

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP No. 296 of 2019**

1. Arun Ramesh, A.R  
2. M. Jaya Priya

... COMPLAINANTS

**Vs.**

M/s. VGN Property Developers Private Ltd.,  
Rep. by its Authorised Signatory  
**(Regn. No.TN/002/Building/0012/2018)**

.... RESPONDENT

Complainants : Rep. by Mr. K.R. Ramesh Kumar, Advocate.

Respondent : Rep. by Mr. K. Harishankar, Advocate.

**Heard on : 03.02.2021**

**Delivered on : 25.02.2021**

**ORDER**

The above complaint by the complainants seeking compensation for the delay in handing over the possession and other reliefs 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 complainants, in brief, as follows:**

(a) The complainants booked an apartment with the respondent in their project namely "VGN Temple Town" at Thiruverkadu Village, Poonamallee Taluk, Thiruvallur District and entered into an agreement for construction of the apartment on 22.03.2018. The total sale consideration of the flat is Rs.56,04,393/-.

(b) The respondent undertook to complete the construction and to hand over possession of flat before December 2018 including grace period. The complainants paid entire sale consideration. The respondent, by letter dated 09.10.2019, informed the complainants that construction of their residential unit has been completed and also informed the complainants to

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execute a no claim letter as a pre condition for the delivery of the apartment. After the period of 9 months delay, the complainants were compelled to take possession of the apartment.

(c) In the construction agreement, it was represented that all the necessary appropriate planning permission and building permission had been issued by the appropriate authorities. But the respondent has not obtained the completion certificate from the competent authority till date. Due to inordinate delay in delivery of the flat the complainants were paying monthly rent of Rs.15,000/- per month and they have foreclosed the fixed deposit and investment for making full payment of the consideration. Hence, the complainants are entitled for compensation for the delay and other compensation and cost.

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

(a) Except admitted, all the allegations of the complainants are denied as false and baseless. The complainants booked the apartment after verifying and satisfied of the project. The respondent had specifically agreed to complete the project on or before September 2018 with a grace period of 3 months is not correct.

(b) As per clause 11(a) of the agreement, the property handing over date is March 2019 with additional grace period of 6 months. Therefore, the handing over date along with grace period is September 2019. When the complainants booked the flat, the construction of the flat was already completed. The complainants demanded for alteration and customization work of the flat and paid Rs. 68,558/- to the respondent. Hence, the delay was not attributable to the respondent. The respondent commenced the works and completed the same in October 2019.

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(c) Under 11(b) of the agreement, any delay due to execution of extra work required by the complainants cannot be considered as delay. Therefore, the respondent prays 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 complainants are entitled for compensation for delay and other compensation with regard to the apartment constructed and handed over by the respondent?
- ii. What are the reliefs, the complainants are entitled for?

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

(a) The learned counsel for the complainants submitted that under the construction agreement dated 22.03.2018, the respondent undertook to complete the construction and to hand over the flat to the complainants before December 2018 including the grace period and the complainants paid a total sale consideration of Rs.56,04,393/- on various dates including the cost for the additional alterations sought by the complainants, but the respondent handed over possession of the apartment only on 09.10.2019 after a period of 9 months from the due date agreed by the respondent and during the delay period, the complainants were in rented premises paying monthly rent of Rs.15,000/- from December 2018 up to 09.10.2019 and they are entitled for all the reliefs sought by them.

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(b) However, the learned counsel for the respondent contended that it is false to state that the respondent had specifically undertook to complete the project on or before December 2018 including the grace period and such a clause was not present in the sale agreement or the construction agreement and as per the clause 11(a) of the agreement for construction dated 03.05.2019, the proposed handing over date for delivery of the flat was March 2019 with an additional grace period of 6 months and the complainants requested the respondent to make alterations and customization works in the flat for the additional cost and the respondent accepted the proposal for alterations and the respondent commenced the work and completed the same in October 2019 and the flat was handed over to the complainants in October 2019 and the complainants availed home loan for Rs.50,00,000/- and there is no question of loss of interest on FD and appreciation of other property and the complainants are not entitled for any reliefs.

(c) On the side of the respondent, Ex.B4, the registered agreement for construction dated 03.05.2019 was produced in support of their contentions that the due date according to the construction agreement entered between the complainants and the respondent was only March 2019 plus an additional grace period of 6 months for completion of construction and delivery of the flat to the complainants and the handing over date along with grace period is only September 2019.

(d) It is not in dispute that as per Ex.A12, the possession letter, the respondent completed construction and handed over the flat to the complainants on 09.10.2019. In the counter, the proof affidavit and the additional proof affidavit of RW-1, the respondent admitted that they

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entered into an agreement with the respondent on 03.03.2018. However, the respondent has not produced the agreements and other documents entered with the complainants on 03.03.2018 and filed only Ex.B4, the construction agreement dated 03.05.2019.

(e) It is the evidence of the complainants that while finalizing the dwelling unit, Ex.A1, the allotment letter dated 23.03.2018 was issued and construction agreement and sale agreement were executed on 22.03.2018 which are marked as Ex.A2 and Ex.A3 respectively and apart from the above, the respondent also executed other documents in Ex.A4 to Ex.A7.

(f) A perusal of Ex.A2, the construction agreement reveals that it is an unregistered agreement entered between the complainants and the respondent on 22.03.2018, under which the respondent undertook to complete the construction of the apartment by September 2018 with a grace period of 3 months from the date of the agreement and the due date expired by December 2018. Even in Ex.A1, the allotment letter, the respondent intimated that sale agreement/agreement for construction is to be signed within 10 days from the allotment.

(g) Ex.A10, the consolidated payment receipt issued by the respondent makes it clear that out of the total amount of Rs.56,04,392/- paid by the complainants, a sum of Rs.53,27,600/- was paid by the complainants by May 2018 itself. As per section 13 of the RERA Act, a promoter shall not accept an advance payment or an application fee from a person without first entering into a written agreement for sale and registering of the said documents.

(h) However, the respondent managed to get Ex.B4, the construction agreement entered with the complainants on 03.05.2019 with a fresh

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period and due date for construction and delivery of the flat but with the same plan and annexure-I, II and III. Nowhere, in the terms of the agreement or the payment schedule in annexure-II of the Ex.B4, the construction agreement, the amounts received till then from the complainants were mentioned. It clearly goes to show that all the receipt of money were received by the respondent on the strength of assurances under the terms of Ex.A2, the construction agreement and other documents in March 2018. There is not even a mention of the earlier agreement or the transactions including the receipt of the amounts towards alteration works in Ex.B4, the construction agreement. It is clearly established that Ex.B4, the construction agreement was entered mischievously to gain time for completion of construction of the flat.

(i) Considering all the above circumstances, it is held that there was delay of delivery of the constructed apartment to the complainants from December 2018 up to 09.10.2019 and the complainants are entitled for the compensation for the delay and other reliefs. Thus, the point is answered accordingly.

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

(a) In view of the answer for the point No (i), the complainants are entitled for compensation for delay in completion of construction and delivery of possession of the flat to the complainants. The complainants have claimed the delay compensation on three grounds, i.e., the rent paid for the rental accommodation during the delay period and interest paid on the loan amount availed from bank from 21.03.2018 up to 04.10.2019 and loss of interest on saving for the sum of Rs.13,27,600/- for the delay period

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and also claimed delay charges at 18% per annum on the pending construction work at 25% on the total value during the delay period.


(b) As per the proviso to Section 18(1) of the RERA Act, the promoter is liable to pay interest to the allottee for every month till the handing over possession of flat. Therefore, the complainants are entitled for interest on the total sale consideration of Rs.55,35,834/- as delay compensation for the delay period, i.e. from January 2019 to 09.10.2019.

(c) As per Rule 18 of the TNRERA Rules, the rate of interest payable by the promoter to the allottees is to be State Bank of India's highest marginal cost of lending rate plus 2% per annum. The present rate of highest marginal cost of lending rate of interest of SBI is 8.05% p.a. The complainants are entitled for interest on the amount of Rs. Rs.55,35,834/- at the rate of 10.05% per annum (8.05% +2%) as compensation for the delay from the month of January 2019 to 09.10.2019.

(d) However, it cannot be disputed that due to the delay the complainants suffered mental agony, loss and hardship and inconvenience. Considering the facts and circumstances, a sum of Rs.2,00,000/- is fixed as compensation towards mental agony, loss and hardship and inconvenience caused to the complainants. Towards cost of litigation expenses a sum of Rs.20,000/- is fixed.

(e) The complainants are 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:-**

The respondent shall pay the amounts of compensation and 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.

**G. SARAVANAN  
ADJUDICATING OFFICER**

**LIST OF WITNESSES**

CW-1--- Arun Ramesh A.R

RW-1 --- A. Rangappan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	23.03.2018	Allotment letter
Ex.A2	22.03.2018	Construction agreement
Ex.A3	22.03.2018	Agreement for sale
Ex.A4	March 2018	Deed of guarantee
Ex.A5	March 2018	Deed of undertaking and indemnity
Ex.A6	March 2018	Deed of undertaking and indemnity
Ex.A7	----	Demand letter for milestone payment
Ex.A8	----	Payment receipts
Ex.A9	31.03.2018	List of customization points
Ex.A10	14.10.2019	Consolidated payment receipt
Ex.A11	21.03.2018	Loan acceptance letter
Ex.A12	09.10.2019	Possession letter
Ex.A13	09.10.2019	No claim letter
Ex.A14	09.10.2019	Handing over kit letter
Ex.A15	09.10.2019	Letter for inspection
Ex.A16	09.10.2019	Letter for car park allotment
Ex.A17	21.01.2019	Rental agreement
Ex.A18	11.03.2019	E-mail communications

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	31.03.2018	Bill for extra work
Ex.B2	03.04.2018	E-mail communications
Ex.B3	March 2018	Booking form
Ex.B4	03.05.2019	Construction agreement

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G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.

  
LAW OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY

25.2.2021

10/24/21