

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 304 of 2019**

1. D.K. Bhagavathi Nath
2. B. Raja lakshmi
3. T.S. Manohar

.... COMPLAINANTS

Vs.

BBCL Srishti Homes LLP
Rep. by its designated partner,
Vummidi Ananth
(Project not registered)

..... RESPONDENT

Complainants : In-person.
Respondent : Rep by M/s. AAV Partners, Advocates.

Heard on : 11.02.2021
Delivered on : 23.02.2021

ORDER


The above complaint by the complainants claiming compensation for delay in handing over the possession of the constructed flat and other relief 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) In July 2015, the complainants booked a house/villa under group development of houses, a gated community of villas, with the respondent on payment of booking advance and subsequently paid the total sale consideration of Rs.1,67,34,700/-.

(b) The respondent undertook to complete and hand over possession of the house in January 2016 with a grace period of 6 months. But the respondent handed over the property only on 18.08.2018. Subsequently, the Kundrathur panchayat affixed a letter in the common area of the

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building stating that the road which was purported for the exclusive use of residents of the gated community has turned out to be a public road and the respondent has already gifted the road to the panchayat. The local body also demolished the compound wall put up by the respondent. The respondent suppressed the fact of public road deliberately.

(c). The complainants came to know that no planning permission has been obtained for the group development and only a separate planning permission for each villa was only obtained by the respondent violating the Town and Country Planning Act, 1971.

(d). The respondent also promised of various amenities which were not provided to the complainants. The respondent violated the obligations of promoters under Section 12 of the Act. The complainants are entitled for compensation from the respondent.

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 complaint is defective and liable to be dismissed. Prior to the relevant approvals being obtained during the year 2015, the land for roads and common areas was gifted to the local authorities. The project falls under exclusion of Section 2(h)(iii) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The Adjudicating Officer has no jurisdiction.

(b) The respondent never suppressed the fact regarding the land being gifted to the Kundrathur panchayat. After handing over the property to the complainants, the Kundrathur panchayat took over the gifted land. Necessary planning permission and approvals were obtained. The same was known to the complainants. The respondent obtained planning permit

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and building permit for constructing the villa. The complaint is defective for want of signature of the third complainant. This Forum has no jurisdiction. Hence, 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 with regard to the apartment constructed and handed over by the respondent?
- ii. What are the other reliefs, the complainants are entitled for?

7. Answer for Point No. (i)

(a). The complainants filed written notes of arguments submitting that the respondent assured that the project was a group development of houses which shall be a gated community of villas and the actual date of possession promised by the respondent was on January 2016 with a grace period of 6 months and the villa was handed over only on 18.08.2018 and the road which was purported for the exclusive use of residents of the gated community, has turned out to be a public road and the local body also demolished the compound wall put up by the respondent on the southern side of project and the land was gifted by the respondent to the local body by way of gift deed and the same was suppressed to the complainants and no planning permission has been obtained for group

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development and only a separate planning permission for each villa by flouting the Town and Country Planning Act and the complainants are entitled for compensation and other reliefs.

(b). The learned counsel for the respondent also filed written notes of arguments contending that the complaint itself is defective and not in the prescribed format and prior to the relevant approval being obtained during the year 2015, the land for roads and common areas was gifted to the local authorities and the project is not an on-going project and is exempted from registration under Rule 2(h)(i) of Tamil Nadu Real Estate (Regulation and Development) Rules, 2017 (hereinafter shortly referred as 'TNRERA Rules') and the CMDA approval of the layout was given on 16.05.2014 and the respondent gifted the land to the Commissioner, Kundrathus panchayat Union under the gift deed dated 28.04.2014, and the project does not come under the purview of RERA Act.

(c). It is not in dispute that the name of the project is 'BBCL Stanburry'. In Ex.A12, the prospectus and brochure, the respondent launched the project as 'A luxury boutique villa community in Manapakkam' with assurances and tall and high claims as the project is a community of luxury row villas designed to give the buyer the space needed for themselves and their beautiful joint families. Ex.A2, the construction agreement dated 02.03.2017, was entered by the respondent as a developer of the project for construction of a residential villa in the project with the complainants for consideration. It is not a layout project. Therefore, Rule 2(h)(i) of the TNRERA Rules, 2017 has no application to the case.

(d). Section 3 of the RERA Act specifies real estate projects, which require registration. RERA Authorities get jurisdiction over all the real estate

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projects, which are eligible for registration irrespective of the fact as to whether they are registered or not. As per Ex.A2, the construction agreement, the respondent undertook to complete the construction of the villa by January 2016 with an additional grace period of 6 months. As per Ex.A7, the letter of the respondent dated 24.04.2018, the respondent intimated the complainants to hand over the actual physical vacant possession of the villa on 24.04.2018 itself. Such intimation was given by the respondent only after the filing of the complaint before the TNRERA by the complainants. The RERA Act came into force on 01.05.2017. The TNRERA Rules came into force on 22.06.2017. On the commencement of the Act and the Rules, the villa was not completed and handed over and the project was an on-going project eligible for registration with TNRERA. Therefore, this Forum has jurisdiction to entertain the complaint. Hence, the contention of the learned counsel for the respondent that this Forum has no jurisdiction is not sustainable.

(e). The learned counsel for the respondent also pointed out as the cause title is defective and the complainants were referred as appellant and the vakalat does not reflect the name and signature of the third complainant. It is settled law that procedural prescriptions are only handmaids of justice and the procedural irregularity which caused no prejudice to the respondent cannot be a ground to reject the complaint. In the midst of the proceedings, the complainants submitted as the counsel on record was no more representing them and as party-in-person, they are conducting the case. Therefore, the above objection of respondent is not sustainable.

(f). As per the proviso to Section 18(1) of the Act, the allottee is entitled for interest for every month of delay till the handing over possession of the

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apartment by the promoter. It is not in dispute that the due date for delivery of the constructed villa expired by July 2016 including the grace period and the villa was handed over to the complainants only on 18.08.2018. Therefore, the complainants are entitled for compensation for the delay in delivery of the constructed villa.

(g). The complainants further contended that the road which was purported for the exclusive use of residents of the gated community, has turned out to be a public road and various amenities in the gated community such as infinity pool, party hall, games and recreation, fitness centre, landscaped gardens, reflexology garden, senior's court yard and children's pocket etc., were promised but till date of filing of the complaint, the amenities were not provided. Regarding the above issues, the complainants have issued Ex.A10, the legal notice to the respondent and the receipt of which was acknowledged by the respondent by Ex.A11, the acknowledgement card. It is not the case of the respondent that they sent any reply legal notice disputing the contents of Ex.A10, the legal notice.

(h). The learned counsel for the respondent contended that the facts of land being gifted to Kundrathur Panchayat union were never suppressed by the respondent. A perusal of Ex.A12, prospectus brochure reveals that the respondent promised villa life of a gated community to the buyers of the villa. Further Ex.A13, the photographs clearly shows that the road which was constructed for exclusive use of the buyers of the villa inside the compound wall was opened for public by demolition of the compound wall and the public have access in the road as a public road. Ex.A9, the notice of the commissioner of the Kundrathur panchayat union also restrained the construction of the compound wall around the project villas. Ex.A8, the

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compromise agreement between the respondent and the first complainant subsequent to the complaint made by the complainants to the TNRERA reveals that the respondent admitted to clear all the pending works of the property. The complainants proved violation of obligations imposed under Section 12 of the RERA Act by the respondent.

(i). Considering above all the circumstances, it is held that the complainants are entitled for compensation on the ground of making false promises and the compensation for the delay in handing over the villa and also for the compensation for the mental agony and inconvenience caused to them. 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 the delay as provided under the proviso of section 18(1) of the RERA Act. 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 complainants are 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 promised delivery of villa till actual date of handing over by the respondent.

(b). The complainants have paid a total sale consideration of Rs.1,67,34,700/-. Therefore, the complainants are entitled for interest as delay compensation on the amount paid at the rate of 10.05% per annum from August, 2016 to 18.08.2018.

(c). The complainants suffered mental agony and hardship due to the violation of obligations and promises made by the respondent for a gated

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community and the destruction of the compound wall inside the project area for public use and also on account of unfinished works and facilities. However, the compensation for mental agony and hardship cannot be exactly quantifiable. In view of the facts of the circumstances of case, a sum of Rs.5,00,000/- is fixed as compensation for mental agony, inconvenience and hardship caused to the complainants. Apart from the above, the complainants is also entitled for cost of the litigation of Rs.20,000/-.

(d) The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

The respondent shall pay the amounts of 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.

**G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1--- D.K. Bhagavathi Nath
RW-1--- Vummidi Bharath

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	05.07.2015	Memorandum of understanding
Ex.A2	02.03.2017	Construction agreement
Ex.A3	02.03.2017	Sale deed
Ex.A4	04.03.2017	Letter by respondent
Ex.A5	25.01.2018	Notice from TNRERA to respondent

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Ex.A6	23.02.2018	Notice from TNRERA to respondent
Ex.A7	24.04.2018	Letter for delivery of villa
Ex.A8	26.04.2018	Compromise agreement
Ex.A9	29.07.2019	Notice by panchayat union
Ex.A10	13.08.2019	Legal notice
Ex.A11	16.08.2019	Acknowledgement card
Ex.A12	-----	Prospectus brochure
Ex.A13	-----	Photographs

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	07.05.2014	Letter by Kundrathur panchayat union
Ex.B2	28.04.2014	Gift deed
Ex.B3	18.12.2019	Board resolution on authorisation

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY