

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP No. 255 of 2019**

J. Jayaraj

...Complainant

**Vs.**

M/s. VGN Homes Private Limited.,  
Rep by its MD, B.R. Nandakumar

....Respondent

Complainant : Rep. by Ms. A. Smrithi, Advocate.  
Respondent : Rep. by Mr. G. Peranban, Advocate.

Heard on : 08.01.2021  
Delivered on : 05.02.2021

**ORDER**

The complaint filed by the above complainant seeking refund of amount paid to the respondent towards purchase of an apartment 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 complainant, in brief, as follows:**

(a) The complainant booked a flat with the respondent in their project, namely, "VGN DYNASTY" at Melpakkam Village, Poonamalle Taluk, Thiruvallur district and paid advance amount and further amount.

(b) On 14.05.2014, the complainant and the respondent entered into a construction agreement and the respondent undertook to complete construction and handover delivery of flat within 24 months with a grace period of six months from the date of the agreement. On 26.05.2014, the respondent executed a sale deed for the undivided share of land in favor of

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the complainant. Towards the sale consideration of the flat, the complainant paid, in total, a sum of Rs.21,95,520/-. The complainant availed loan from India Bulls, a financial institution under subvention scheme and is still repaying the loan.

(c) The respondent failed to hand over possession of the flat as per the terms of the agreement. Due to the delay in handing over the possession of the flat, the complainant is put to great hardship and inconvenience. The respondent stated that the environmental clearance is still pending and it will take time to handover the flat. Left with no other choice, the complainant opted to cancel the flat booked and sought for refund of the amount paid to the respondent with compensation and other reliefs.

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

(a) Except those that are specifically admitted, the respondent denies all the allegations and averments of the complainant and puts the complainant for the strict proof of the same. In view of arbitration clause in the construction agreement, the complaint is not maintainable. The complainant paid sale consideration of Rs.2,66,200/- towards the UDS of the land and Rs.19,29,320/- under the construction agreement. The respondent has no knowledge about the loan availed by the complainant. It is incorrect to say that the complainant is making timely payment without any default as per terms of the agreement. Therefore the complainant has no right of claiming any interest or compensation under rule 19(2) of TNRERA Rules.

(b) As per the clause 20 of the construction agreement, the respondent agreed to compensate the allottees at Rs.4/- per Sq.ft per month in case of delay in construction beyond the stipulated period under the agreement.

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Environmental clearance under the Environmental Impact Assessment Notification, 2006 is mandatory. Regarding the environmental clearance, the office memorandum by the Ministry was stayed by the National Green Tribunal (Southern Bench). Subsequently the matter was transferred to Principal-Bench at New Delhi. The decision of the NGT order is now pending for adjudication before the Hon'ble Supreme court. Therefore, the respondent has to wait for the final outcome of result of the decision of the Hon'ble Supreme Court for further action.

(c) The respondent expected to get the completion certificate before 20.05.2018 and sent e-mail to the complainant to hand over the flat on 20.05.2018. The respondent got the completion certificate on 17.05.2018 and there is no delay to handover the flat. In view of the above circumstances, the complaint is liable to be dismissed with cost.

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

5. On the both sides, evidence on affidavits was filed and documents were marked.

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 amounts paid to the respondent with interest, compensation and costs on the ground of failure on the part of the respondent to give possession of the flat booked by him in accordance with the date and terms of agreements for sale and construction?
- ii. What are the reliefs, the complainant is entitled for?

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

(a) The learned counsel for the complainant submitted that the complainant entered into a construction agreement for purchase of a flat with the respondent in their project and paid a sum of Rs.21,95,520/- by availing loan for which he is paying EMI and the respondent also executed a sale deed on 26.05.2014 for the UDS land and undertook to complete the construction and to deliver the flat within 24 months from the date of starting the construction i.e., 01.07.2013 with a grace period of 6 months from the date of the agreement, but failed to complete the construction and when contacted, the respondent stated that the environmental clearance is still pending, it will take time to handover the flat and therefore the complainant opted to cancel the flat booked and is entitled for refund of the amount with interest and other reliefs.

(b) The learned counsel for the respondent contended that in view of arbitration clause, this Forum has no jurisdiction and the complainant has to approach only the civil court under section 9 of CPC and no notice of cancellation of sale deed already executed in favor of the complainant was issued and environmental clearance which is the subject matter of decision of the NGT is pending adjudicating before the Hon'ble Supreme Court and the respondent was ready and willing to deliver the flat subject to environmental clearance and there was delay and default in payment of sale consideration by the complainant and the complaint is liable to be dismissed.

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(c) Section 18 of RERA Act gives an option to 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 date specified in the agreement. It is not disputed that as per Ex.A1 construction agreement dated 14.05.2014, the respondent undertook to complete the construction and to handover the possession of the said flat within 24 months from the date of starting the construction 01.07.2013 with a grace period of 6 months from the date of the agreement. As per the terms of the above agreement, the due date for delivery is over by either December 2015 or November 2016. Admittedly, till the filing of the complaint, the respondent has not handed over possession of the flat for want of clearance certificate from the concerned authority.

(d) Even though as per Ex.B4 letter dated 29.05.2018 by the respondent to the complainant, the respondent intimated the complainant that they have achieved the handing over stage of the flat and the complainant has to pay a sum of Rs.73,721/- towards handing over stage, till date, admittedly, the possession of the flat was not handed over by the respondent to the complainant. Therefore, the contention of the respondent that there was default and delay in payment of sale consideration by the complainant is not sustainable. In view of the expiry of the date for delivery of the flat was over long back, the complainant cannot be made to wait endlessly to get possession of his flat.

(e) RERA Act is a special enactment to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal. Section 88 of the Act makes it clear that the provisions of the Act is in addition to, and not in derogation of, the

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provisions of any other law for time being in force. Therefore, arbitration clause in agreement is not a bar for seeking reliefs under the Act by the complainant. Section 79 of the Act bars the jurisdiction of civil Court to entertain any matter which the Authority or the Adjudicating Officer is empowered to determine under the Act. Therefore, the contentions of the learned counsel on jurisdiction of this Forum are not sustainable.

(f) In the above circumstances, it is held that the complainant is entitled for refund of the entire sale consideration paid to the respondent together with interest, compensation and costs. Thus, the point is answered accordingly.

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

(a) In the counter of the respondent, it is admitted that a sum of Rs.2,66,200/- towards the sale consideration of UDS and a sum of Rs.19,29,320/- under the construction agreement was paid by the complainant. The complainant has paid in total a sum of Rs.21, 95,520/- to the respondent. Therefore, the complainant is entitled for refund of the said amount.

(b) As per Rule 18 of TNRERA Rules, rate of interest 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 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2%, i.e., 10.05% per annum for the amounts paid from the date of respective payments till repayment by the respondent.

(c) There cannot be any dispute that due to the inordinate delay, the complainant is put to mental agony and hardship. Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed as compensation

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towards mental agony and hardship caused to the complainant. Apart from the above, the complainant is also entitled for litigation expenses of Rs.25,000/-. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

**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 as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order.
3. On repayment of the claim as per this order, the complainant shall execute the cancellation of the construction agreement and the sale deed, as the case may be, at the expense of the respondent.

**G. SARAVANAN  
ADJUDICATING OFFICER**

**LIST OF WITNESSES**

CW-1--- J. Jayaraj

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	14.05.2014	Construction agreement
Ex.A2	26.05.2014	Sale deed
Ex.A3	24.01.2018	E-mail communication with the respondent
Ex.A4	----	Interest working sheet
Ex.A5	-----	Payment receipts
Ex.A6	-----	Identity proof of the complainant

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**LIST OF WITNESSES**

RW-1 --- B.R. Nandakumar

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	14.05.2014	Construction agreement
Ex.B2	26.05.2014	Sale deed
Ex.B3	15.05.2018	E-mail communication
Ex.B4	29.05.2018	E-mail communication

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G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.

  
5.2.2021  
LAW OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY