

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 263 of 2019**

Uma Maheshwari

.... COMPLAINANT

Vs.

1. M/s. Alliance Projects

Rep. by its POA, Ravindranath Singh

2. M/s. Alliance Orchid Tech Parks Pvt Ltd.,

Rep. by its POA, Ravindranath Singh

(Project not registered)

.... RESPONDENTS

Complainant : Rep. by Mr. P. Dharmaraj, Advocate.

Respondents : Rep. by M/s. AAV Partners, Advocates.

Heard on : 11.02.2021

Delivered on : 23.02.2021

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondents 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). On 16.07.2012, the complainant booked a flat with the respondents in their project namely, "ORCHID SPRINGSS", at Korattur Village, Ambattur Taluk and paid advance amount and further amounts. The complainant availed housing loan for the purchase of the flat,

(b). On 05.10.2012, the complainant and the respondents entered into an agreement of sale and also entered a tripartite agreement with the finance company. The complainant in total paid Rs.74,49,847/- to the respondents.

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Subsequently, the finance company refused to release further amounts as the construction work was stalled. On 22.01.2014, the first respondent cancelled the agreement by alleging default in payment and stated that a cheque was attached for refund of the amount. But, no such cheque was found attached with the letter.

(c). Thereafter, on 03.05.2016, the respondents sent another letter for choice of flooring and further assured to handover the property within 24 months with a grace period of 6 months. The complainant has been paying EMI to the finance company and living in rental accommodation on payment of monthly rent of Rs.18,000/-. The respondents failed to register the agreement of sale and to hand over possession of the apartment as per the terms of the agreement. Hence, the complainant seeks for the refund of the amount with interest, compensation and cost.

3. Counter Averments of the respondents, in brief, as follows:-

(a). Except admitted, all the allegations of the complainant are denied as false and baseless. The complaint is not maintainable. The project commenced before the commencement of the RERA Act. The project is not an ongoing project as per the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. Therefore, this Forum has no jurisdiction to entertain the complaint.

(b). On 16.07.2012, the complainant booked an apartment with the respondents in their project and on 05.10.2012 entered an agreement of sale and construction agreement with the respondents for a total sale consideration of Rs.1,07,58,000/-. The complainant has paid only Rs.74,49,847/- and defaulted in making payment. The construction agreement and the sale agreement were terminated.

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(c). The document no.15 furnished by the complainant appears to be suspicious and contains no To or From name nor any correspondence address. Only upon payment of sale consideration, sale agreement can be registered and possession can be handed over to the complainant. Hence, the respondents pray for the dismissal of the complaint.

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 for refund of the amounts paid to the respondent together with interest and compensation on the ground of failure to deliver the apartment as per the terms of the agreements?
- ii. What are the reliefs, the complainant is entitled to?

7. Answer for Point No. (i)

(a). The learned counsel for the respondents filed written notes of arguments contending that the complaint is defective and not in the prescribed format and the project commenced before the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (hereinafter shortly referred as TNRERA Rules) came into force and the application for final completion certificate was made on 28.03.2017 and the same was issued on 22.12.2017 and therefore, by virtue of Rule 2(h) of TNRERA Rules, the project does not come within jurisdiction of this Forum.

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(b). However, the learned counsel for the complainant also filed written notes of arguments submitting that the RERA Act came into force on 01.05.2017 and the respondents obtained partial completion certificate during the year 2013 and there is no such provision in the Act for obtaining such partial completion certificate and the scope of section 2(q) was analyzed in the case in Subashini Thulasiram Vs. M/s. SPR & RG Constructions Private Limited by the Hon'ble Division Bench of Madras Highcourt which is reported in 2020 - 4 - LW - 865.

(c). The RERA Act is a beneficial piece of legislation. A hyper-technical approach cannot be made to deprive the litigants of their right to redress their grievances under the Act. Since the complaint is not in the prescribed format, no prejudice is caused to the respondents. Such contentions are liable to be rejected to do complete justice to contesting parties.

(d). Section 3 of the RERA Act, specifies real estate projects, which require registration. The RERA Authorities get jurisdiction over all the real estate projects, which are eligible for registration irrespective of the fact as to whether they are registered or not. From 01.05.2017 when the RERA Act came into force, TNRERA gets the jurisdiction over all the real estate project which are eligible for registration under Section 3 of the RERA Act. If the cause of survives after coming into force of the RERA Act, TNRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects. The on-going projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and the Indian Contract Act in particular.

(e). Section 79 of the RERA Act bars the jurisdiction of the civil court from entertaining any suit or proceeding in respect of any matter which the

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Authority, Adjudicating Officer or Appellate Tribunal is empowered by or under the RERA Act to determine. Hence, the Authority gets the jurisdiction over such matters which the civil court had. The Authority can take cognizance of the agreements executed under the Contract Act also and is equally competent to grant the relief under the said statute. This view gets the support from Section 88 of the RERA Act which provides that its provisions shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

(f). In this context, Section 71 of the RERA Act can be looked into. It provides that for the purpose of adjudicating compensation under Sections.12, 14, 18 & 19, an Adjudicating Officer can be appointed by the Authority. Its proviso provides that any person whose complaint in respect of matter covered under Sections. 12, 14, 18 and 19 is pending before the consumer disputes redressal forum, consumer disputes redressal commission or national consumer dispute redressal commission on or before the commencement of the RERA Act, he may, with the permission of the said forum, withdraw the complaint pending before it and file it before the Adjudicating Officer under the RERA Act. This provision, therefore, indicates that the RERA Act is retroactive.

(g). According to the respondents, they applied for final completion certificate on 28.03.2017 and the same was issued on 22.12.2017. As per the first proviso to the Section 3, prior registration of the project with the Authority is mandatory for a project that are on-going on the date of commencement of the Act and for which the completion certificate has not been issued. Since the respondents has applied for the final completion certificate prior to the commencement of the Act and for which the

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completion certificate has not been issued, as per Section 3 of the Act, the project was an on-going project eligible for registration on the date of commencement of the Act and this Forum gets jurisdiction.

(h). It is relevant to note that in the decision in Subashini Thulasiram Vs. M/s. SPR & RG Constructions Private Limited, cited above, the Hon'ble Division Bench of the Madras High Court held as follows:

As rightly pointed out by the learned senior counsel appearing on behalf of the appellant, it is well settled law that the parent Act will prevail over the rules and there cannot be any rules contrary to Act. Assuming that Rule 2(h)(ii) gives some relief to the 1st respondent, it is in contrary to Section 3 of the Act. When the Act has come into force on 01.05.2017, the 1st respondent should have complied with. The principle that the subordinate legislation cannot be in violation of the Act is supported by following decisions of the Apex Court:

1. *Ramesh Meha Vs. Sanwal Chand Singhvi reported in 2004 (5) SCC 409.*
2. *Global Energy Ltd., Vs. Central Electricity Regulation Commission reported in (2009) 15 SCC 570.*

The State Government Rule 2(h)(ii) is contrary to Section 3 of the Act and therefore the 1st respondent cannot take advantage of the same and claim exemption from registration.

Therefore, the contentions of the learned counsel for the respondents are not sustainable. This Forum has got jurisdiction to decide the case.

(i). The learned counsel for the respondents further contended that the agreements for sale and construction were terminated by the respondents as the payments were not made in timely manner as per the payment

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schedule and therefore, possession was not handed over to the complainants. Ex.A7, is the cancellation letter dated 22.01.2014 by which the complainant were informed about the termination of the agreements on the ground of failure of payment due by the complainant. Even though, it was stated as the refund cheque was enclosed with the letter, the specific averment of the complainant that no such refund cheque was enclosed with the letter was not specifically denied by the respondents. Therefore, it is obvious that the respondents themselves have not acted upon the cancellation of the agreements.

(j). The cancellation of the agreements by the respondents is per se illegal and not sustainable. In Ex.A7, the cancellation letter, it is admitted that the complainant paid Rs.74,49,847/- and stated as per the demand notices amount due payable was Rs.74,49,847/-. As per Ex.B3, the allotment letter, the total sale consideration is Rs. 1,07,58,000/- In pursuance of Ex.A5, the tripartite agreement dated 18.05.2013 with the finance company, the finance company sanctioned a loan of Rs.60,00,000/- for the complainant to purchase the flat and also paid Rs.28,00,097/- on 28.05.2013 and Rs.24,98,150/- on 04.07.2013. The receipt of the said amounts from the finance company is reflected in Ex.A5, the payment ledger of the respondents. In Ex.B7, series of demand notices, between the receipt of Rs.24,98,150/- from the finance company on behalf of the complainant on 04.07.2013 and Ex.A7, the cancellation letter dated 22.01.2014, the respondents issued notice dated 14.07.2013 for a sum of Rs.17,40,344/- on or before 29.07.2013 and reminder notice dated 06.12.2013 for a sum of Rs.27,21,105/- only. Even as per Ex.B8, the payment particulars produced by the respondents, as on the date of issue of Ex.A7, the cancellation letter,

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the calculation of the due amount payable by the complainant was not found correct. Further, Ex.B7, the demand notices lacks particulars of the stage of completion to meet the milestone payment demanded by the respondents. Ex.B6, the payment schedule also shows that the payment schedule was not linked with stage wise construction with specific dates for milestone payment.

(k). Subsequently, on 03.05.2016, the respondents sent Ex.A9, the letter to the complainant offering choice of flooring in the booked unit by the complainant and also sent Ex.A10, the E-mail letter on 24.03.2017 inviting pre delivery inspection of the unit from 24.03.2017 and between 25.03.2017 to 05.04.2017. The learned counsel for the respondents raised doubts as Ex.A9, to be suspicious. Ex.A9, the letter contains the name of the sender with designation and mobile phone number. There is no specific denial by the respondents as any official with the said name was not working in their office. In Ex.A8, the demand notice and legal notice dated 22.01.2016 by M/s. Sundaram BNP Paribas to both the respondents and complainant, the finance company has stated that till the date of the notice on 31.03.2016, the respondents have not completed the construction of the property.

(l). A perusal documents reveals that the respondents have entered Ex.B9, the construction agreement with the complainant with an assurance to hand over the property within 24 months with a grace period of 6 months from the date of obtaining approval and other necessary approval. The terms on time limit in the agreement is vague, unfair and only to the advantage of the respondents. In the above facts and circumstances, it is held that the complainant is entitled for refund of the amount with interest

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and compensation from the respondents. Thus, the point is answered accordingly.


8. Answer for Point No. (ii)

(a). In view of the answer for the point No (i), the complainant is entitled for refund of the amount of Rs.74,49,847/- with interest. Admittedly, the complainant availed loan from the finance company M/s. Sundaram BNP Paribas, and the finance company also issued notices to the complainant and the respondents for return money from both of them. Therefore, from the total amount to be refunded as per the order of this Forum with interest and compensation, the respondents is to settle first the amount due to the finance company and thereafter the balance amount is payable to the complainant.

(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 respondents.

(c). Apart from the above, considering the facts and circumstances of the case, it is held that the complainant is entitled for a sum of Rs.5,00,000/- towards compensation for mental agony and inconvenience and Rs.20,000/- towards legal expenses incurred by her. 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 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. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
3. On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondents.

**G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1--- Uma Maheshwari
RW-1--- N. Sivakumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	26.07.2012	Allotment letter
Ex.A2	05.10.2012	Agreement of sale
Ex.A3	-----	Payment receipts
Ex.A4	17.05.2013	Loan offer letter
Ex.A5	18.05.2013	Tripartite agreement
Ex.A6	24.05.2013	Loan agreement

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Ex.A7	22.01.2014	Cancellation letter from the respondents
Ex.A8	22.01.2016	Demand notice and legal notice from finance company
Ex.A9	03.05.2016	Letter from the respondents
Ex.A10	24.03.2017	Email communication
Ex.A11	15.11.2018	Statement of accounts of finance company
Ex.A12	-----	Statement of accounts of respondents
Ex.A13	01.03.2019	Demand notice from the finance company

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Ex.Nos	Date	Documents Name
Ex.B1	22.12.2017	Final completion certificate
Ex.B2	16.07.2012	Booking form
Ex.B3	26.07.2012	Allotment letter
Ex.B4	05.10.2012	Agreement for sale
Ex.B5	July 2012- July 2013	Payment ledger
Ex.B6	-----	Summary schedule for payments
Ex.B7	-----	Demand notices
Ex.B8	-----	Pending payments and interest calculation
Ex.B9	05.10.2012	Construction agreement

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


 23.12.2018
 LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY