

BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 319 of 2019

1. S. UdayaKumari
2. V.Prasanth Durai Complainants

Vs.

M/s. Pacifica (Chennai) Infrastructure Co.Pvt.Ltd
rep by its Managing Director Rocky Israni. Respondents

(PROJECT NOT REGISTERED)

Complainant : Represented by Mr. T. Raghavan, Advocate
Respondent : Remained absent

Heard on : 13.04.2020

Delivered on : 28.08.2020

ORDER

The above complainants filed the complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together with interest, compensation and costs 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 complaint in brief as follows:**

(a) On 18.07.2013, the complainants booked a flat with the respondent in their project at Aurum Pride Tower, Padur Village, Chengelpet Taluk, Kanchipuram District and paid advance amount and further amounts towards part payment and in total Rs. 52,21,649 /-. On 10.12.2013, agreement for sale was entered between the complainants and respondent. The respondent executed sale deed on 15.07.2015 and undertook to complete the construction and handover the flat on 15.07.2015. But till date the construction of the flat is not completed and

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the respondent failed to handover possession of the flat as per the terms of the agreement. Hence the complaint.

3. In spite of service of notice, the respondent remained absent.

4. In evidence to prove his claim, the complainant filed the proof affidavit with documents.

5. On the basis of the contentions of the complainants, the following points arise for determination.

i. Whether the complainants are entitled to refund of the amount paid to the respondent with interest, compensation on the ground of failure on the part of the respondent to complete the construction and to handover possession as per the terms and conditions of the agreement?

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 complainants booked flat in the project of the respondent and paid amount in total a sum of Rs. 52,21,649/- out of the total sale consideration of the flat Rs. 53,90,219/- and on 10.12.2013, the respondent and the complainants entered into an agreement of sale and the sale deed was executed on 15.07.2015 and the respondent was supposed to complete the construction of said flat and hand over the same on 15.07.2015. As per the sale deed, but the construction is not completed and the flat was made ready even after several years, and therefore the complainants sought for the refund of the entire amount cancelling the booking of the flats. But the respondent failed to refund the amount and

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therefore the complainants are entitled refund of amount with interest compensation and cost.

(b) Ex.A-1 is the booking form with regard to unit No.D-709 in the project of the respondent namely Aurum Pride Towers. As per the Ex.A-3 are the details of payment, the complainants paid in total a sum of Rs.52,22,649.03/-. Ex.A-4 is the agreement for sale deed dated 10.12.2013 between the complainants and the respondents and Ex.A.5 is the sale deed dated on 15.07.2015 for the undivided share of land in the project. Infavour of the complainants. Ex.A7 is the letter of the respondent dated 25.09.2019 intimating the complainants their inability to complete block-D of the project and requesting to consider shifting of the booking to another block. Ex.A-8 is the email communication dated 16.11.2019 of the complainants to the respondent making requested for refund of the amount paid by them on cancellation of the booked flat.

(c) Thus through the documents and by their proof affidavit of the complainants prove that the respondent failed to complete the construction of the booked flat and to give possession of flat as promised by them. Therefore, it is held that the complainants are entitled for return of the amount with interest, compensation and cost. Thus the point is answered accordingly.

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7. Answer for Point No: (ii)

a) In view of the answer for Point No.(i), the complainants are entitled for refund of the amount paid by them i.e., a sum of Rs. 52,21,649/- with interest, compensation and cost from the respondent.

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 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% per annum for the amounts paid from the date of respective payment till repayment by the respondent. The complainant claimed compensation under the head 'income loss from property as rent'. Since the amount paid by the complainant is ordered to be repaid with interest, the claim as income loss is rejected.

c) Considering the facts and circumstances of the case, it is held that the complainants are entitled for compensation of Rs.2,00,000/- towards mental agony and inconvenience to them and a sum of Rs.20,000/- towards litigation expenses. The complainant is entitled for reliefs as detailed above. Thus, the point is answered accordingly.

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

1. The respondent shall pay the amounts at the interest rate, compensation and litigation cost as per the findings in answer for Point No.(ii), Para No.6 of this order within 30 days of issue of this order.

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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.
3. On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement memorandum of deposit of title deeds and sale deed, as the case may be at the expense of the respondent.

G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- S.UDAYAKUMARI

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1		Booking Form
Ex.A2	11. 07.2013	Unit Rate information Sheet
Ex.A3	-----	Details of Payment
Ex.A4	10.12.2013	Agreement for sale
Ex.A5	15. 07.2015	Deed of sale
Ex.A6	13.08.2014	Email communication
Ex.A7	25.09.2019	Letter form respondent
Ex.A8	16.11.2019	Email communication
Ex.A9	09.02.2019	Order

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ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

sd/-28.08.2020
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI