

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP No. 348 of 2019**

1. E. Narayanan,  
2. Gajalakshmi Narayanan .....COMPLAINANTS

**Vs.**

M/s. VGN Property Developers Pvt Ltd.,  
Rep. by its Chairman, V.N.Devadoss,  
and its MD, V. Pratish Devadoss  
(Not Registered with TNRERA) ..... RESPONDENT

Complainants : Rep. by Mr. R.Narendran, Advocate.

Respondent : Rep. by Mr. K.Harishankar, Advocate.

Heard on : 04.02.2021  
Delivered on : 25.02.2021

**ORDER**

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of an apartment with interest, compensation and 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 complainants, in brief, as follows:**

(a) The complainants booked a flat with the respondent in their project namely " VGN TEMPLE TOWN" at Thiruverkadu, Thiruvallur District and paid advance amount and further amount as agreed by them. The total sale consideration of the flat is Rs.42,13,583/-.

(b) On 16.07.2013, the complainants and the respondent entered into a construction agreement and the respondent undertook to complete the

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construction and to deliver the flat within a period of 24 months from the date of agreement with an additional grace period of 6 months. The complainants availed housing loan from M/s. DHFL finance company and are paying EMI for the housing loan. The complainants paid in total a sum of Rs.33,15,289/- to the respondent.

(c) The respondent has not completed construction of the flat within the time limit prescribed under the agreement. When the complainants questioned the respondent, they assured to repay the amount and also obtained a request for refund from the complainants. Subsequently, the respondent also sold the property to a third party, but not refunded the amount to the complainants. The complainants are entitled for refund of amount with interest, compensation and costs.

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

(a) Except admitted, all the allegations of the complainants are denied as false and baseless. It is admitted that the complainants entered into an agreement for construction and development of a flat with the respondent on 16.07.2013 and the flat was allotted to them by the respondent. The complainants were not co-operative to the sale and willfully defaulted in making payments. Therefore, the respondent issued cancellation letter. However, the respondent refrained from cancelling the allotment in good faith of timely payments. There is a clause in the agreement for payments default by the complainants.

(b) The complainants submitted cancellation request on 30.01.2019 to cancel the booked flat. Under the agreement, the respondent has full liberty to deal with a cancelled flat and convey the same to a third party. The

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complainants have not made payments as per the terms of the agreement and cannot claim for handing over the flat.

(c) The complainants availed loan from DHFL and along with the respondent entered into a tripartite agreement dated 06.01.2015. Under the agreement, the respondent will have to first refund the loan availed by the complainants to DHFL. The respondent is entitled to deduct Rs.1,50,000/- as cancellation charges. The complainants are not entitled for all the reliefs sought by them. Therefore, 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 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 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 to?

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

(a) The learned counsel for the complainants submitted that the complainants booked a flat with the respondent in their project on 23.05.2013 for the total sale consideration of Rs.42,13,583/- and entered into an agreement for development and construction on 16.07.2013 and paid a sum of Rs.33,15,289/- out of which a sum of Rs.14,13,981/- was availed through home loan and the respondent promised to hand over the flat

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within a 24 months from the date of the agreement with a grace period of 6 months and the time limit expired on or before 15.12.2015 and in spite of payment of 90% of consideration, the construction of the flat was not completed and the possession was not hand over and the complainants were put to hardship and mental agony and seeks for refund of the amount paid to the respondent with other reliefs.

(b) However, the learned counsel for the respondent contended that the complainants booked a flat after verifying and satisfied with the details of the project and were not co-operative and failed to make payment as per the payment schedule agreed between the parties and since payment were not made, the respondent issued demand letter dated 23.05.2013 and 07.09.2013 and the respondent was constrained to cancel the booking of the flat of the complainants and as per the clause in the agreement, the respondent is entitled to deduct a sum of Rs.1,50,000/- as cancellation fee and in view of the tripartite agreement entered with the DHFL, the finance company, the amounts received by way of loan are to be reimbursed to the finance company along with the foreclosure charges and other charges, if any and the complainants will be entitled for the balance amount after liquidated damages to the respondent and are not entitled for any compensation for mental agony and other reliefs.

(c) Section 18 of the RERA Act gives an option to buyers to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the flat on the date specified in the agreement. It is not disputed that as per Ex.A3 agreement for development and construction dated 16.07.2013, which is also marked as Ex.B3 on the side of the respondent, the respondent

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undertook to complete the construction and to hand over the possession of the booked flat within 24 months with an additional grace period of 6 months from the date of the agreement. As per the terms of the agreement, the due date for delivery was over by 15.01.2016. Admittedly, till the Ex.A8 cancellation request dated 30.01.2019 (also marked as B8 by the respondent), the respondent has not offered delivery of possession of the completed flat to the complainants.

(d) The respondent relied on Ex.B3, the demand notice dated 23.05.2013 and also Ex.B5, the demand notice dated 07.09.2013 and contended that the amount due payable by the complainants as on the date of the above demand notices was a sum of Rs.21,06,841.64/- and they failed to make milestone payment on time thereby violating the terms of the agreement. It is relevant to note that Ex.A1, the allotment letter is dated 25.06.2013 and the Ex.B3, the demand letter was issued on 23.05.2013 even prior to the allotment of the flat by way of Ex.A1, the allotment letter. Both Ex.B1 and Ex.B5, the demand notices reveal that the delayed payment attracts interest till payment. Ex.B5, the demand letter was raised by the respondent after issue of Ex.B4, the cancellation letter and subsequent payments were received and receipts were issued by the respondent till 26.03.2015 as evidenced by Ex.A6 series of payment receipts. Ex.B4, the cancellation letter issued by the respondent was not acted upon in view of the subsequent receipt of payments by the respondent from the complainants. Therefore, on the strength of Ex.B4, the cancellation letter, the respondent cannot claim cancellation charges from the complainants.

(e) Admittedly, the complainants paid Rs.33,15,281/- as on 25.03.2015 against the sale consideration of Rs.42,13,583/-. It is alleged that the

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complainants did not make further payments till January 2019. It is not the case of the respondent that any further demand notices were sent to the complainants on completion of further stage of construction of the project or the flat was fully constructed and was offered for delivery to the complainants till 30.01.2019. It is the evidence of the complainants that when the flat was not completed and possession was not handed over, they questioned the respondent regarding the delay and the respondent assured to repay the amount paid by them and at the request of the respondent to complete with the formalities and procedures of the finance company, they signed in the cancellation request which is marked as Ex.A8 and also as Ex.B8 on the side of the respondent.

(f) The circumstances clearly proves that since the respondent failed and was not able to hand over the possession of the booked flat within the dates specified in the construction agreement, the complainants chose to seek refund of amount from the respondent. Therefore, the respondent is not entitled to deduct any amount as cancellation charges and under Section 18 of the Act, the complainants are entitled for the refund of the entire amount paid to the respondent with interest, compensation and cost.

(g) Admittedly, the flat has been sold to a third party. The learned counsel for the respondent contended that the flat was allotted to a third party after two and half month from the date of cancellation of the flat, but without return of the amount paid by the complainants to them. The amount for which the flat was sold to the third party is not disclosed by the respondent. However, it is not in dispute that the complainants availed home loan from DHFL, finance company towards part of the sale consideration paid to the respondent on execution of a tripartite agreement which is marked as Ex.B6.

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(h) A perusal of Ex.B6 reveals that under clause 15, the respondent has given their consent to DHFL to have a lien on the flat booked by the complainants on granting loan. Under clause 10 of the said document, a prior "No Objection Certificate" is necessary for cancellation of the allotment of the complainants. It is not the case of the respondent that the above terms of the agreement were complied with. It shows that there was collusion between the respondent and the finance company. However, it is made clear that out of the amount payable under this order by the respondent to the complainants, the amounts paid by the finance company on home loan on account of the complainants are to be repaid first to the finance company after deduction of the amounts paid by the complainants by way of EMI as per Ex.A9, the loan statement and as per the terms of the agreement. Thus, the point is answered accordingly.

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

(a) It is not in dispute that the complainants paid Rs.33,15,281/- towards the sale consideration including the amount availed as loan from finance institution. The complainants are entitled for the refund of the above amount with interest, compensation and cost.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. 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% p.a for the entire amount paid from the dates of respective payments till repayment by the respondent.

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(c) Considering the facts and circumstances of the case, a sum of Rs.2,00,000/- towards compensation for mental agony, loss and hardship caused to the complainants and Rs.25,000/- 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 respondent 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.
2. 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--- E. Narayanan  
RW-1--- A. Rangappan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	23.05.2013	Allotment letter
Ex.A2	23.05.2013	Demand letter by the respondent
Ex.A3	16.07.2013	Construction agreement
Ex.A4	03.09.2013	Cancellation letter by the respondent
Ex.A5	07.09.2013	Demand letter by the respondent
Ex.A6	----	Payment receipts
Ex.A7	22.10.2016	Demand letter
Ex.A8	30.01.2019	Cancellation request form
Ex.A9	11.07.2019	Loan statement

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	16.07.2013	Construction agreement
Ex.B2	16.07.2013	Agreement for sale
Ex.B3	23.05.2013	Demand letter by the respondent
Ex.B4	03.09.2013	Cancellation letter by the respondent
Ex.B5	07.09.2013	Demand letter by the respondent
Ex.B6	06.01.2015	Tripartite agreement
Ex.B7	05.02.2015	Letter by finance company
Ex.B8	30.01.2019	Cancellation request form
Ex.B9	24.09.2019	Reply notice by the respondent
Ex.B10	----	Payment details
Ex.B11	----	Booking application form

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G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

20.5.2021  
LAW OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY

20.5.2021