

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

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

CCP No. 336 of 2019

1. T. Saravanan,
 2. K. Lakshmanan,
 3. S. Silvanus Fernando &
 4. S. Antoniet Rosario Beula
- Rep by its POA M. Niranjanan

.....COMPLAINANTS

Vs.

M/s. Propaids Builders and Developers Pvt.Ltd.,
Rep by 1. Sebastian B.M.Gomes, the director
and 2. Christopher Wilson Fernandes, Power agent and
the managing director

..... RESPONDENT

Complainants : Rep. by. Niranjanan, POA
Respondent : In person

Heard on : 29.12.2020
Delivered on : 07.01.2021

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of an apartment with interest, compensation and costs 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 "PROPAIDS BLISS" at Thodukadu Village, Thiruvallur Taluk, Thiruvallur District and paid Rs.20,00,000/- towards sale consideration to the respondent.

(b) The respondent promised to complete the construction and deliver apartment on or before 20.10.2015. But the respondent stopped

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construction work in 2015 itself. Hence the complainants approached TNRERA by filing complaint in C.No.325/2019 seeking registration of the project with TNRERA. The authority also passed an order dated 19.08.2019 directing the respondent to refund the money within 30 days with compensation as per the agreement to the complainants and also to approach this Forum in case of non-compliance.

(c) Since the respondent did not return the money received by them, the complainants are entitled for the refund of the amount from the respondent with interest, compensation and cost.

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

(a) All the allegations, except admitted, are denied as false and baseless. The complainants are put to strict proof of the allegations. The complaint is not maintainable under law or on facts.

(b) It is admitted that the respondent company and complainants entered into a MoU on 20.10.2014. The complainants have actually made an investment of Rs.20,00,000/- with the intension of earning a return of Rs.30,000/- per month in the form of advance rental compensation and for a return at the rate of 1.5% per month. The respondent company has paid so far a total sum of Rs.3,60,000/- to the complainants for the period between November 2014 and October 2015.

(c) In addition, the respondent issued four cheques for the period from November 2015 to August 2017 and each cheque to the value of Rs.2,25,000/-. Some of the cheques got returned as unpaid. The respondent tried to settle the matter amicably. Further the complainants initiated criminal cases under the Negotiable Instrument Act. While those

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cases are pending, the complainants filed the complaint before the TNRERA and they suppressed pending criminal cases.

(d) Apart from the above, the respondent also offered the complainants an equivalent apartment in another block of the project. But the complainants have not heeded and rushed to the multiplication of legal recourses. There is no violation on the part of the respondent under the purview of the provisions of the TNRERA Act. Hence the complaint is liable to be dismissed.

4. An attempt to settle the matter amicably has failed.

5. On the side of the complainants, evidence on proof affidavit with documents was filed. No evidence produced on the side of the respondent.

6. On the basis of the rival contentions of the parties, the following points arise for determination:-

- i. Whether the complainants are entitled for refund of the amounts paid to the respondent together with interest, compensation and cost on the ground of failure to deliver the constructed apartment as per the terms of the agreement?
- ii. What are the reliefs, the complainants are entitled for?

7. Answer for Point No. (i)

(a) The power of attorney of the complainants submitted that the complainants jointly booked an apartment in the project of the respondent and entered into an agreement to sell UDS and for construction of the apartment on 20.10.2014 and paid Rs.20,00,000/- and the respondent undertook to complete and handover the constructed apartment on or before 20.10.2015 and the respondent failed to deliver the apartment as

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per the terms of the agreement and therefore the complainants are entitled for refund of the amount with other reliefs.

(b) The respondent admitted that they entered into an agreement for delivery of the apartment on 20.10.2014 and received Rs.20,00,000/- towards the sale of UDS land and construction of the apartment and also they undertook to hand over possession of the apartment by 20.10.2015, however, submitted that they also paid a rental compensation at Rs.30,000 per month from November 2014 to October 2015 and in total a sum of Rs.3,60,000/- to the complainants and the respondent tried to settle the issue amicably, but the complainants filed the complaint before the authority and this Forum.

(c) There is no dispute that the complainants paid Rs.20,00,000/- to the respondent under the agreement for sale and construction of the apartment on 20.10.2014 and the respondent undertook to complete the construction and deliver the apartment by 20.10.2015. Admittedly, the respondent were not able to complete the construction and hand over the possession of the apartment as per the terms and conditions of the agreement. However, the respondent contented that they have paid to the complainants as compensation Rs.30, 000/- per month from November 2014 to October 2015 in total a sum of Rs.3,60,000/- to the complainants and same is to be taken into consideration while awarding the compensation. The complainants also admitted the receipt of rental compensation of Rs.3,60,000/- in total at the rate of Rs.30, 000/- per month from November 2014 to October 2015.

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(d) In the above circumstances, it is held that the complainants are entitled for refund of the amount paid to the respondent together with interest, compensation and cost. 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 refund of Rs.20,00,000/- paid to the respondent towards sale and construction of the apartment.

(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 is 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 to the respondent. Since the respondent paid rental compensation from November 2014 to October 2015, the complainants are entitled for interest on the amount paid by them only from November 2015 till the date of repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.50,000/- 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.

In the result, the respondents 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.(ii), Para No.8 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 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--- M. Niranjanan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	20.10.2014	Agreement of sale and construction
Ex.A2	19.08.2019	Order in C.No.325/2019
Ex.A3	16.10.2014	Proofs of payment

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY