

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP Nos. 032 of 2019**

Sridharan Rajaraman AND Jayalakshmi Sridharan ... **COMPLAINANTS**

**Vs.**

1. M/s. Ambojini Properties Developers Pvt Ltd.,  
Rep. by its Managing Director Suresh Subramanian  
(Regn. No.TN/01/Building/0090/2018) ... **RESPONDENT**

Complainants : In person

Respondent : Rep. by Mr. A. Palaniappan, Advocate

Heard on : 16.04.2019

Delivered on : 30.04.2019

**ORDER**


The above complaint by the complainants claiming the refund of the amounts paid to the respondent towards the purchase and construction of the booked flat, interest, compensation and costs is filed u/s 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. **Averments of the complaint in brief as follows:**

(a) The complainants booked the flat with the respondent in their project namely "PEACE AND PROSPERITY" Kottivakkam Village, Tambaram Taluk, Kancheepuram District. The respondent allotted flat No.2A, in the 2<sup>nd</sup> Floor of Block – I of the project.

(b) The complainants paid Rs.5,00,000/- as booking advance on 02.12.2013. The total cost of the apartment is Rs.98,24,285. The

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respondent promised to complete the construction and hand over the flat within 24 months i.e., by the end of 2015. However, the complainants found out that the respondent had not obtained necessary approvals from the authorities at that point of time. Subsequently, the respondent informed that they obtained approvals from the authorities. Even subsequently, the project has not being started with construction. Hence, the complainants are not willing to continue the project.

(c) Hence, the complainants conveyed their intention to cancel the booking seeking return of the amount. On 04.01.2016, the complainants received a refund of Rs.1,00,000/- out of the amount paid by them.


(d) As per the provisions of the RERA Act, the respondent is liable to return the amount with interest and compensation and also costs to the complainants.

**3. Counter averments of the respondent in brief as follows:**

(a) The respondent denies all the allegations and averments except admitted and put the complainants to the strict proof of the same. The respondent is reputed developer for the past 20 years. The complainants approached the respondent for purchase of flat in their project "PEACE AND PROSPERITY". The complainants paid booking advance and booked the flat accepting the terms and conditions of the booking form. On booking of the flat by the complainants, the respondent was restricted from selling the same to any other persons.

(b) There is no delay in putting up the construction as and when the sanctioning authority gives the sanction. There were many legal proceedings initiated against the respondent. The Hon'ble High Court of Bombay passed Orders in Arbitration Petition (L) No.513 of 2016 on

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11.04.2016 and on 03.04.2017. Thereafter, the Hon'ble Madras High Court passed Order on 14.06.2017 in A. Nos.6843 to 6846 of 2016 and thereby appointed Hon'ble Mr. Justice K. Venkataraman, Retired Judge of Madras High Court as the Administrator of the project of the respondent.

(c) As per the order, the Administrator is vested with the power to issue all directions, superintendence and control of the project and the execution of the project. The said Administrator sent resignation letter on 27.10.2018 and the Hon'ble High Court of Madras has to appoint a new Administrator in his place.

(d) There is no deficiency of service. The complainants are defaulters in the eye of law. The allegations are false and imaginary created for the purpose of filing the complaints. Hence, the respondent prays for the dismissal of the above 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 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 promise made at the time of booking?

ii. Whether the complainants are entitled for all the reliefs as prayed for?

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7. Answer for Point No: (i)


(a) The complainants submitted that they paid Rs.5,00,000/- and booked a flat in the project of the respondent and the respondent promised to complete the construction and hand over the flat within two years but the project has not even started as on date and hence the complaint is to be allowed with all the reliefs prayed for.

(b) However, the learned counsel for the respondent submitted that there were many legal proceedings initiated against the respondent with regard to the project and the Hon'ble High Court of Bombay passed Orders in Arbitration Petition (L) No.513 of 2016 on 11.04.2016 and on 03.04.2017 and further Hon'ble Madras High Court also passed in Application No.6843 to 6846 of 2016 dated 14.06.2017 appointing Administrator to issue directions, superintendence and control of the project and subsequently the Arbitrator resigned and the Hon'ble High Court is to appoint the new Administrator and the complainants have to approach the Administrator for redressal of their grievance and therefore the complaint is liable to be dismissed with costs.

(c) It is not in dispute that the complainants paid Rs.5,00,000/- to the Respondent. As per the Ex.A1 booking form, the respondent allotted a flat with apartment No.2 A, in Block 'I' of the project with built up area of 1359 sq.ft. Admittedly, the complainants made payments of Rs.5,00,000/- by ExA4 receipt on 02.12.2013 and till date there was no progress of construction of the flat.

(d) The respondent produced Ex.B5 copy of the order of the Hon'ble Bombay High Court in Arbitration Petition (L) No.513 of 2016 dated 11.04.2016, Ex.B-6, copy of the order of the Arbitration Tribunal in I.A

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Nos.1, 2 & 3 of 2016 dated 03.04.2017 and Ex.B7, copy of the order of the Hon'ble Madras High Court in A.Nos.6843 to 6846 of 2016 dated 14.06.2017 appointing Administrator for the project of the respondent. Admittedly, the complainants are not parties in the above legal proceedings. In Ex.B7, copy of order it is recorded by the Hon'ble High Court that as on 20.03.2017, the construction work is yet to commence and only piling work has been completed partly and further appointed Administrator only for the execution of the project by the respondent subject to overall directions, superintendence and control of the administrator. The arbitration proceedings are between the Portfolio Management Scheme known as ASK Investment Managers Pvt Ltd., and the respondent. Therefore, the complainants have nothing to do with the legal proceedings. The contention that the complainants have to approach the Administrator is also not tenable.

(e) In the said circumstances, it is held that held that 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 start construction of the project and hand over possession of the flat as promised by them to the complainants. Thus the point is answered accordingly.

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

There is no dispute as to the amount paid by the complainants to the respondent. Admittedly, the respondent made refund of Rs.1,00,000 to the complainants on their cancellation of the flat. As per the complaint, the balance due is Rs.4,00,000/- . In view of the answer for Point No.(i), the complainants are entitled to get Rs.4,00,000/- from the respondent.

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As per Rule 18 of the TNRERA Rules, the rate of interest eligible is the highest marginal cost of lending rate of interest of SBI plus 2% per annum. Therefore, the complainants are entitled to the rate of interest of 8.70% per annum, which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum from the date of payment till repayment by the respondent. The amounts paid by the complainants were used by the respondent in their project. Considering the circumstances, it is held that the complainants are entitled to get compensation at the rate of 9% on Rs.4,00,000/- towards mental agony and inconvenience and a sum of Rs.20,000/- towards litigation expenses incurred by them. Thus the point is answered accordingly.


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

- (1) The respondent shall pay the complainants the amount at the interest rate, 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.
- (2) The charge of the aforesaid amount shall be on the flat booked by the complainants till repayment.

**CERTIFIED TO BE TRUE COPY**

  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

  
ADMINISTRATIVE OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY

  
30/11/2019