

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

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

CCP No. 021 of 2019

A. Sayeeda AND Syed Asimus Salam COMPLAINANTS

Vs.

M/s. Hamsini Foundation Pvt Ltd.,
Rep. by P.G. Prabakar Reddy, Director
(Regn. No.TN/02/Building/0025/2018)

..... RESPONDENT

Complainant : Rep. by Mr. R. Abinandhan, Advocate
Respondent : Remained absent

Heard on : 03.07.2019
Delivered on: 10.07.2019

ORDER

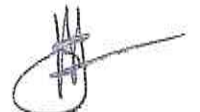
The above complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together with interest, compensation and costs is filed under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Averments of the complaint in brief as follows:

- (a) The complainants booked a flat with the respondent in their project namely, "*P dot G Flora*" at Nemilichery Village, Ponamalle Taluk, Thiruvallur District and paid Rs.1,00,000/- as advance. The respondent allotted flat No.109, in the 1st floor of the building, "*ALAMANDA*" in the project.
- (b) The total cost of the flat is Rs.33,00,092/-. The agreements for the sale of undivided share of land and construction were entered between the complainants and the respondent, who also the power of attorney for the land owners. As per the agreement, the respondent undertook to complete the construction of the apartments and hand over possession of the apartment to the complainants within 24 months from the date of the

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agreements. Out of the total cost of construction, the complainants paid Rs.6,00,000/-.

(c) Till date, the flat has not been completed and handed over to the complainants. The complainants withdraw from the project and seek full refund of the entire amount with interest and compensation. Hence, the complaint.

3. The service of notice to the respondent returned as "Left". Hence, private notice by the complainants was ordered and the same was also returned with endorsement as "Left". Subsequently, notice by publication in news paper was ordered and effected. The respondent remained absent.

4. On consideration of pleadings and evidence of the complainants and other documents, the following points arise for consideration.

i. Whether the complainants are entitled to get back the amount paid to the respondent with interest, compensation and costs on the ground of failure on the part of the respondent to complete construction and hand over possession of the apartment booked by them in accordance with the terms and conditions of the agreement?

ii. Whether the complainants are entitled for all the reliefs as prayed for?

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

(a) The first complainant examined herself as CW1 and marked Ex.A1 to A7 documents. As per the evidence of the complainant, they booked a flat in the project "P dot G Flora" of the respondent on payment of booking advance and the respondent allotted Flat No.109 in block "ALAMANDA". Ex.A1 is the receipt given by the respondent for payment of Rs.1,00,000/-

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as advance and subsequent payment of Rs.5,00,000/- towards the purchase of the flat. Ex.A2 is the agreement of sale entered between the land owners represented by the respondent as power of attorney and the complainants for the UDS land. ExA3 is the construction agreement dt.05.02.2016 entered between the complainants and the respondent wherein the respondent has undertaken to complete and deliver the completed flat within 24 months from the date of signing the agreement. As per the terms of Ex.A3 agreement dt.05.02.2016, the due date for delivery of the flat expires by 05.02.2018. Through evidence, the complainants proved that the respondent failed to complete and hand over the flat as promised by them.

(b) Section 18 of the RERA Act gives an option to the allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the flat on the dates specified in the agreement. Till date, the respondent is unable to give delivery of the flat as agreed by the respondent. The complainants have proved that the possession of the booked flat was not handed over as agreed by the respondent.

(c) In the said circumstances, it is held that the complainants are 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 them in accordance with the terms and conditions of the agreements. Thus the point is answered accordingly.

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

(a) In view of the Answer for Point No.(i), the amount, interest, compensation and costs, if any, which the complainants are entitled to recover from the respondent is examined as follows.

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(b) The complainants are entitled to get Rs.6,00,000/-, which was paid by them to the respondent. As per the Section 18 of the TNRERA Rules, the complainants are entitled to interest @ 8.70%, which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum from the dates of respective payments till repayment by the respondent. Therefore, the complainants are entitled to interest on the amount of Rs.6,00,000/- at the rate of 10.70% per annum from the dates of respective payments till repayment by the respondent.

(c) Towards compensation for the stress, mental agony and deficiency of service, considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed as compensation payable by the respondent to the complainants. Towards cost of litigation, a sum of Rs.20,000/- is fixed.

The complainants are entitled for the relief as agreed above. Thus the point is answered accordingly.

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

- 1) The respondent shall pay the complainants the amounts at the interest rate, compensation and cost as per the findings in the answer for Point No.(ii), Para 6 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 complainants till their repayment.
- 3) The complainants shall execute the Cancellation of Agreements and other documents, if any, as the case may be, on satisfaction of their claim at the respondent's cost.

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Sd/-xxx
ADJUDICATING OFFICER

N. Anand
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY 2017/2019