

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
C.C.P. Nos. 253 and 254 of 2019**

**CCP No.253/2019**

1. Bhavadharini Ramu  
2. Avinash Mysore Srikanth  
(Rep. by PoA Saraswathi Ramu) ..... COMPLAINANTS  
**Vs.**  
M/s. KGEYES Residency Pvt. Ltd.  
Rep.by Managing Director ..... RESPONDENT  
(Registration No.TN/29/Building/128/2019)

**CCP No.254 / 2019**

1. Cyril Anand Bakianathan  
2. Josephine Marry Praba ..... COMPLAINANTS  
  
1. M/s. KGEYES Residency Pvt. Ltd  
2. The Managing Director  
M/s. KGEYES Residency Pvt. Ltd. ...RESPONDENTS  
(Registration No.TN/29/Building/128/2019)

Complainants (in both CCPs) : Rep. by M/s. Ralph. V. Manohar, Advocate  
Respondent : Remained absent

Heard on : 14.02.2020

Delivered on : 28.02.2020

**ORDER**

Both the complaints by the above complainants claiming interest on the money paid to the respondents towards purchase of flats as delay compensation and also other compensation and cost are filed *under section 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016* (hereinafter referred to as RERA Act).

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*Trml*

2. Since both the complaints are relating to same project of the respondents 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 booked residential flats with the respondents in their project at No.1, 7<sup>th</sup> Avenue, Besant Nagar, Chennai – 90 and paid the amounts.

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

1.	CCP No	Allotted Flat Nos.	Price Agreed Rs.	Amount Paid Rs.	Due Date for delivery of the shop (including grace period)
(1)	(2)	(3)	(4)	(5)	(6)
1. Bhavadharini Ramu 2. Avinash Mysore Srikanth	253/2019	3A in 3 <sup>rd</sup> Floor	1,63,17,700/-	1,70,01,916/-	June, 2017
1. Cyril Anand Bakianathan 2. Josephine Mary Prabha	254/2019	4B in 4 <sup>th</sup> Floor	1,67,43,424/-	1,50,00,000/-	November, 2017

(c) In CCP No.253/2019, the complainant and the respondent entered into an agreement of construction of flat on 07.12.2016 and sale deed for undivided share land was executed by the respondent on 15.12.2016 and in CCP No.254/2019 on 17.11.2017, an agreement for construction of the flat was entered with the respondent and on the same date, the respondent also executed Sale Deed for UDS as Power of Attorney of the land owner in favour of the complainant.

(d) In spite of the payment of the entire money, the respondents have not completed the construction of the flats and till date the flats have not been handed

over to the complainants. The application for completion certificate by the respondent was rejected and demolition notice was issued by CMDA. The complainants were kept in dark the above problems and crisis in the project. The delay in handed over the flat was only due to the negligence of the respondent.

(e) As per section 18 of the RERA Act, when the allottee is not withdrawing from the project due to delay, the promoter is liable to pay interest for every month of delay till the handing over possession of the flats. In addition, the complainants suffered hardship, harassment and mental agony due to the delay in the project. Therefore, the complainants are also entitled for interest on the amounts paid as sale consideration and also compensation for hardship, harassment and mental agony from the respondents. Hence the complaint.

4. On receipt of the notices of hearing in both the cases, Mr. A. Srinivasan, Deputy Manager of the company appeared in person for the first hearing. However, subsequently 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 contentions of the complainants, the following points arise for determination:

- i. Whether the complainants are entitled for the interest on the amount paid to the respondent towards purchase of the flats as delay compensation and also compensation for hardship, harassment and mental agony on the ground of failure on the part of the Respondent to give possession of the flats in accordance with the date and terms of agreements?
- ii. What are reliefs, the complainants are entitled to?

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

(a) The Learned Counsel for the complainants submitted that the complainants in both the cases are home buyers of the same project of the Respondents and in

spite of the payment of entire sale consideration, the respondent is unable to hand over the completed flats for possession as per the terms and conditions of the agreements and as per the Proviso to Section 18 (1) of the RERA Act, the complainants are entitled for interest on the entire sale consideration and the delay was due to own negligence of the respondent and therefore the complainants are entitled for compensation towards hardship, harassment and mental agony suffered by them and also cost of the litigations.

(b) In C.C.P. No. 253/2019, the construction agreement was entered between the complainants and the respondents on 07-12-2016 and the respondent undertook to construct and complete the construction and also to deliver the flat by March 2017 with a grace period of three months. The due date for delivery of the flat including the grace period expired by June 2017.

(c) In C.C.P. No. 254/2019, the construction agreement was entered between the complainants and the respondents on 17-11-2017 and the respondent undertook to construct and complete the construction and also to deliver the flat by October 2017 with a grace period of one month. The due date for delivery of the flat including the grace period expired by November 2017.

(d) As per the evidence of the complainants, till date the construction of the flats is not completed and due to violation of the approved plans, the CMDA issued demolition notice and subsequently there was delay in continuing the construction of the project and the delay was only due to the negligence of the respondent.

(e) The Proviso of Section 18 (1) of the RERA Act reads as follows:-

*“Provided that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.*

A reading of the Section 18 and the proviso to Section 18(1) of the RERA Act reveals that the promoter is liable to pay interest to the home buyer in case where the promoter is unable to give possession of flat as per the terms and conditions of the agreement, if the allottee does not intend to withdraw from the project. Therefore the complainants are entitled for interest for every month of delay till the handing over of possession of the flat by respondent/promoter.

(f) However, the complainants claimed interest as delay compensation for the amounts paid to the respondent from the dates of respective payments made by them to the respondent at the rate specified in Rule 18 of the TNRERA Rules. The period of delay starts to run only from the due date for delivery and on failure of the promoter to deliver the flat on the due date fixed for delivery under the agreements. In C.C.P. No. 254/2019, in Ex-A4 letter, the respondents undertook to pay interest in the event of delay only on failure to complete on 30.11.2017 and not from the dates of payments. Therefore the complainants are entitled for interest only from the due date fixed under the agreements.

(g) Considering the circumstances of the cases and the provision of law, it is held that the complainants are entitled for interest on the amount paid to the respondent as sale consideration from the due date fixed under the agreement till the handing over the possession of the constructed flats. Apart from the interest for the sale consideration, since the complainants suffered mental agony and hardship due to the delay, they are also entitled for compensation towards hardship, harassment and mental agony. Thus the point is answered accordingly.

8. Answer for Point No: (ii) -

(a) In DLF HOMES PANCHKULA PVT. LTD. & OTHERS -Vs- D.S.DHANDA & OTHERS, reported in CDJ 2018(Cons.) Case No. 462, relied by the counsel for the

complainants, the Hon'ble National Commission has observed that if compensation comprises of two parts, (i) by way of interest on the deposited amount from the assured date (milestone date) of completing construction and handing over possession to the actual date of handing over possession, and, (ii) lump sum amount, there is no wrong in it. However, it is also relevant to bear in mind that the settled law on compensation is that compensation must be just in the facts and circumstances of the case.

(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 marginal cost of lending rate plus 2% per annum. The present rate of highest marginal cost of lending rate of interest of SBI is 8.15% p.a. Therefore the complainants are entitled for interest on the amount paid as sale consideration at the rate of 10.15% p.a. till the date of delivery of completed flats.

(c) Considering the above decision and the circumstances of the cases, it is held that the complainants are entitled for compensation in the following manner:-

**C.C.P. No. 253 / 2019 :**

The due date for delivery including of grace period expired on June 2017. Therefore the complainants are entitled for interest from July 2017 till the handing over possession of the flat by the Respondent at the rate of 10.15% per annum for the amount paid by them towards sale consideration to the Respondent. Apart from the above, compensation for hardship, harassment and mental agony is fixed at Rs.1,00,000/- . Towards cost of litigation, a sum of Rs.25,000/- is fixed.

**C.C.P. No. 254 / 2019 :**

The due date for delivery including of grace period expired on November 2017. Therefore the complainants are entitled for interest from December 2017 till the

handing over possession of the flat by the Respondents at the rate of 10.15% per annum for the amount paid by them towards sale consideration to the Respondents. Apart from the above, compensation for hardship, harassment and mental agony is fixed at Rs.1,00,000/- . Towards cost of litigation, a sum of Rs.25,000/- is fixed.

As detailed above, the Complainants are entitled for the reliefs. The point is answered accordingly.

**In the result, the Respondents are directed as follows:-**

The Respondents shall pay the delay compensation and also the compensation for hardship, harassment and mental agony as per the findings in Answer for point no. (ii) in paragraph 8 of this order within 30 days from the date of issue of this order subject to adjustment of any amount due payable by the complainants.

Sd/ - 28.02.2020  
G. SARAVANAN  
ADJUDICATING OFFICER

**C.C.P.No.253/2019**

**List of witness**

CW-1 --- Saraswathi Ramu

**List of documents filed by the complainants**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1		Project details
Ex.A2	24.09.2018	General Power of Attorney
Ex.A3	07.12.2016	Welcome Letter
Ex.A4	07.12.2016	Letter from Respondent
Ex.A5	07.12.2016	Construction Agreement
Ex.A6	15.12.2016	Deed of Sale
Ex.A7	07.12.2016	Receipt
Ex.A8	08.12.2016	Tentative receipt
Ex.A9	---	Account statement

Ex.A10	16.12.2016	Receipt
Ex.A11	16.12.2016	Receipt
Ex.A12	25.05.2017	Receipt
Ex.A13	07.12.2016	Letter for demanding payment
Ex.A14	15.12.2016	Letter from Respondent
Ex.A15	---	Letter from Respondent
Ex.A16	---	Email communication
Ex.A17	19.05.2017	Letter from Respondent
Ex.A18	---	Advertisement
Ex.A19	---	Email communication
Ex.A20	---	List of Builders applied for CC
Ex.A21	---	List of projects for demolition notice
Ex.A22		Email communication
Ex.A23	26.09.2018	Letter to Respondent
Ex.A24		Project Registration
Ex.A25	16.08.2019	Undertaking Affidavit
Ex.A26	---	Statement of Loan

**C.C.P.No.254/2019**

**List of witness**

CW-1 --- Cyril Anand Bakianathan

**List of documents filed by the complainants**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	23.09.2017	Booking Form
Ex.A2	25.09.2017	Break up area and UDS
Ex.A3	13.10.2017	Email communication
Ex.A4	14.10.2017	Letter of undertaking
Ex.A5	17.11.2017	Email communication
Ex.A6	17.11.2017	Construction Agreement
Ex.A7	26.12.2017	Sale Deed
Ex.A8	17.11.2017	Memorandum of Deposit of Title Deeds
Ex.A9	---	Repayment Schedule
Ex.A10	---	Breakup of interest
Ex.A11	----	List of projects for demolition notice
Ex.A12	---	List of Completion Certificates rejected



Ex.A13	09.04.2018	Email communication
Ex.A14	29.11.2018	Order Copy
Ex.A15	29.08.2019	Project Registration details

Sd/ - 28.02.2020  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

**CERTIFIED TO BE TRUE COPY**

  
**Administrative Officer**