

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A., B.L., Adjudicating Officer,  
CCP No. 216 of 2019**

1. J. Rajashekar  
2. Mani Jayaraj ... **COMPLAINANTS**

**Vs.**

M/s. KG Foundations (Pvt) Ltd.  
Rep. by Chairman & MD, Kishorkumar Gokaldas ... **RESPONDENT**  
**(Project not registered)**

Complainants : In Person  
Respondent : Rep. by Mr. Anand Sasidharan, Advocate

Heard on : 05.02.2020  
Delivered on : 21.02.2020

**ORDER**

The above complaint by the complainants seeking refund of booking advance amount paid to the respondent towards the purchase of flat with interest, compensation and cost 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 complainants in brief as follows:**

- a) The complainants booked a flat with the respondent in their project namely **KG – Signature City** and paid Rs.1,00,000/- as booking advance on 27.06.2015. The total cost of the flat is Rs.35,68,000/-.
- b) Subsequently, the respondent obtained details for agreement from the complainant. On 14.07.2015, the executives of the respondent brought the agreement deed for signature of the complainants. Since the mutually agreed terms and conditions were not incorporated in the agreement and the complainants insisted for inclusion of such terms and conditions in the

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agreement, the executives took back the agreement. But, they did not come back with the corrected agreement deed .

c) The complainants were ready and willing for the purchase of the flat. In spite of several email communications, the respondent did not respond. The complainants came to know that the flat allotted to the complainants were sold to some other party. On 27.07.2019, the respondent informed the complainants as the amount was forfeited and the allotment was cancelled. The complainants are entitled for refund of the booking amount with interest, compensation and cost from the respondent. Hence the complaint.

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

- a) The complaint is not maintainable under the RERA Act and TNRERA Rules. As per the Rule 2(h)(ii) of the TNRERA Rules, the project cannot be treated as on-going project and the Forum has no jurisdiction.
- b) The complainants and the respondent have not signed any agreement and the complainants merely applied for allotment for paying a sum of Rs.1,00,000/-. The respondent offered to execute the construction agreement and sought details from the complainants and approached the complainants for signature in the draft agreement. But the complainants sent them back and asked them to come with a new agreement with a reduced price offer, car park and time limit. The respondent cannot vary the terms and conditions in the agreement for different allottees and has to maintain the same terms and conditions for all. The respondent informed that the same cannot be done.

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c) The complainants sent a letter dated 10.08.2017 for cancellation of their allotment and refund of the amount. The respondent cancelled the allotment and is entitled to levy administrative and cancellation charges. The terms in the allotment letter are binding upon the complainants. The respondent is justified in retaining Rs.1,00,000/- and reserves the right to claim damages from the complainants for loss caused. The respondent is not liable to pay any interest or compensation. The complaint deserves to be dismissed with cost.

4. An attempt to settle the matter amicably has failed.

5. On both sides, evidence on proof affidavit was filed with documents.

6. On the basis of the rival contentions of the parties, the following points arise for determination:

- i. Whether the complaint is maintainable?
- ii. Whether the complainants are entitled for refund of the booking advance with interest, compensation and cost?
- iii. What are the reliefs, the complainants are entitled for?

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

a) The learned counsel for the complainants submitted that this Forum has jurisdiction to decide the complaint under the RERA Act which came in to force on 26.03.2016 and 01.05.2017 and as per the section 3 of the RERA Act, the projects that are ongoing on the commencement of the act and for which the completion certificate has not been issued, the promoter has to apply for the registration of the project and the TNRERA Rules 2017 is in

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total contradiction of the section 3 of the RERA Act and the Rules cannot override the Act and the complaint is maintainable.

b) However, the learned counsel for the respondent contended that the respondent applied for a completion certificate on 04.05.2016 and as per the list of projects for which the application for completion certificate has been filed, the respondent filed the application for the blocks 'F' and 'G' even prior to the rules were notified on 22.06.2017 and as per rules 2(h)(ii), the project of the respondent is not an on-going project and is not coming within the jurisdiction of this Forum.

c) Section 3 of the RERA Act requires the promoter to make an application to the Authority for registration of the project that are on-going on the commencement of the Act and for which the completion certificate has not been issued. Rule 2(h)(ii) excludes registration of the projects for which application for completion certificate has been filed with CMDA on the date of coming into force of sub section 1 of section 3 of the RERA Act. Nowhere, in the RERA Act, it is specified that the Act is applicable only for registered projects. The projects which are taken out of requirement of registration under section 3 of the Act, are not out of the purview of the other provisions of the Act.

d) Under Rule 2(h)(ii) of the TNRERA Rules, the crucial date for exclusion of the projects for which the application for completion certificate is filed with CMDA is the date of which the section came into force i.e., 01.05.2017. RW1 stated that the respondent applied for completion certificate on 04.05.2016. Ex.B2, the partial completion certificate, reveals that the

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application dated 25.05.2017 was received on 31.05.2017. Ex.B3, the list of application for completion certificate also reveals in serial no.70, the date of submission of the application by the respondent as on 31.05.2017. Therefore, it is clear that the project of the respondent is not coming under the exception in the Rule 2(h)(ii) of TNRERA Rules. The contentions of respondent are not sustainable. Therefore, this Forum has got jurisdiction and the complaint is found maintainable before this Forum.

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

a) The learned counsel for the respondent submitted that the complainants are not coming under the definition of allottee under section 2(d) of the Act and all the rights will stem from the agreement entered between parties and the complainants and respondent have not entered into any agreements and sections 11 to 13 have not used the word allottee and the respondent has legal right to forfeit the amount paid by the complainants as booking advance and the complainants have not paid 10% of the total sale consideration as per the terms and conditions in the allotment form.

b) Admittedly, no written agreements for construction and purchase of flat were entered between the complainants and respondent. Ex.A1, is the allotment form of the respondent dated 27.06.2015 in which, the complainants were allotted flat No.401 in the 4<sup>th</sup> floor of 'G-1' block of the project. In Ex.A2, welcome letter dated 06.07.2015, the respondent acknowledged the receipt to Rs.1,00,000/- towards the booking amount.

c) The term 'allottee' under section 2(d) of the RERA Act means a person to whom a flat, apartment or building has been allotted, sold by the

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promoter and also includes certain other persons. Therefore, the complainants to whom a flat was allotted on receipt of Rs.1,00,000/- towards booking amount come under the definition of allottee. Sections 11 and 13 speak about responsibilities and obligations of the promoters towards the allottee.

d) It is the contention of respondent that as per the terms and conditions of the allotment letter, they are entitled to levy administrative and cancellation charges and also to forfeit the booking advance paid by the complainants. Forfeiture means to incur a penalty. The question of forfeiture will arise only on breaches of conditions of written agreement with forfeiture clause where it is stipulated that the breaches shall occasion forfeiture. There is no clause for forfeiture of the booking advance paid by the complainant in Ex.A1.

e) In Ex.A1, under the terms and conditions, it is mentioned that in the event of withdrawal of application of allotment before entering in to agreement, the builder is entitled to deduct Rs.50,000/- from the advance paid towards administrative and cancellation charges. In the same document, under minimum advance, it is mentioned as minimum advance of 10% of the total consideration of the flat to be paid with the application. Admittedly, the respondent has not collected 10% of the total consideration of the flat with application, but received and accepted Rs.1 lakh as advance amount with application and also claims forfeiture of the amount. This itself reveals that the terms and conditions in Ex.A1 allotment form are one sided, unfair and made only to suit the convenience of the respondent. Incorporating such terms and conditions in the booking form

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at the proposal stage on receipt of the booking advance is an unfair trade practice.

f) The proposal to purchase the flat by the complainants did not result in execution of the construction agreement, since the complainants insisted for certain changes in the terms and conditions of the agreement. In the counter itself the respondent admitted that they refused to make variations to the terms and conditions of agreement.

g) A contract can be finalised only on negotiation of acceptable terms and conditions of both the parties. Therefore, it cannot be said that the complainants have no right to seek alteration of unacceptable terms and conditions unilaterally included in the draft agreement and for the fault of the complainants, the proposal did not materialize. In the above circumstances, it is held that the complainants are entitled for refund of the amount paid by them to the respondent as booking advance with interest, compensation and cost. Thus the point is answered accordingly.

**9. Answer for point No. (iii)**

a) In view of answer for points no. (i) and (ii), the complainant is entitled for refund of the booking advance of Rs.1,00,000/- paid by them to the respondent. On perusal of the records, it is seen that in spite of the several efforts made by the complainants for getting the reply of the respondent, the respondent did not even respond to the letters, e-mails of the complainants for a long time.

b) Considering the facts and circumstances of the case, it is held that the complainants are entitled for refund of the booking advance of Rs.1,00,000/- with interest at the rate of 9% per annum from the date of

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payment till the date of repayment by the respondent. Towards compensation for mental agony a sum of Rs.25,000/- is fixed and towards litigation expenses a sum of Rs.10,000/- is fixed. The complainants are entitled for the reliefs as detailed above.

**In the result, it is directed as follows:-**

The respondent shall refund the amount with interest compensation for mental agony and cost as per the findings in the answer for Point No.(iii), Para 9 of this order within 30 days from the date of issue of this order.

Sd/-21.02.2020  
G. SARAVANAN  
ADJUDICATING OFFICER

**LIST OF WITNESSES**

CW-1 --- J. Rajashekar and Mani Jeyaraj  
RW-1 --- E. Hariharan

**List of documents filed by the complainants**

Ex.Nos.	Date	Document
Ex.A1	27.06.2015	Allotment Form
Ex.A2	08.07.2015	E-mail Communication
Ex.A3	08.07.2015	E-mail Communication
Ex.A4	14.08.2015	E-mail Communication
Ex.A5	18.09.2015	E-mail Communication
Ex.A6	27.03.2016	E-mail Communication
Ex.A7	30.04.2017	E-mail Communication
Ex.A8	10.08.2017	Legal Notice
Ex.A9	27.12.2018	Legal Notice
Ex.A10	12.01.2019	Letter from Respondent
Ex.A11	21.04.2019	E-mail Communication
Ex.A12	21.04.2019	E-mail Communication
Ex.A13	08.05.2019	Reminder E-mail Communication

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Ex.A14	28.05.2019	E-mail Communication
Ex.A15	27.07.2019	E-mail Communication
Ex.A16	--	Bank Statement

**List of documents filed by the respondent**

<b>Ex.Nos.</b>	<b>Date</b>	<b>Document</b>
Ex.B1	04.05.2016	Application for CC
Ex.B2	25.04.2018	Partial completion certificate
Ex.B3	08.07.2015	Extract from CMDA

Sd/-21.02.2020  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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Administrative Officer