

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 0046 of 2019**

Manu Karan AND Archana Ram ... **COMPLAINANTS**

Vs.

- (1) M/s. Devinarayan Housing and Property
Developments Pvt Ltd.,
(2) N. Nandakumar, Managing Director,
(3) N. Srinivasan, Land Owner
(UNREGISTERED)

... **RESPONDENTS**

Complainants : Rep. by M/s. V Legal Empire, Advocates
Respondents : Rep. by Mr. N.V.V. Krishna, Advocate

Heard on : 09.08.2019

Delivered on : 27.08.2019


ORDER

The above complaint by the complainants seeking compensation and legal charges for the delay in handing over of the flat booked by them with the respondents is filed u/s 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Averments of the complaints in brief as follows:

- (a) The 1st respondent company is the developer of the project and the second respondent is its managing director and the 3rd respondent is the land owner of the project land. The complainants booked a flat with the 1st respondent in their project namely "DEVINARAYAN's SAISAGAR" and also paid booking advance and further amounts. The respondents allotted apartment 'C' in the project. Out of the total cost of the flat of Rs.3,11,85,000/-, a sum of Rs.3,06,00,000 was paid by the complainants.

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(b) On 20.07.2017, sale agreement for the undivided share of land and agreement for construction were entered between the complainants and the respondents. The complainants availed housing loan from bank for the purpose.


(c) As per the agreements, the 1st respondent agreed to hand over possession of the flat on or before 30.08.2017. Time was essence of the contract. There were several works remained uncompleted and unattended by the 1st respondent. There was an unexplained delay of almost one year (i.e., May 2018) in handing over possession of the flat.

(d) The 1st respondent obtained a completion certificate from CMDA on 19.02.2018. Certain amenities were not provided as promised by the 1st respondent. The 1st respondent failed to come forward to execute the sale deed. However, the 1st respondent demanded Rs.9,50,000/- for completing the registration in favour of the complainants. The delay in execution of the sale deed is against the terms and conditions of the agreement and caused huge financial loss to the complainants. The respondents are bound to compensate the complainants for the loss. Hence the complaint.

3. Counter averments of the 1st respondent, adopted for the other respondents, in brief as follows:

(a) The claim is not maintainable before this Forum on the ground that this project does not require registration with TNRERA. The maximum units in the project are only four units. The completion certificate was applied well before the commencement of the RERA Act. The complainants have no locus standi to file this complaint. The complainants have not paid the entire consideration to the respondents.

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(b) During July 2017, the complainants requested for the keys of the apartment to do interior decoration. When the keys given to them, they illegally occupied and are in possession of the apartment. The building was completed in all aspects pending receipt of completion certificate from CMDA. The completion certificate was required for getting EB service connection, metro water connection and estimates other works. There was no delay on the side of the respondents. The completion certificate was received in February 2018.


(c) It is admitted that the complainants paid Rs.3,06,00,000/- out of the total consideration of Rs.3,18,39,756/- excluding document registration charges but including amenities costs amounting to Rs.6,54,756/-. A sum of Rs.9,21,356/- is due from the Complainants excluding the costs of the registration of the documents and TDS. All the other units were completed and handed over to the allottees and the same were occupied by them.

(d) The respondents were not permitted to carry left over the works, which were carried out in other apartments prior to their occupation. The delay is owing to the act of the complainants. Gym room was promised subject to approval by CMDA but the approval was not granted and the gym rooms could not be constructed by the respondents. However, the respondents provided amenities room to the satisfaction of the co-owners. The complaint is liable to be dismissed with costs.

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

5. Both the parties have filed their respective evidence on affidavit with documents.

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

- i. Whether the complaint is maintainable?
- ii. Whether there was delay in completing and handing over possession of the flat to the complainants by the respondents?
- iii. Whether the complainants are entitled for compensation and legal charges as prayed for?

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

a) The learned counsel for the respondents submitted that this Forum has no jurisdiction to adjudicate the dispute, since the entire project has only four dwelling units, which does not require registration as per section 3(2) (a) of the RERA Act and the application for completion certificate was submitted by the respondents as early as 31.05.2017, prior to the enactment of the RERA Act, which came into force only on 22.06.2017 and the Authority is entitled to regulate only the real estate projects registered under the Act.

b) However, the learned counsel for the complainants submitted that the disputed project comes within the purview of the Act and a plain reading of section 3(2)(a) of the RERA Act makes it clear that the project has to mandatorily registered under the Act and the total extent of land to be constructed in the project of the respondents is 5935 square feet., which is above 500 square meters and the exemption from registration will apply only if the project was given completion certificate prior to the commencement of the Act and the completion certificate was obtained by the 1st respondent only on 19.02.2018 and the 1st respondent ought to have applied for registration before the Authority.

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c) As per section 3(2)(a), registration is not required for the projects, which do not exceed 500 square meters or the number of apartments proposed to be developed does not exceed 8 inclusive of all phases. Admittedly, the project has only 4 dwelling units and the land developed under the project is to an extent of 5935 square feet i.e., 551.38 square meters. Since the extent of land exceeds 500 square meters, the exemption under the section 3(2)(a) is not applicable to the project in dispute.

d) The first proviso of sub section 1 of section 3 of the RERA Act requires the promoter to make an application to the Authority for registration of the project that are on-going on the commencement of the Act and for which completion certificate has not been issued. The act came into force on 25.03.2016. Section 3 came into force on 01.05.2017. According to the respondents, the application for completion certificate was submitted on 31.05.2019, i.e., after 01.05.2017 and the completion certificate was issued on 19.02.2018. As on 01.05.2017, the project was an on-going project, which required registration with the Authority under the Act.

e) Section 3 of the RERA Act specifies real estate project which requires registration. The Authority gets jurisdiction over all the real estate projects, which are eligible for registration irrespective of the fact as to whether they are registered or not. Therefore, the authority gets jurisdiction for all the real estate projects, which are eligible for registration under section 3 of the Act. In the said circumstances, it is held that the complaint is well maintainable before the Forum. This is the point is answered accordingly.

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8. Answer for Point No.(ii)

a) It is contended by the respondents that the interior and other sanitary works of the respective apartment could only be done after completion of inspection and issuance of completion certificate and the complainants requested the respondents to hand over the keys of the apartment in order to facilitate them to organize interior works and the keys were handed over to the complainants and they illegally occupied the apartment and door was closed and the officials could not inspect the premises but all other units were completed and handed over to the allottees and occupied by them.

b) As per Ex.A-3 construction agreement, the 1st respondent undertook to hand over possession of the apartment to the complainants by 30.08.2017. Ex.A-6 the completion certificate was issued only on 19.02.2018 by the CMDA. The respondents have not produced any documents to prove that the delivery of the other units completed and hand over to the other allottees by the due date promised by them.

c) In the proof affidavit, RW-1 admitted that at the request of the complainants, they were provided rental accommodation. No evidence was produced by the respondents regarding the period for which rental apartment was provided by them to the complainants and the reason for providing such accommodation. ExA11, tax invoices produced by the complainants prove that the complainants were provided rental apartment by the respondents at their cost from 01.01.2018 till 04.04.2018. It is obvious that the complainants were provided rental apartment due to the delay of delivery of the completed apartments by the respondents.

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d) It is admitted case of the respondents that the complainants paid Rs.3,06,00,000/- (Rupees three core and sixty lakhs only) out of the total sale consideration of Rs.3,18,39,756/- excluding UDS registration and registration of construction agreement i.e., almost 96% of the total sale consideration. In his proof affidavit, the first complainant specifically stated that there was unexplained delay of one year i.e., till May 2018 in handing over possession of the apartment. Even though the respondents alleged that the apartment was prematurely occupied by the complainants, the date on which, such occupation was made by the complainants was not specifically mentioned in the affidavit of the RW-1.

e) The evidence on record clearly establish the case of the complainants that there was delay of one year in handing over possession of the apartment by the respondents. Therefore, it is held that there was delay of one year from 01.09.2017 till May 2018 in completing and handing over the possession of the apartment by the respondents. Thus, the point is answered accordingly.

9. Answer for Point No.(iii)

a) As per terms of the construction agreement, under clause 15, the respondents 1 & 2 agreed to pay to the complainants interest at the rate of 12% per annum for the period of delay. In view of the answer for point No.(ii), the complainants are entitled for compensation as provided under the construction agreement.

b) The complainants worked interest calculation as provided under the agreement for the amounts paid by them and marked as Ex.A9 interest calculation sheet. Ex.A9 was not disputed by the respondents. Perusal of Ex-A9 shows that for the amounts paid prior to 30.08.2017, the interest is calculated only from 01.09.2017 till 30.05.2018. So far as the amounts

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paid to the subsequent to 30.08.2017, the interest is claimed only for six months. Hence the claim of Rs.25,35,000 as compensation is sustainable.

c) Since admittedly the respondents paid for rental apartments from 01.01.2018 to 04.04.2018, the amounts paid for the said apartment for the occupation of the complainants is liable to be deducted from the compensation claimed. As per Ex.A-11, Rs.93,000 for January 2018 and Rs.84,000/- for February 2018 and Rs.12,000/- for April 2018 during the period from 01.04.2018 to 04.04.2018 was paid by the respondents. Even though the complainants have not filed receipt for the month of March 2018, it is admitted by the complainants that the respondents paid for the apartment for their stay 04.04.2018 including March 2018. Hence, a sum of Rs.2,82,000/- is liable to be deducted from the compensation to be awarded to the complainants.

d) According to the respondents, a sum of Rs.9,21,356/- is due from the complainants and the amount due is excluding stamp duty, registration charges and TDS. However, the complainants contended that only an amount of Rs.5,85,000/- is due from them to the respondents and the claims of charges towards electricity connections were not part of the agreements. But as per clause-5 of the Ex.A-3 construction agreement, the complainants are liable to pay for common amenities, meter-rents, electricity, water and other expenses connected with the amenities of the building. Further, in Ex.B-5 legal notice sent by the complainants to the respondents, the complainants admitted that the total sale consideration is Rs.3,30,00,000/- and the balance is Rs.24,00,000/-. Therefore, the contention of the respondents that a sum of Rs.9,21,356/- is due excluding the stamp duty, registration charges and TDS is found correct.

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e) The said amount of Rs.9,21,356/- is also to be deducted from the amount payable under the order by the respondents to the complainants. The complainants shall meet the expenses of stamp duty, registration charges. Thus, out the of total sum of Rs.25,35,000/-, after deducting Rs.9,21,356/- and Rs.2,82,000/-, the complainants are entitled a sum of Rs.13,31,644/- from the respondents. Towards legal expenses, a sum of Rs.25,000/- is fixed. The complainants are entitled for the above amounts from the respondents. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:

The respondents, either jointly or severally, shall pay the complainants Rs.13,31,644/- towards compensation and Rs.25,000/- for litigation expenses within 30 days from the date of issue of this order.

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Sd/- 27.08.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

N. Narasimhan
27/8/19
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

[Signature]
27/8/2019