the circumstances, it is held that the complainant is entitled for refund of Rs.4,16,690/-from the respondent.

(b) In view of the answer for point no.(i), the complainant is entitled for interest at the rate for 10.05% p.a. (8.05% p.a. which is currently the highest marginal cost of lending rate of interest of SBI + 2% p.a.) from the date of filing of this complaint i.e., 23.07.2019 till the repayment by the respondent and also

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the cost of litigation at Rs.25,000/-. The complainant is entitled for relief as detailed above. Thus the point is answered accordingly.

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

The respondent shall pay the complainant the amounts at the rate of interest and litigation expenses as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

Sd/-23.03.2020  
G. SARAVANAN  
ADJUDICATING OFFICER

**List of Witnesses**

CW1 -- N. Dinesh  
RW1 -- J. Ravi

**List of documents filed by the complainant**

| EX. No. | Date       | Documents           |
|---------|------------|---------------------|
| A1      | 12.04.2013 | Statement           |
| A2      | 22.01.2013 | Cost Sheet          |
| A3      | 22.01.2013 | Cost Sheet          |
| A4      | 22.01.2013 | Cost Sheet          |
| A5      | 22.01.2013 | Cost Sheet          |
| A6      | 12.04.2013 | Email Communication |
| A7      | --         | Identify Proof      |
| A8      | 12.04.2013 | Receipts            |
| A9      | --         | Account Statement   |

**List of documents filed by the respondent**

| EX. No. | Date       | Documents Name         |
|---------|------------|------------------------|
| B1      | 05.02.2013 | Sale Agreement         |
| B2      | 05.02.2013 | Construction Agreement |
| B3      | 12.04.2013 | Demand Letter          |

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|-----|------------|---------------------------|
| B4  | 13.05.2013 | Payment Request Letter    |
| B5  | 16.07.2013 | Demand Letter             |
| B6  | 03.10.2013 | Payment Request Letter    |
| B7  | 22.11.2013 | Payment Reminder Letter 1 |
| B8  | 30.11.2013 | Payment Reminder Letter 2 |
| B9  | 30.12.2013 | Demand Letter             |
| B10 | 23.01.2014 | Payment Reminder Letter 3 |
| B11 | 11.03.2014 | Demand Letter             |
| B12 | 24.06.2014 | Final Reminder            |
| B13 | 29.09.2014 | Demand Letter             |
| B14 | 25.06.2014 | Email Communication       |
| B15 | 16.07.2014 | Letter                    |
| B16 | 02.09.2014 | Email Communication       |
| B17 | 29.09.2014 | Consumer Ledger Account   |

Sd/-23.03.2020  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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N. *[Signature]*  
23/3/2020  
Administrative Officer