

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 316 of 2019**

1. Akhilandeswari SK
2. Vebhin Chandar P

....COMPLAINANTS

Vs.

M/s. Amar Prakaash Developers Pvt Ltd.,
Rep. by its director, Aadarsh Surana
(Project not registered)

....RESPONDENT

Complainants : Rep. by Ms. A. Smrithi, Advocate
Respondent : Rep. by Mr. P. Dinesh Kumar, Advocate.

Heard on : 16.02.2021
Delivered on : 05.03.2021

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of flat with interest, compensation and cost 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, "TEMPLE WAVES", at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District. The total sale consideration of the apartment is Rs.37,88,200/-.

(b) On 14.11.2015, the complainants and the respondent entered into an agreement for construction. The respondent undertook to complete the construction and deliver the flat on or before December 2016. The

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complainants availed bank loan to purchase the flat. Till June 2019, the complainants, in total, paid a sum of Rs.38,01,375/- .

(c) Whenever the complainants approached the respondent for delivery of the flat, the respondent stated various invalid reasons and vague excuses. Because of the delay, the complainants were put to hardship and mental agony and forced to live on a rented house and pay rent and also EMIs on the loan to the bank. Hence, the complainants seeks refund of the amount paid to the respondent with interest, compensation and cost.

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

(a) Except admitted, all the averments of the complainants are denied. Under Section 18, the Adjudicating Officer has jurisdiction only for adjudging the quantum of compensation. The Authority is vested with the power to decide on the entitlement of refund, interest and compensation. The complaint is liable to be dismissed as not maintainable.

(b) The apartment booked by the complainants forms part of completed project and has been exempted from registration with TNRERA. It is admitted that the agreement of project promotion and construction was entered on 14.11.2015 and the construction provides for delivery of apartment on or before December 2016. According to the terms, the complainants are required to make payments on various circumstances in strict compliance to the deadlines prescribed under the payment schedule of the agreement. The respondent is entitled for interest at the rate of 24% per annum for every delayed payment.

(c) The complainants are liable to pay delay interest charges to the tune of Rs.2,31,822/- as on 12.02.2020. Therefore, the claim of possession of apartment is not permissible. The apartment was fully completed and the

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same was duly informed to the complainants. The respondent undertakes to handover possession subject to payment of the delay interest charges due and payable by the complainants. Hence, the respondent prays for dismissal of the complaint with cost.

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 complaint is maintainable?
 - ii. Whether the complainants are entitled to get back the amounts paid to the respondent with interest and compensation on the ground of failure on the part of the respondent to give possession of the apartment booked by them in accordance with the date and terms of agreement of project promotion and construction?
 - iii. What are the reliefs, the complainants are entitled to?

7. **Answer for Point Nos (i) and (ii):**

(a) The learned counsel for the complainants submitted that the complainants booked a flat in the project of the respondent for a total sale consideration of Rs.37,88,200/- and entered into a construction agreement on 14.11.2015 and the respondent undertook to complete the construction and handover the flat on or before December 2016 and the complainants also availed bank loan for the purchase of the flat and till date, the project is not completed and possession of the flat was not offered to the

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complainants and the complainants lost confidence with the respondent on the completion of the project and are entitled for refund of the amount and other reliefs.

(b) The learned counsel for the respondent contended that this Forum has no jurisdiction over the project which forms part of completed project and has been exempted from registration with TNRERA in view of the completion certificate issued by the CMDA and the complaint for refund of the amount along with interest is not maintainable and the Adjudicating Officer has jurisdiction only for the purpose of adjudging the quantum of compensation under Section 18 of the RERA Act and therefore the complaint is liable to be dismissed as not maintainable.

(c) Under Section 3 of the Act, which came into force on 01.05.2017, prior registration of the project with the Authority is mandatory for projects that are ongoing on the date of commencement of the Act and for which completion certificate has not been issued. As per Rule 2(h) of the TNRERA Rules, which came into force on 22.06.2017, the exemption of project from registration is given to projects for which completion certificate has not been issued but, application for completion certificate has been filed with CMDA on the date of coming into force of Subsection(1) of 3 of the Act. It is obvious that the cut-off date is 01.05.2017. Ex.B1, the completion certificate was issued on 28.02.2019. Admittedly, the application for completion certificate was made by the respondent only on 31.05.2017. Therefore, as on 01.05.2017, the project of the respondent was an ongoing project eligible for registration with TNRERA.

(d) Section 3 of the RERA Act, specifies real estate projects, which require registration. The 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. 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 71 of the RERA Act is framed in the larger interest of the consumers. It is not specifically mentioned in the section that Adjudicating Officer appointed under section 71 is only for the purpose of adjudicating compensation alone. The proviso to Section 71 (1) provides that any person whose complaints in respect of matters covered under sections 12, 14, 18 and 19, if pending before the Consumer Disputes Redressal Forum or the State Commission or National Commission can withdraw the complaint and file an application before the Adjudicating Officer under the RERA Act. The reading of the proviso makes it clear that such complaints can be in respect of matters covered under sections 12, 14, 18 and 19 of the RERA Act. A further reading of Section 18 of the Act makes it clear that the allottee is entitled to withdraw from the project seeking return of the amount with interest including compensation in the manner provided under the Act. The section does not provide any division of adjudging the amount refundable to the allottee, entitlement of interest and claim for compensation separately by different authorities. In this regard, Section 12, which deals with the obligations of promoters regarding veracity of the advertisement or

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prospectus, also provides, in case of incorrect and false statement by the promoter, for refund of the investment made by the buyer with interest and compensation. The claim of refund of money is clubbed with interest and compensation to be arrived at under both the Sections 12 and 18, so as to mean to adjudge the amount refundable in case of dispute with interest and compensation to be arrived at. Harmonious reading of the Sections 71, 12, 14, 18 and 19 indicate that this Forum can award the refund of the amount with interest including compensation sought by the complainants.

(f) As per Wharton's Law Lexicon, 16th Edition, '*compensation*' is defined as follows:

Compensation, according to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss, Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65 (75): AIR 2004 SC 2141.

Compensation or purchase money are the same thing under different names, IRC vs. Glasgow South Western Railway Co., (1887) 12 App Cas 315 (HL)

In Blacks's Law Dictionary, 'Compensation' is shown as equivalent in money for a loss sustained or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred, or recompense in value for some loss, injury or service especially when it is given by statute. It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value, Rathi menon vs Union of India, AIR 2001 SC 1333 (1337)(2001)3SCC 714.

The above definitions make it clear that compensation is given to make things equal in value. Compensation or damages can be computed under the heads of pecuniary loss and also non-pecuniary loss. So far pecuniary loss is concerned, the amount given towards purchase of the flat, which was not at all handed over by the due date is actual monetary loss. Therefore, the

legislators thought it fit to include return of amount with interest payable for such amount and compensation under Section 18 of the RERA Act to be decided by the Adjudicating Officer.

(g) Section 18 of the RERA Act gives a right to the allottee to withdraw from the project and demand the amount paid by him with interest including the compensation, if a promoter fails or is unable to give possession of the flat on the dates specified in the agreement. As per Ex.A1, the construction agreement dated 14.11.2015, the respondent undertook to complete the construction and deliver the apartment on or before December 2016. Even as per the respondent, Ex.B1, the completion certificate was obtained on 28.02.2019. It is not the case of the respondent that in pursuance of the completion certificate the flat was offered to the complainants with occupancy certificate as contemplated under Section 2(zf) or otherwise as fit for occupancy.

(h) The learned counsel for the respondent contended that the terms of the agreement are binding on the complainants and the complainants are entitled for possession of his apartment only on issuance of No due certificate by the developer, and a sum of Rs.2,31,822/- towards delay interest charges was due as on 12.02.2020. It is not in dispute that the complainants availed bank loan for payment of the part sale consideration. Even as per the payment reminder letter dated 03.06.2019 in Ex.B4, the complainants have paid Rs.36,13,515/- and only a balance of Rs.2,51,124/- was due. The complainants have almost paid the entire sale consideration. The amount of Rs.2,51,124/- is to be paid by the complainants on notice of possession of the flat. The respondent has not given any notice of possession of flat at any point of time even till date. All the contentions of

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the learned counsel for the respondent are not sustainable. In the above circumstances, it is held that the complaint is maintainable before this Forum and the complainants are entitled for the refund of the entire amount paid to the respondent with interest, compensation and cost. Thus, the point is answered accordingly.


8. Answer for Point No. (iii)

(a) In view of the answer for the point No (i) and (ii), the complainants are entitled for refund of the amount with interest, compensation and cost from the respondent. It is not disputed by the respondent that the complainants have paid Rs.38,01,375/- towards the purchase of the flat. The complainants are entitled for refund of Rs.38,01,375/- from the respondent with interest.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. 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% per annum i.e., 10.05% p.a for the entire amount paid from the dates of respective payments till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.2,00,000/- towards compensation for mental agony, loss and hardship caused to the complainants and Rs.20,000/- towards litigation expenses is fixed. 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:-

1. The respondent shall pay the amounts at the interest rate, compensation and cost as per the findings in answer for Point No.(iii), 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 complainants 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 complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1--- Akhilandeswari SK
RW-1--- M. Ramesh
RW-2--- R. Surendar

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	14.11.2015	Construction agreement
Ex.A2	23.12.2015	Sale deed
Ex.A3	-----	Payment receipts
Ex.A4	15.05.2018	Payment reminder letter
Ex.A5	18.11.2019	Account statement
Ex.A6	-----	Interest working sheet
Ex.A7	----	Identity proof
Ex.A8	11.10.2019	Order in CCP.No.143/2019

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	28.02.2019	Completion certificate
Ex.B2	14.11.2015	Agreement of project promotion and construction
Ex.B3	14.10.2020	Payment ledger statement
Ex.B4	-----	Payment request letters
Ex.B5	01.10.2015	Home loan sanction letter
Ex.B6	30.05.2019	Communication
Ex.B7	18.05.2019	E-mail communication
Ex.B8	31.01.2018	E-mail communication
Ex.B9	12.11.2015	Quotation issued by respondent

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**G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.**


5.3.2021
**LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY**