

BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

CCP No. 257/2019

(1) Mohana Sundhari]
(2) Nagalingam] **COMPLAINANTS**

Vs.

M/s. Alliance Villa Pvt. Ltd.,
Rep by its Managing Director
(Regn. No.TN/11/Building/0192/2018, dated 07.06.2018) ... RESPONDENT

Complainants : Rep. by Mr. J. Fanklin, Advocate
Respondent : Rep. by M/s. A.A.V. Partners, Advocates

Heard on : 18.08.2020
Delivered on : 01.09.2020

ORDER

The above complaint is filed by the Complainants claiming compensation for the delay in construction and handing over the completed villa by the Respondent 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 villa with the Respondent in their project "Humming Garden" at Thaiyur, Kelambakkam, Chennai. The total cost of the Villa is Rs.1,34,24,731/-. The Complainants paid in total Rs.16 Lakhs.

(b) When the agreement was entered between the Complainants and Respondent, the copy of agreement and title deeds were not furnished to the Complainants. On 10.04.2019, the Complainants, due to financial position, sent an email for cancellation of the booking and for refund of the amount paid to

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the Respondent. The Respondent did not respond in proper manner, but informed deduction of 10% of the value of the villa.

(c) As on date, no construction activities started in the place allotted for the Complainants. Therefore, the Complainants issued legal notice. There was no reply from the Respondent. Under the provisions of RERA Act, the Complainants are entitled for refund of the amount paid with interest. Hence, the petition.

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

(a) The Respondent denies all the allegations as false. The complaint is not maintainable on law or facts. The complaint is defective and needs to be dismissed.

(b) The total sum of Rs.16 lakhs was made by the Complainants towards the booking amount of 10% value of the cost of the unit which is Rs.1,34,24,731/-. Separate agreements for Construction and Sale of UDS land were entered between the Complainants and the Respondent on 25.01.2019.

(c) Copies of the Title Deeds were furnished to the Complainants by means of CD at the time of allotment. In the agreement to sell, the Complainants admitted verification of all the documents. The photo copies of the agreements were furnished to the Complainants prior to the execution of the agreements on 25.01.2019. On signing the agreements, photo copies of the agreements were also furnished to the Complainants. The original set of agreements were retained by the Respondent, as the Complainants had stated that they will opt for funding through bank loan.

(d) By email, dated 10.04.2019, the Complainants expressed their financial inability and sought to cancel the booking and for refund. They have not mentioned anything about non-furnishing of Title Deeds and agreement

copies. The Respondent is entitled to deduct 10% of the total value of the villa as per the terms of the agreement.

(e) As per the terms of the agreement, the due date for completion of the construction of the villa is or before October 2020. The period of time stipulated in the agreement is not over. The Complainants have hastily filed this complaint. The complaint filed relying under Section 18 (1) of RERA Act is not sustainable. The essential ingredients of Section 18 (1) of RERA Act are not made out. Hence, the complaint is liable to be dismissed.

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

5. On both the sides, evidence on affidavit 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 Complainants are entitled for refund of the amount paid to the Respondent towards purchase of villa with interest on the grounds of non-furnishing of documents and no construction activities in the project site?

ii. What are the reliefs, the Complainants are entitled for?

7. Answer for Point No: (i)

(a) The learned counsel for the complainants filed notes of written arguments and submitted that since the copies of sale and construction agreements and title deeds were not furnished to the Complainants and no construction activities initiated by the Respondent in the allotted site, the Complainants decided to seek refund of the money from the Respondent and approached them and they advised the Complainants to send a mail and the Complainants sent an email on 10.04.2019 as they are in financial problem and requested for refund of the money and subsequently sent legal notices and the agreements

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were not registered as required under the provisions of the RERA Act and the registration of the agreements is mandatory under Section 17 of the Registration Act and there was no construction commenced in the allotted site and the same was not disputed in the counter of the Respondent and therefore, the Complainants are entitled for refund of the amount with interest.

(b) However, the learned counsel for the Respondent also filed notes of arguments and contended that the copies of the title documents and copies of the agreements were furnished to the Complainants and only due to lack of funds and money problem, the Complainants withdrew from the project and the Respondent is entitled to deduct 10% of the total value of the Villa as per the terms of the agreement and it was agreed by the Complainants for forfeiture of the booking amount of 10% by the Respondent and the dues date for completion of the construction of Villa is on or before October 2020 and the time period is not over and the Complainants filed the complaint hastily and the Complainants relied on the Section 18 (1) of the RERA Act and the essential ingredients of the section are not made out and therefore, the complaint is liable to be dismissed.

(c) It is not in dispute that the Complainants paid in total a sum of Rs.16 Lakhs out of the total sale consideration of the villa of Rs.1,34,24,731/-. Even though the Respondent stated that a copy of the title deeds were furnished to the Complainants by way of CD at the time of allotment, there is no mention of the same in Ex.A2, allotment letter. Clause I of Ex.B6, agreement for sale reads as the allottee has already scrutinised/verified all sanctions, authorizations, consents, no objections, permissions and approvals issued by the appropriate authorities and is satisfied with the title and statutory compliance with regard

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to the project. But there is no mention of providing any copy of title deed documents to the Complainants. It is one of the clauses in the agreement and the date on which such title documents were provided to the Complainants is not mentioned in the clause.

d) It is specific case of the Complainants that no copies of agreement entered between them were provided to the Complainants. Even though the Respondent claims to have handed over the copies of the agreements to the Complainants, it is admitted by the Respondent that the original sets of the agreement were not provided to the Complainants. In Ex.A5 and A6, legal notices, the Complainants made specific averments that inspite of repeated requests, the Respondent failed to provide copies of the agreement and the title deeds and they lost faith with the Respondent. Admittedly, the Respondent has not given any reply to the above legal notices disputing the contentions raised by the Complainants. Therefore, it is clear that the Complainants were not provided with copies of agreements and title deeds by the Respondent. It is an unfair trade practice adopted by the Respondent.

e) The Learned Counsel for the Complainants submitted that as required under Section 13 (1) of the RERA Act and Section 17 of the Registration Act, the sale agreement was not registered and, it is mandatorily to be registered. Section 13 (1) of the RERA Act restricts the promoter not to accept a sum more than 10% of the cost of the unit as advance payment and also requires the agreement of sale to be registered. Admittedly, when the unit cost is Rs.1,34,24,731/-, the Respondent collected Rs.16,00,000/- which is more than 10% of the amount without registration of the agreement. So far as the lack of funds pleaded by the Complainants is concerned, according to the Respondent in the counter, it is the practice of the Respondent to retain original sets of

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agreements to hand over to the banks in the event of allottee opting for funds through a bank loan. Therefore it is clear that availing funds under house loan scheme is not a constrain for the Complainants.

f) The Learned Counsel for the Complainants further contended that no construction work commenced in the allotted site and the Respondent also not disputed the same in the Counter. But the Learned Counsel for the Respondent pointed out that as per the agreement, the Respondent has time till October 2020 for completion of the construction. Admittedly, the Respondent has not specifically disputed the averments of the Complainants that as on the date of the complaint, no construction activities started in the place allotted to the Complainants.

g) Section 13 (2) of the RERA Act mandates that the agreement for sale shall be in the prescribed form specifying the particulars of development of the project including construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payment towards the cost of the apartment, plot or building are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over etc. Ex.B6 agreement for sale as well as Ex.B5 construction agreement contains Schedule "C" and Schedule "D" respectively for payments without specifying the dates and the manner by which payments towards the cost of apartment are to be made, even though period of payment, stages of construction and the amount to be paid are mentioned. Therefore, it is clear that the Respondent has not followed Section 13 (2) of the RERA Act in the agreements for sale and construction.

h) As pointed out by the learned counsel for the Respondent, it is seen that the due date for completion of construction as per the agreements is not over and

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essential ingredients of Section 18 (1) of the RERA Act are not made out. However, it is relevant to note that the second part of Rule 19 (2) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 reads as follows:

"The entitling allottee shall get full refund at any time if the builder has not followed the time of schedule. The builder shall not keep 10% of the booked value of the property. If the allottee defaults in making timely payments as per terms of the agreement, the allottee shall not have the right of claiming any interest or compensation from the promoter".

Admittedly, the Respondent has not sent any notice for further payment subsequent to the execution of agreements for payments as per the payment schedule without dates in the agreement. It implies that there was no construction activities as stated by the Complainants. Hence, the contention of the Complainants that no construction activities started in the place allotted to the Complainants is found acceptable. Therefore, the Respondent is not entitled to keep 10% of the value of the booked property under the above rule. It is settled law that wrong quoting or misquoting of provisions of law is not a legal bar for seeking relief. In the above circumstances, it is held that the Complainants are entitled for refund of the entire money paid by them to the Respondent with interest and cost. 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 entire amount paid by them to the Respondent without any deduction. It is not in dispute that the Complainant has paid Rs.16,00,000/- to the Respondent. Therefore, the Complainants are entitled for refund of Rs.16,00,000/- from the Respondent.

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(b)As per Rule 18 of TNRERA Rules, the rate of interest payable by the promoter to the allottee shall be highest marginal cost of lending rate of SBI plus two percent. The Complainants have claimed interest at the rate of 7.5% per annum which is lesser than the MCLR of SBI which is currently 8.05% per annum. Therefore it is held that the Complainants are entitled for interest at the rate of 7.5% per annum for Rs.16,00,000/- from the dates of respective payments till repayment of the amount by the Respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- is fixed towards litigation expenses payable by the Respondent to the Complainants. The Complainants are entitled for the relief as detailed above. Thus the point is answered accordingly.

In the result, it is directed as follows:

- 1) The Respondent shall pay the Complainants the amount towards refund with interest and cost as detailed in Answer for Point (ii) in Para-8 of the order within 30 days from the date of receipt of this order.
- 2) The charges of the aforesaid amount shall be on the villa booked by the Complainants till the repayment of the amount with interest and cost by the Respondent.

G. SARAVANAN
ADJUDICATING OFFICER

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List of Witnesses

CW1 – S. Nagalingam

RW1 – N. Sivakumar

List of document filed by the Complainant

EX. No.	Date	Documents Name
A1	14.11.2018	Payment of Receipt for Rs.3,00,000/-
A2	15.11.2018	Allotment letter in favour of me
A3	29.12.2018	Payment of Receipt for Rs.8,00,000/-
A4	29.01.2019	Payment of Receipt for Rs.5,00,000/-
A5	22.06.2019	Notice
A6	25.09.2019	Notice to Managing Director

List of documents filed by the Respondent

EX. Nos.	Date	Description
B1	...	Summary Schedule for Payment
B2	...	Schedule of Total Amount received
B3	24.10.2018	Booking Form
B4	15.11.2018	Allotment Letter
B5	25.01.2019	Construction Agreement
B6	25.01.2019	Agreement to sell (Undivided Share of Land)
B7	10.04.2019	Email – seeking cancellation by Complainant
B8	13.12.2019	Board Resolution

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 ADMINISTRATIVE OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY

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G. SARAVANAN
 ADJUDICATING OFFICER
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