

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

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

CCP No. 178 of 2019

R. SANTHANARAJ

.... COMPLAINANT

Vs.

M/s. Eco Bay Developers and
Builders Pvt Ltd.,

Rep. by Sebastian B.M. Gomes, Managing Director
(TN/02/Building/0047/2018)

.... RESPONDENT

Complainant : Rep. by Mr. M. Niranjanan, Authorized
Representative

Respondent : Rep. by Mr. Goutham S. Raman, Advocate

Heard on : 20.01.2020

Delivered on: 30.01.2020

ORDER

The above complaint by the complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together with 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, "**ECOBAY VIOLET**" at Pollivakkam Village, Thiruvallur Taluk, Thiruvallur District and paid Rs.18,81,880/- as on 03.06.2015.

(b) On 08.07.2015, the agreement to sell UDS and for construction of apartment was entered between the complainant and the respondent. The respondent promised to complete the construction and deliver the apartment by 31.12.2015, but the respondent stopped construction in August 2015. The work started again in December 2018 with a slow pace of progress. The respondent failed to hand over the apartment till date.

TRUE COPY

THG
30/1/2020

Hence, the complainant withdraws from the project and seeks full refund of the amount with interest, compensation for mental agony and cost.

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

(a) Except admitted all the allegations are false. It is admitted that the complainant entered an agreement with the respondent on 08.07.2015 and paid Rs.18,81,880/- towards the purchase of the flat. As per the agreement, the respondent agreed to complete the construction for delivery of the flat by 31.12.2015 with a grace period of 3 months.

(b) The construction work was stalled in December 2015 due to floods and recessions. Demonetization and GST affected the financial ability of the respondent to complete the project.

(c) The delay in completing the construction work was due to events beyond the control of the respondent. The complainant also filed CCP No.60 of 2019 regarding the purchase of another apartment. In the above case, it was ordered to refund the amount subject to the amounts of compensation already received by the complainant. The respondent is willing to return the amount to the complainant.

(d) There is no violation on the part of the respondent. The respondent is ready to pay the decreed amount to the complainant once the proposed project is completed. Therefore, the respondent prays for the 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.

TRUE COPY

Tral
30/11/2020

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 them 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.

(b) As per the agreement entered between the complainant and respondent on 08.07.2015, the respondent agreed to complete the construction and to hand over the apartment by 31.12.2015. Admittedly, till date the construction of the apartment was not completed.

(c) The respondent contended that due to the various reasons, the respondent was not able to complete the project. The admitted date of delivery is 31.12.2015. Even after 3 years of the admitted due date, the completion of the construction of the apartment is not over. Therefore, the contentions of the respondent for delay in completion of the construction for several years continuously are not acceptable.

TRUE COPY

TML
30/11/2020

(d) In the above circumstances, it is held that the complainant is entitled to get back the amounts with interest, compensation and cost from the respondent 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. Thus, the point is answered accordingly.

8. **Answer for Point No.(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.18,81,880/- 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 8.20% p.a. The complainant is entitled for interest on the amount of Rs. 18,81,880/- at the rate of 10.20% per annum (8.20% +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.2,00,000/- 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.

TRUE COPY
TMO
30/11/2020

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 flat booked by the complainant till the repayment.
- 3) The complainant shall execute the cancellation of agreements and other documents, if any, as the case may be, on satisfaction of his claim at the respondent's cost.

Sd/-30.01.2020
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- R. SANTHANARAJ
RW-1 --- H. JEYARAJ

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	08.07.2015	Agreement to sell UDS and for construction of apartment
Ex.A2	--	Payment receipts (5 nos.)

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/-30.01.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY

N. Anand
30/1/2020
Administrative Officer