

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 272 of 2019**

Latha Manikandan

..... COMPLAINANT

Vs.

M/s. Metroline Promoters Pvt. Ltd
Rep. by Director Amit Gupta

..... RESPONDENT

(Project not registered)

Complainant : Rep. by Mr. V. Manohar, Advocate
Respondent : Remained absent

Heard on : 06.02.2020

Delivered on : 25.02.2020

ORDER

The above complaint by the complainant claiming refund of the amount paid towards purchase of constructed commercial unit paid to the respondent with interest, compensation and cost is filed *under section 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016* (hereinafter referred to as RERA Act).

2. Averments of the complainant in brief as follows:

- a) The complainant made application for allotment of commercial unit which is shop in a commercial complex, namely, "**GOLD SOUK GRANDE**" at GST Road, Vandalur, Chegleput Taluk promoted by the respondent and paid the amounts.
- b) The respondent allotted shop bearing no.FF-144 (43) in the first floor having super built up area of 405 sq.ft. The total sale consideration is Rs.43,74,000/-. The complainant paid the entire sale consideration to the respondent.

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c) Subsequently on 23.03.2012, unit buyer agreement was entered between the complainant and respondent. As per the Memorandum of Understanding dated 24.05.2012, the respondent promised to pay a sum of Rs.36,450/- as monthly return till possession of the unit is handed over and also undertook to complete and hand over the commercial unit on or before 31.12.2012 with a grace period of six months. The due date with grace period expired on 30.06.2013. The monthly return or rent was not paid.

d) In spite of payment of the entire money and after delay for a period of 7 years, the respondent is unable to complete the construction of the unit for delivery to the complainant. As per the provisions of the RERA Act, the respondent is liable to refund the amount paid to the respondent by the complainant with interest and compensation. Hence the complaint.

3. On receipt of the notice of hearing, the respondent remained absent.

4. On the side of the complainant, the complainant filed evidence on proof affidavit with documents.

5. On the basis of the rival contentions of the complainant, the following points arise for determination:

- i. Whether the complainant is entitled for refund of the amounts paid to the respondent towards purchase of the constructed shop with interest and compensation on the ground of failure on the part of the respondent to give possession of completed shop booked by them in accordance with the date and terms of agreements?
- ii. Whether the complainant is entitled for all the reliefs as prayed for?

6. Answer for Point No: (i)

a) The learned counsel for the complainants submitted that the respondent launched the project namely "GOLD SOUK GRANDE" which is a commercial complex and invited applications for allotment of units and the complainant submitted application form for allotment of unit in pursuance of which unit buyers agreement was entered between the complainant and respondent followed by the memorandum of understanding over the construction of the unit allotted to the complainants and the complainants paid entire amount and subsequently there was no progress and therefore the complainants are entitled for the reliefs prayed by them.

b) The complainant who was examined as CW1 stated that she made application on 16.11.2010 which is marked as Ex.A1, for allotment of the shop and paid a sum of Rs.43,74,000/- in total and on various dates and Ex.A2, the unit buyer agreement was entered on 23.03.2012 and in Ex.A3, memorandum of understanding, the respondent acknowledged the receipt of the total amount and promised to pay monthly return to the unit.

c) As per the Ex.A1, form of allotment, the date of promise and delivery of shop was on 31.12.2012. It is the evidence of the complainant that the respondent promised to pay rents or return and failed to pay any amount and nearly 7 years passed and there is no progress of the project and therefore he is entitled for all the reliefs.

(d) The evidence of complainant in the cases proved that he paid the amount to the respondent towards purchase of the constructed commercial unit and the respondent has not completed the construction and failed to hand over the possession of the completed unit to her as per the terms of the agreement.

(e) Section 18 of the RERA Act gives an option to allottee to withdraw from the project and demand the amount paid by him with interest including compensation, if a promoter is unable to give possession of the shop on the dates specified in the agreement.

(f) In the above circumstances, it is held that the complainant is entitled for the refund of the amount paid by her to respondent towards the purchase of shop with interest and compensation on the ground to failure on the part of the respondent to complete and hand over the constructed unit to the complainant. Thus, the point is answered accordingly.

8. Answer for Point No.(ii)

(a) In view of answer for Point No.(i), the complainant is entitled for refund of the amounts paid to the respondent with interest and compensation. As per the evidence, the complainant paid Rs.43,74,000/- to the respondent. The complainant is entitled for refund of Rs.43,74,000/- with interest and compensation from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest payable 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 8.15% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.15% per annum for the amounts paid from the dates of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, compensation of a sum of Rs.3,00,000/- is fixed towards mental agony, hardship and inconvenience caused to complainant. Towards litigation expenses a sum of Rs.20,000/- is fixed.

The complainant is entitled for the reliefs as discussed and found above. Thus, the point is answered accordingly.

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

- (1) The respondent shall pay the complainant the amounts at the interest rate, compensation and litigation cost as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.
- (2) The charge of the aforesaid amount shall be on the unit booked by the complainant till the repayment.

Sd/ - 25.02.2020
G. SARAVANAN
ADJUDICATING OFFICER

List of witness

CW-1 --- LATHA MANIKANDAN

List of documents filed by the complainant

Ex.Nos	Date	Document
Ex.A1	16.11.2011	Application Form
Ex.A2	23.03.2012	Unit Buyer Agreement
Ex.A3	24.05.2012	Memorandum of Understanding

Sd/ - 25.02.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY

N. Animesh
25/2/2020
Administrative Officer