

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
Complaints Nos. 213 AND 214 of 2019**

1. Lavanya Prasad (CCP No.213/2019)
2. A. Joseph Stanley AND S.J.S.Thamarai Selvi (CCP No.214/2019)
..... COMPLAINANTS

Vs.

M/s. Metroline Promoters (P) Ltd
Rep.by Director Amit Gupta
(Project not registered) RESPONDENT

Complainants (in both CCPs) : Rep. by Mr. V. Manohar, Advocate
Respondent : Remained absent

Heard on : 02.12.2019
Delivered on : 13.12.2019

ORDER

Both the complaints claiming the refund of the amounts paid by the complainants to the Respondent towards the purchase of constructed commercial units with interest and compensation are filed *u/s 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016* (hereinafter referred to as RERA Act).

2. Since both the complaints are relating to same project of the Respondent and same points arise for determination, both the complaints are heard together and disposed of by common order.

3. Averments of the complainants in brief as follows:

(a) The complainants made applications for allotment of commercial units which are shops in a commercial complex, namely, "**GOLD SOUK GRANDE**" at GST Road, Vandalur, Chegleput Taluk promoted by the respondent and paid the amounts.

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b) The shops allotted to the complainants, the agreed price, the amounts paid by them and due dates for delivery of the constructed shops to the respective complainant are as follows:

Complainants Name	CCP No	Allotted Shop No	Price Agreed Rs.	Amount Paid Rs.	Due Date for delivery of the shop (including grace period)
(1)	(2)	(3)	(4)	(5)	(6)
Lavanya Prasad	213/2019	SF-203 in 2 nd Floor (420 sq.ft.)	37,25,000/-	37,25,000/-	30.06.2013
A. Joseph Stanley AND S.J.S.Thamarai Selvi	214/2019	FF-106 in 1st Floor (420 sq.ft.)	45,36,000/-	45,36,000/-	30.06.2013

(c) Subsequently unit buyer agreements were entered between the complainants and respondent. Under the agreement, monthly rents for the amount invested in the respective units was fixed at Rs.31,042/- with effect from 01.07.2011 till the date of offer of possession of the unit in the case of complainant in CCP No.213/2019 and at Rs.37,800/- with effect from 10.06.2011 till the date of offer of possession in the case of complainants in CCP No.214/2019. The respondent also paid the rents as promised only for a few months.

(d) In spite of payment of the entire money, since the possession of the shops were not handed over, the complainants approached the District Crime Branch Police, Kancheepuram by way of complaints on 13.10.2016. The company representative attended the enquiry with a proposal to hand over the units and also payment of interest. There was no progress thereafter.

(e) As on date of the commencement of the Act, the project was not given completion certificate and still it is an ongoing project. As per the provisions of the RERA Act, the Respondent is liable to return the amount with interest and compensation to the complainants and hence, the complainants withdraw from the project and seek full refund of entire amount with interest and compensation.

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4. On receipt of the notices of hearing in both the cases, the respondent remained absent.
5. On the side of the complainants, the complainants in both the cases filed their respective evidence on affidavit with documents.
6. On the basis of the rival contentions of the complainants, the following points arise for determination:
 - i. Whether the complainants are entitled for refund of the amounts paid to the Respondent towards purchase of the constructed shops with interest and compensation on the ground of failure on the part of the Respondent to give possession of completed shops booked by them in accordance with the date and terms of agreements?
 - ii. Whether the complainants are entitled for all the reliefs as prayed for?

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

(a) The learned counsel for the complainants submitted that the respondent launched the project namely "GOLD SOUK GRANDE" which is a commercial complex and invited applications for allotment of units and the complainants submitted application forms for allotment of unit in pursuance of which unit buyers agreement entered between the complainants and respondents followed by the memorandum of understanding over the construction of the unit allotted to the complainants and the complainants paid entire amount and subsequently there was no progress and therefore the complainants are entitled for the reliefs prayed by them.

(b) In CCP No.213 of 2019 the complainant herself was examined as CW1. The complainant stated that she made the application on 10.11.2010 which is marked as Ex.A1 for allotment of the shop and paid a sum of Rs.37,25,000/- in total and on various dates and Ex.A2 unit buyer agreement was entered on 09.02.2011 and as per Ex.A3 memorandum of understanding, the respondent acknowledged the receipt of total sum of Rs.37,25,000/- and promised to pay

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monthly rents for the unit. As per the Ex.A1 application form and allotment, the date of promissory delivery was on 31.12.2012. It is the evidence of the complainant that the respondent paid rents for 8 months and subsequently, since there was no progress, she and other allottees filed a complaint with the District Crime Branch Police, Kancheepuram on 13.10.2016 and the representative of the respondent attended the enquiry and requested time to hand over possession of the unit and till date the unit was not handed over.

(c) In CCP No.214 of 2019 the first complainant was examined as CW1. The complainant stated that they made the application on 09.12.2010 which is marked as Ex.A1 for allotment of the shop and paid a sum of Rs.45,36,000/- in total and on various dates and Ex.A2 unit buyer agreement was entered on 10.02.2011 and as per Ex.A3 memorandum of understanding, the respondent acknowledged the receipt of total sum of Rs.45,36,000/- and promised to pay monthly rents for the unit. As per the Ex.A1 application form and allotment, the date of promissory delivery was on 31.12.2012. It is the evidence of the complainant that the respondent paid rents for 6 months and subsequently, since there was no progress, he and other allottees filed a complaint with the District Crime Branch Police, Kancheepuram on 13.10.2016 and the representative of the respondent attended the enquiry and requested time to hand over the possession of the unit and till date the unit was not handed over.

(d) The evidence of respective complainants in both the cases proved that they paid the amounts to the respondent towards purchase of the constructed commercial units and the respondent has not completed the construction and failed to hand over the possession of the completed unit to them.

(e) *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

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compensation, if a promoter is unable to give possession of the shops on the dates specified in the agreement.

(f) In the above circumstances, it is held that the complainants in both the cases are entitled for the refund of the amount paid by them to respondent towards the purchase of shops with interest and compensation on the ground to failure on the part of the respondent to complete and hand over the constructed units to the complainants. Thus, the point is answered accordingly.

8. Answer for Point No.(ii)

(a) In view of the answer for point No.(i) the complainants are entitled for refund of the amounts paid to the respondent with interest and compensation.

(b) CCP No.213/2019: The complainant paid Rs.37,25,000/- to the respondent as per the Ex.A3, memorandum of understanding. Therefore, the complainant is entitled for refund of the amount of Rs.37,25,000/- with interest and compensation from the respondent. As per Rule 18 of TNRERA Rules, rate of interest payable 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 8.20% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.20% per annum for the amounts paid from the dates of respective payment till repayment by the respondent. Towards compensation for mental agony the complainants claim Rs.15,00,000/-. However, considering the facts and circumstances of the case, compensation of a sum of Rs.3,00,000/- is fixed towards mental agony, hardship and inconvenience caused to complainants. Towards litigation expenses a sum of Rs.20,000/- is fixed.

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(c) CCP No.214/2019: The complainant paid Rs.45,36,000/- to the respondent as per the Ex.A3, memorandum of understanding. Therefore, the complainant is entitled for refund of the amount of Rs.45,36,000/- with interest and compensation from the respondent. As per Rule 18 of TNRERA Rules, rate of interest payable 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 8.20% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.20% per annum for the amounts paid from the dates of respective payment till repayment by the respondent. Towards compensation for mental agony the complainants claim Rs.15,00,000/-. However, considering the facts and circumstances of the case, compensation of a sum of Rs.3,00,000/- is fixed as towards mental agony, hardship and inconvenience caused to complainants. Towards litigation expenses a sum of Rs.20,000/- is fixed.

As discussed and found above, the complainants are entitled for the reliefs. Thus, the point is answered accordingly.

In the result, in both the complaints, the respondent is directed as follows:-

- (1) The respondent shall pay the complainants the amounts at the interest rate, compensation and litigation cost 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.
- (2) The charge of the aforesaid amount shall be on the units booked by the complainants till the repayment.

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Sd/-13.12.2019
G. SARAVANAN
ADJUDICATING OFFICER

C.C.P.No.213/2019

List of witness

CW-1 --- Lavanya Prasad

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	10.11.2010	Application Form and allotment
Ex.A2	09.02.2011	Unit Buyer Agreement
Ex.A3	14.07.2011	Memorandum of Understanding

C.C.P.No.214/2019

List of witness

CW-1 --- A. Joseph Stanley

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	09.12.2010	Application Form and allotment
Ex.A2	10.02.2011	Unit Buyer Agreement
Ex.A3	02.07.2011	Memorandum of Understanding
Ex.A4	Aug.2016	Draft Sale Deed

Sd/-13.12.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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N. Anand
15/12/19
Administrative Officer