

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI  
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 328 of 2019**

1. Konnanath Narayanan  
2. Vijayan Narayanan

.... Complainants

Vs

M/s. Serene Senior Living Pvt.Ltd.  
Rep. by its MD, Akshay Seth  
(Regn No.TN/01/Building/0077/2019)

.... Respondent

Complainants : Rep.by Mr.A.Karthikeyan, Advocate.  
Respondent : Rep.by M/s.Mothilal & Goda, Advocates

Heard on : 29.10.2021  
Delivered on : 16.11.2021

**ORDER**

The above complaint by the complainants claiming compensation for the delay in handing over of the flat booked by them with the respondent and return of amount paid for car park space 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) On 01.11.2012, the complainants booked an apartment with the respondent in their project namely "Serene Rose" at Kadampadi, Sulur, Coimbatore and paid booking advance amount and further amounts. The

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total sale consideration of the flat is Rs.29,39,946/-. The UDS of land was registered in 2015, in favor of the complainants.

(b) On 03.11.2014, construction agreement was entered between the complainants and the respondent. The respondent undertook to handover possession of the flat by 31.03.2016 with a grace period of 90 days or the latest by 30.06.2016.

(c) The learned counsel for the complainants submits that the respondent adopted lethargic and pedantic approach towards construction of the flat and there was slow progress. After much delay, the flat was handed over possession on 25.10.2018 without proper electricity connection and completion certificate. According to the respondent's letter dated 25.11.2013, it was mentioned that the basic cost, inclusive of corpus fund, car park, refundable deposit and also statutory levies such as plan approval charges and other charges. However, by a letter in October 2017 the respondent claimed an additional amount of Rs.2,00,000/- towards the allotted car park. Due to delay in delivery and unfair trade practice, the complainants have faced several hardship and suffered mental agony. Hence, the complainants are entitled for compensation for the delay, mental agony and cost.

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

(a) Except admitted, all the averments and contentions are denied. It is true that on 25.11.2013, allotment letter was issued for flat No.A305 in the project of the respondent to the first complainant for a total sale consideration of 27,17,650/- . The amount was payable towards basic cost, inclusive of corpus fund, car park, refundable deposit and also statutory

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levies such as plan approval charges, land tax, TNEB charges and other charges. The above cost excluded cost of registration, service tax and the cost which may vary in case the land area differs or should the floor plan be modified.

(b) On 03.11.2014, the complainants and the respondent entered into a construction agreement wherein the construction value of the property was arrived at Rs.25,47,298/-. The said amount was inclusive of cost of construction, corpus fund, refundable deposit and statutory levies. No allotment of car park was made to the complainants as per the construction agreement. The difference in amount in the allotment letter and the construction agreement was due to the fact that the complainants had not opted for a car park. The amount towards cost of car park was thus deducted and the final consideration was mentioned in the construction agreement. Hence the respondent prays for 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. Documents were marked only on the side of the complainants and no documents marked on the side of the respondent.

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

- i. Whether the complainants are entitled for the delay compensation, return of amount paid for car park space and compensation for mental agony and litigation cost from the respondent?

ii. What are the reliefs the complainants are entitled to?

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

(a) In the course of the proceedings, a memo was filed by the first complainant stating that the memo is filed on behalf of the second complainant also and the offer of the respondent to pay a sum of Rs.24,000/- as delay compensation was accepted by the complainants and the claim towards delay compensation is given up as the amount has already been paid by the respondent. Therefore, the question of considering the delay compensation does not arise as the complainants had given up their right to claim the delay compensation by the memo which was recorded on 11.03.2021

(b) The learned counsel for the respondent claimed that the allotment letter dated 25.11.2013 was given to the complainants which included the cost of the car park, but in the construction agreement entered between the complainants and the respondent on 03.11.2014, the construction value of the property was arrived at Rs.25,47,298/- and the difference was due to the non allotment of the car park as per the construction agreement, since the complainants had not opted for a car park and sought a reduction of the proportionate amount from the total cost.

(c) In Ex-A1, the offer letter issued by the respondent, admittedly, it is mentioned as the basic cost inclusive of corpus fund, car park and refundable deposit is Rs.25,33,200/-. The offer letter was accepted and acted upon and the payments were made by the complainants. The specific averment of the complainants that they paid Rs.29,39,946/- towards total cost of the flat is also not disputed by the respondent. In Ex.A2, construction agreement also,

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the construction value of the property under schedule 'C' of the document is specifically mentioned as Rs.25,47,298/-.

(d) It is not open for the respondent to unilaterally alter the conditions of accepted offer by the complainants and demand charges for car park separately and in addition to the amounts paid by the complainants. In the above circumstances it is held that the complainants are entitled for refund of the amount of Rs.2,00,000/- charged for the car park by the respondent and other reliefs. Thus the point is answered accordingly.

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

(a) In view of the answer for Point No.(i), the complainants are entitled for refund of Rs.2,00,000/- paid towards car park from the respondent.

b) Considering the facts and circumstances of the case, a sum of Rs.25,000/- is fixed towards mental agony and Rs. 20,000/- is fixed towards litigation expenses payable by the respondent.

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

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

The respondent shall pay the complainant the amounts of compensation and cost as per the findings in Answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

**Sd/- 16.11.2021  
G. SARAVANAN  
ADJUDICATING OFFICER**

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**List of witness**

CW-1 --- Konnanath Narayanan  
RW-1 ... Girish Bhandari

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

| Ex.Nos | Date       | Documents Name         |
|--------|------------|------------------------|
| Ex.A1  | 25.11.2013 | Offer letter           |
| Ex.A2  | 03.11.2014 | Construction agreement |
| Ex.A3  | 10.10.2017 | Email communication    |
| Ex.A4  | 17.10.2018 | Email communication    |
| Ex.A5  | ----       | E.B Bill               |
| Ex.A6  | 24.03.2018 | Final payment receipt  |

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

NIL

Sd/- 16.11.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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LAW OFFICER  
16.11.2021  
TN REAL ESTATE REGULATORY AUTHORITY