

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP No. 341 of 2019**

R.Venkataraman

....COMPLAINANT

**Vs.**

The Managing Director,  
Indian Railway Welfare Organization,  
**(TN/02/Building/160/2018)**

....RESPONDENT

Complainant : Rep. by Mr. R. Pandian, Advocate.

Respondent : Rep. by Mr. G. Prakash, Advocate.

**Heard on** : 23.02.2021  
**Delivered on** : 11.03.2021

**ORDER**

The above complaint by the complainant seeking compensation for delay in delivery of the dwelling unit and other 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 complainant, in brief, as follows:**

(a) The complainant is a primary member of the respondent organization. During May 2006, the respondent launched the scheme for construction of dwelling units to its member. The complainant applied for the Type-B dwelling unit with the respondent. The total sale consideration was fixed at Rs.15,60,000/- and revised later to Rs.27,85,000/-.

(b) As per the brochure of the respondent, the respondent promised to provide open car parking but later changed to two wheeler parking. The respondent also assured common facilities such as open spaces, children play area, shops and a community centre within the campus.

(c) The respondent has given possession of the dwelling unit during January 2019 forcefully with instruction to get the dwelling units registered within 3

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months of possession. The respondent has not made any effort to get the registration done. The respondent has also not provided the dwelling unit with car parking and also floated another scheme in the space originally meant for open parking and children play area.

(d) The complainant is entitled for compensation for failure to provide open car parking, for the delay in delivery of the unit and completion of the project, failure to register the property after handing over possession of the unit and not providing common facilities and also compensation for mental agony.

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

(a) Except admitted, all the averments are denied. The complaint is not maintainable and is liable to be dismissed. It is true that the complainant is a primary member of the respondent and during May 2006, the respondent launched the project for construction of four types of dwelling units and the complainant was allotted the Type-B dwelling unit on application.

(b) The delay occurred on account of approval from local bodies, which is beyond the control of the respondent. The respondent assures to provide the facilities of community centre within a reasonable time limit and to hand over the same to the association of the residents. The respondent organization promoted the scheme on No-Profit-No-Loss basis.

(c) The reason for the delay in obtaining the approvals was briefed and the option was given to the complainant for withdrawal from the scheme with refund of the amount with interest. The cost of the dwelling unit was mentioned tentatively and subsequently the cost of unit was revised. On review of expenditures including common services, the respondent has not charged any additional amount from the complainant for car parking space. The land proposed for the scheme was not meant for open car parking space

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as alleged by the complainant. The complainant has been advised all the facts and was given an option either to continue or to withdraw from the scheme on account of increase in cost. The respondent never forced any allottee to take possession of the dwelling unit.

(d) The complainant has no right to demand for open car parking space, which was optional and was promised allotment if the land was available. As per the sanctioned plan, the open car parking slot could not be provided for want of sufficient space and only two wheeler parking has been provided. The complainant also submitted acceptance and undertaking to abide by the rules and conditions of the scheme. Except the facility of community centre, all the facilities have been provided. After possession of the unit, the complainant has not taken any steps for registration of the property in his favor. The complainant is not entitled for any reliefs. The complaint is liable to be dismissed 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 complainant is entitled for compensation on the ground of failure to provide car parking, delay in construction and delivery of the dwelling unit and failure of registration of the property and to provide common facilities and for mental agony?
- (ii) What are the reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant filed written notes of argument and submitted that the respondent is amenable to the rules and regulations under the RERA Act and is liable for the delay in completion and handing over of the dwelling unit in the project and the complainant is entitled for compensation for failure to provide open car parking and also compensation for mental agony suffered by the complainant.

(b) The learned counsel for the respondent also filed written notes of argument and contended that the respondent promoted housing welfare scheme under No-Profit-No-Loss basis and the authorities took more time for obtaining necessary sanction plans and there were litigation by local residents association which are all the cause for delay and the facts are well within the knowledge of the complainant and the respondent has taken all the possible efforts and finally the possession of the dwelling unit was handed over to the complainant and the children park developed by the Chennai Corporation is in use and the construction of the community centre is nearing completion.

(c) It is not in dispute that the housing scheme was launched by the respondent organization during May 2006 as a welfare scheme exclusively for its members and as one of the member, the complainant applied and was allotted type-B dwelling unit and finally, was given possession of the dwelling unit during January 2019. Under the first proviso of Section 18 of the RERA Act, an allottee is entitled for compensation for every month of delay till handing over possession of the flat/dwelling unit. To apply the proviso, the essential ingredient under Section 18 (i) (a) of the Act is that the promoter ought to have failed or was unable to give possession of the apartment in accordance with the terms of the agreement, or as the case may be, duly completed by the date specified therein.

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(d) Admittedly, no construction agreement was entered between the complainant and the respondent. Under Ex.A1, the brochure for the scheme issued by the respondent, also marked as Ex.B2 on the side of the respondent, no specific date was given for completion of construction and handing over of the dwelling unit to the applicant. Apart from the same, clause 13 of the brochure which deals with the delay in construction, lays down that if construction of dwelling unit was delayed for any reasons whatsoever, no interest or compensation is payable to the allottee. Accepting the terms and conditions in Ex.A1, the complainant applied for allotment of the dwelling unit. Therefore, the claim of compensation for the delay under Section 18 before this Forum is not sustainable.

(e) So far as the compensation for the failure of the respondent to provide open car parking is concerned, it is not the case of the complainant, that any amount was collected from the complainant for provision of car parking. Clause 5.6(v) of Ex.A1 reads that for optional reserved open car parking outside the plot, the cost will be extra and would be considered only if land is available for the same. The complainant has also not opted for compulsory car parking area as provided under Ex.A1. Therefore, the claim of compensation for failure to provide car parking is also not sustainable.

(f) The complainant claimed compensation for failure to get the property registered as per law even after handing over possession and for not providing common facilities such as community hall, children play area etc.,. In Ex.A6, the possession letter by the respondent, there is a condition to get the dwelling unit registered within 3 months of possession. In their letter dated 25.04.2019, the respondent advised the complainant to complete the registration by 31.07.2019.

(g) The complainant stated that despite repeated persuasion, the respondent has not made any effort to get the registration done. No

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documents filed for making any request to respondent calling for the registration of sale deed, subsequent to handing over of the dwelling unit on 22.01.2019. It is the duty of the complainant to get the draft sale deed and required stamp papers ready to get the registration process done. Therefore, the claim of compensation on the above ground is also not sustainable.

(h) In view of the above facts and circumstances, it is held that the complainant cannot be said to have suffered any mental agony and is entitled for compensation for mental agony. The complainant is not entitled for any compensation. Thus, the point is answered accordingly.

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

(a) In view of the answer for the point No (i), the complainant is not entitled for any reliefs and the complaint deserves to be dismissed. Thus, the point is answered accordingly.

**In the result, the complaint is dismissed. No cost.**

**G. SARAVANAN  
ADJUDICATING OFFICER**

**LIST OF WITNESSES**

CW-1--- R. Venkataraman

RW-1--- C. Ramayan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	May 2006	Brochure issued by respondent
Ex.A2	10.07.2006	Application for booking by complainant
Ex.A3	-----	Letters by respondent
Ex.A4	-----	Representations from complainant
Ex.A5	30.07.2016	Payment details
Ex.A6	17.01.2019	Possession letter issued by respondent

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.B1	10.09.2003	Advertisement for project
Ex.B2	May 2006	Group housing scheme brochure
Ex.B3	-----	Location plan with application form
Ex.B4	29.09.2006	Booking letter by respondent
Ex.B5	-----	Acceptance undertaking by complainant
Ex.B6	-----	Letters to complainant from respondent
Ex.B7	-----	Letters from various departments
Ex.B8	-----	Letters to complainant from respondent
Ex.B9	-----	Brochure with specifications of project
Ex.B10	----	Letters between respondent and complainant
Ex.B11	-----	Online application for approval
Ex.B12	-----	Demand notices by Chennai Corporation
Ex.B13	-----	Building permission, plan approval and demand notices
Ex.B14	17/22.01.2019	Possession letter by respondent
Ex.B15	-----	Letters by respondent and departments

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

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