

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 22 of 2019

V.P.Raju
Rep.by power of attorney, Hemamalini Complainant
Vs.

M/s. Hallmark Infrastructure Pvt.Ltd
Rep. by its director, Kamal Kumar Respondent
(PROJECT NOT REGISTERED)

Complainant : Rep. by M/s.Chennai Law Associates, Advocates
Respondent : Rep.by Mr.K.Chandrasekaran, Advocate

Heard on : 20.10.2020
Delivered on : 11.11.2020

ORDER

The above complainant filed the complaint claiming the refund of the amounts paid to the respondent towards purchase and construction of flat booked with the respondent together with interest, compensation 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) On 21.02.2013, the complainant booked a flat with the respondent in their project namely, "Golden County" at Gudalur, Maraimalai Nagar, Chengalpet Taluk, Kanchipuram District and paid advance amount and further amounts. The cost of the apartment was Rs. 53,00,000/-. The complainant in total paid Rs.43,00,000/-.

(b) As per the terms of the construction agreement entered with the complainant on 27.02.2013, the respondent undertook to complete construction and deliver flat on or before 30.09.2013. The respondent

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executed sale deed for UDS land in favour of the complainant on 27.03.2013. The respondent has not completed the construction by the agreed date under the agreement.

(c) When the complainant approached the respondent in the first week of October, 2013, the respondent asked the complainant to execute a property management agreement to their sister company, namely, M/s. Hallmark Capital Pvt Ltd. The complainant also executed the said agreement in favour of the said company, which agreed to pay Rs.18,000/- per month as rent. However they said company never gave any amount to the complainant.

(d) On 17.03.2018 the complainant visited the project site and came to know that the project was abandoned by the respondent. As per the provisions for the RERA Act, the complainant is entitled for refund of the amount paid to the respondent with interest and compensation.

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

(a) The complaint is liable to be dismissed. Except admitted, all the allegations and averments are denied. It is admitted that the complainant booked a flat in the project of the respondent, namely, "Golden County" and entered into a construction agreement and also an agreement for sale on 27.03.2013. The total sale consideration was Rs.53,00,000/-.

(b) As per the terms of the agreement, the respondent shall not be responsible for any delay for reasons stated in the agreement. Under clause 10 of the construction agreement, the construction was agreed to be completed within period of 6 months from date of the agreement or on or before 30.09.2013.

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(c) The complainant paid a total sum of Rs.43,00,000/-. The complainant also approached the respondent with an offer to let out allotted flat that will be constructed by the respondent. An agreement for property management was entered between the complainant and the company, M/s.Hallmark Capital Pvt Ltd .

(d) In the year 2014, there was recession in the real estate industry and the respondent could not proceed with the construction of the project. The respondent intimated the complainant the reasons for the delay. The complainant issued legal notice dated 24.03.2018 for which the respondent held talks of settlement with complainant and offered alternate flat. The complainant refused to take the offer of alternate flat.

(e) The respondent is not liable to any of the reliefs sought by the complainant as the respondent was always ready and willing to offer alternate flat to the complainant. If the complainant wants to seek cancellation of the agreement and refund, the relevant provisions of the agreement shall come into operation. Hence, the complaint is liable to be dismissed with cost.

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 amount paid to the respondent with interest and

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compensation and other reliefs on the ground of failure on the part of the respondent to give possession of the apartment booked by him in accordance with the date and terms of the agreements for sale and construction?

ii. What are the reliefs, the complainant is entitled to?

7. Answer for Point No.(i)

(a) The learned counsel for the complainant submitted that the respondent allotted a flat to the complainant in their project, namely, "Golden County" on payment of booking amount on 21.01.2013 and the cost of the flat was Rs.53,00,000/- and complainant paid Rs.43,00,000/- as on 30.02.2013 and the complainant entered in to agreements for sale and construction with the respondent on 27.02.2013 and the respondent agreed to complete construction and hand over the flat on or before 13.09.2013 and also executed sale deed for UDS land on 27.03.2013 and till date the respondent has not completed the construction and the complainant even accepted the offer of the respondent for swapping of flat and the respondent failed to complete that arrangement also and therefore the complainant is entitled get back the amount paid to the respondent with all the reliefs.

(b) However, the learned counsel for the respondent contended that the respondent, a reputed builder, entered in to an agreement for sale and construction on 27.02.2013 for sale of flat with the complainant for a total sale consideration of Rs.53,00,000/- and the complainant paid in total a sum of Rs. 43,00,000/- and under clause7 of the agreement for construction, the respondent is not responsible for any delay, even though

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the construction agreement provides time limit for completion of construction and delivery of flat and in view of recession in the real estate industry in the year 2014, the respondent was not able to proceed with the construction and the respondent also took all possible steps for amicable resolution of dispute by providing alternate flat and the same could not made possible due to non availability of owner of the alternate flat and the complainant is not entitled for refund of the amount and the complaint is liable to be dismissed.

(c) As per the section 18 of RERA Act, the home buyer is entitled to seek refund of the amount paid to the promoter towards purchase of flat together with interest including compensation, if the promoter fails or is unable to complete and deliver the completed flat to the home buyer as per the terms and conditions of the agreement. As per the Ex.A4 construction agreement dated 27.02.2013, the respondent undertook to complete construction and to deliver possession of the apartment within a period of 6 months from the date of signing of the agreement or on or before 30.09.2013. Admittedly, the construction of the apartment was not complete till date.

(d) It is not in dispute that during January 2019, the respondent offered alternate flat to the complainant and the same was not acceptable to the complainant due to some difference in area and subsequently another flat was offered by the respondent but in view of the non availability of the owner of the alternate flat for execution of the deed of the general power of attorney, the same did not materialize.

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(e) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid by him towards purchase of flat on the ground of failure on the part of the respondent to deliver the constructed flat as per the terms of the agreement. Thus the point is answered accordingly.

8. Answer for Point No.(ii)

(a) In view of the answer for point No. (i) the complainant is entitled for refund of the amount of Rs.43,00,000/- paid to the respondent with interest, compensation and cost. It is not in dispute that the complainant paid in total a sum of Rs.43,00,000/-. Therefore the complainant is entitled for refund of Rs.43,00,000/- from the respondent.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% p.a for the entire amount paid from the dates of respective payment till repayment by the respondent.

(c) Towards mental agony and inconvenience caused to the complainant, a sum of Rs.1,00,000/- is fixed as compensation. Towards litigation expenses, a sum of Rs. 25,000/- is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

1. The respondent shall pay the amounts at the interest rate, compensation and litigation cost as per the findings in answer for Point No.(ii), Para No.8 of this order within 30 days of issue of this order.
- 2) The charge of the aforesaid amount shall be on the flat booked by the complainant till the repayment. The office of the forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
3. The Complainant shall execute the Cancellation of Agreements and Sale Deed of the UDS land, as the case may be, on satisfaction of his claims as per the order at respondent's expense.

**G. SARAVANAN
ADJUDICATING OFFICER**

List of witnesses

CW-1 --- Hemamalini

RW-1 --- Anand Jain

List of documents filed by the Complainant

Ex.Nos	Date	Documents Name
Ex.A1	-----	Booking Form
Ex.A2	22.02.2013	General power of attorney
Ex.A3	27.02.2013	Agreement for sale
Ex.A4	27.02.2013	Construction agreement
Ex.A5	27.03.2013	Sale deed
Ex.A6	30.03.2013	Payment receipt
Ex.A7	----	Cost estimation and payment chart
Ex.A8	01.10.2013	Property management agreement

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Ex.A9	07.10.2014	Deed of simple mortgage
Ex.A10	30.09.2014	Loan sanction letter
Ex.A11	----	Specific power of attorney
Ex.A12	01.10.2016	Renewal letter
Ex.A13	16.09.2016	Payment details
Ex.A14	07.04.2017	Letter issued by DHFL
Ex.A15	09.09.2017	Renewal letter
Ex.A16	09.09.2017	Payment details
Ex.A17	24.03.2018	Legal notice
Ex.A18	----	Acknowledgement card
EX.A19	18.10.2018	E-mail
Ex.A20	01.12.2018	E-mail
Ex.A21	17.12.2018	Special Power of Attorney

List of documents filed by the respondent

Ex.Nos	Date	Documents Name
Ex.B1	16.12.2019	E-mail communication

**G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI**

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TN REAL ESTATE REGULATORY AUTHORITY