

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

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

**CCP No. 059 of 2019**

K. Deepa  
Rep. by PoA M. Kumar ..... Complainant

**Vs.**

M/s. Akshaya Private Limited,  
Rep. by its Managing Director - Chitti Babu ..... Respondent

Complainant : Represented by Ms. R. Ramya, Advocate

Respondent : Represented by Mr. Mani Sundargopal, Advocate

Heard on : 29.08.2019

Delivered on : 17.09.2019


**ORDER**

The above complainant filed the complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together with interest, compensation and costs 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) On 16.05.2012, the complainant booked an apartment with the respondent in their project namely, "JANUARY", at Thaiyur B Village, Chengalpat Taluk, Kanchipuram District and paid booking advance and further amounts. Memorandum of Agreements for sale and construction of the flat between the complainant and the respondent were entered on 06.06.2012. The total sale consideration of the flat is Rs.48,47,400/-. The complainant paid Rs.28,33,440/-.

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(b) As per the terms of the agreement, the respondent undertook to complete the construction and to deliver the apartment within 30 months with a grace period of 90 days from the date of obtaining the building plan sanction. Till date, the construction of the apartment is not completed. The complainant made several representations for early completion of the apartment. The complainant was put to heavy loss due to delay of the project.


(c) After the complainant approached this Authority, the respondent has completed the flat only in the month of December 2018. The complainant seeks refund of the amounts paid to the respondent with interest, compensation and cost.

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

(a) The complainant and the respondent entered into agreements for sale of UDS land and construction of the apartment on 06.06.2012. The total sale consideration is Rs.48,47,000/- The complainant defaulted in making stage-wise payments as per the payment schedule in the agreement. The respondent completed the project as early as 26.02.2014 and also obtained completion certificate. Since the project is completed, it cannot be termed as ongoing project coming under the purviews of RERA Act.

(b) The apartment was completed as early as August 2018 and the complainant was called for inspection of the apartment on 30.08.2018 and also to take possession of the apartment after payment of outstanding dues. The respondent kept the complainant updated about the progress of the construction. The delay in the delivery of the apartment was due to various factors, including the delayed payment of installments by many

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customers including the complainant. The delay was due to the reasons beyond the control of the respondent.

(c) So far the complainant paid Rs.28,33,440/- and there is a balance of Rs.22,52,370/-. The complainant is liable to pay the delayed payment with interest at 18%. As per the agreement, in case of delay, the allottees are entitled to get rental compensation only. The complainant filed the present complaint only to escape from her obligation under the agreement. In the said circumstances, the respondent prays for the 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 rival contentions of the parties, the following points arise for determination:-

i. Whether the complaint is maintainable?


ii. Whether the complainant is entitled for refund of the amount paid to the respondent towards the purchase of the flat with interest, compensation and cost on the ground of failure to complete the construction and hand over possession of the flat as per the terms and conditions agreement?

iii. What are the reliefs, the complainant is entitled for?

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

(a) The learned counsel for the respondent submitted that the complaint itself is not maintainable and the project was given completion certificate by the village panchayat and once the project is issued completion

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certificate, the project need not be registered under the RERA Act and the RERA Act is not applicable to the case. However, the learned counsel for the complainant submitted that the respondent has not completed the project as per the due date, which is December 2013 and as on date of the commencement of the Act, the project was on-going project requiring registration of the project with the TNRERA and therefore the provisions of the REERA Act are applicable and the complaint is maintainable.

(b) As per Ex.B-1 the completion certificate dated 26.02.2014 issued by the President of the Thayur Village Panchayat, it is mentioned as the construction of the residential building was completed. No name of the project mentioned in the certificate. Admittedly, the complainant was allotted apartment in the 13<sup>th</sup> floor of wednesday block in the project. In the counter the respondent stated that apartment of the complainant was completed as early as in August 2018 and the complainant has called for inspection of the apartment on 30.08.2018. It was further mentioned in the counter as the delay in completion of the project was due to reasons beyond the control of the respondent. Therefore, it is obvious that as on the date of commencement of the RERA Act, i.e., 26.3.2016 or as an 01.05.2017 when the section 3 of the RERA Act came into force, the project was not completed.

(c) As per section 3, the project that are on-going on the date of commencement of the Act and for which the completion certificate has not been issued, the project has to be registered under the Act. As per the own admission of the respondent, the project was an on-going project on the

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date of the commencement of the Act, even though the respondent was able to get completion certificate from the village panchayat.

(d) As per Rule 2(h)(iii) of the TNRERA Rules, for projects outside Chennai Metropolitan Area, the structural completion is to be certified issued by the architect or structural engineer or the license surveyor associated with the project. In a similar case, where the project was given completion certificate but the project was not completed as per the own admission of the builder in Marg Properties Ltd., Vs. T.S. Arunachalam. – Appeal No.2 of 2018 – order dated 13.11.2018, Hon'ble Tamil Nadu Real Estate Appellate Tribunal held as follows:

*Mere issuance of alleged completion certificate by the DTCP without the completion as per the Act will not be a ground for them not to register the project under the Act. Hence the project can only be treated as an ongoing project under the Act and it has got to be necessarily registered.*

In view of the above, the issuance of completion certificate by the Village Panchayat President without completion of the project is not a bar to treat the project as on-going project under the Act.

(e) Section 3 of the RERA Act, specifies real estate projects, which require registration. RERA Authorities get jurisdiction over all the real estate projects, which are eligible for registration irrespective of the fact as to they registered or not. Therefore, since the project was an on-going project eligible for registration on the date of commencement of the Act, this forum has got jurisdiction. Hence the complaint is maintainable before this forum. Thus the point is answered accordingly.

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

(a) The learned counsel for the respondent contended that the Adjudicating Officer is appointed under section 71 of the RERA Act for the purpose of adjudicating compensation alone and the powers are laid down in respect of compensation claimed under sections 12, 14, 18 and 19 of the REARA Act and the manner in which the compensation to be awarded has been elicited under section 72 and Sections 37 and 38 relating to the power of authority only includes directions to refund the amount paid by the complainant.


(b) As per Wharton's Law Lexicon, 16<sup>th</sup> Edition, 'compensation' is defined as follows:

*compensation, according to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss, Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65 (75): AIR 2004 SC 2141.*

*compensation or purchase money are the same thing under different names, IRC vs. Glasgow South Western Railway Co., (1887) 12 App Cas 315 (HL)*

The above definitions make it clear that compensation is given to make things equal in value. Compensation or damages can be computed under the heads of pecuniary loss and also non-pecuniary loss. So far pecuniary loss is concerned, the amount given towards purchase of the flat, which was not at all handed over by the due date is actual monetary loss. Therefore, the legislators thought it fit to include return of amount with interest payable for such amount and compensation under Section 18 of

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the RERA Act to be decided by the Adjudicating Officer. Section 37 and 38 are not dealing with refund or return of money.

(c) Section 71 of the RERA Act is framed in the larger interest of the consumers. It is not specifically mentioned in the section that Adjudicating Officer appointed under section 71 is only for the purpose of adjudicating compensation alone. The proviso to Section 71 (1) provides that any person whose complaints in respect of matters covered under sections 12, 14, 18 and 19, if pending before the Consumer Disputes Redressal Forum or the State Commission or National Commission can withdraw the complaint and file an application before the Adjudicating Officer under the RERA Act. The reading of the proviso makes it clear that such complaints can be in respect of matters covered under sections 12, 14, 18 and 19 of the RERA Act. A further reading of Section 18 of the Act makes it clear that the allottee is entitled to withdraw from the project seeking return of the amount with interest including compensation in the manner provided under the Act. The section does not provide any division of adjudging the amount refundable to the allottee, entitlement of interest and claim for compensation separately by different authorities. In this regard, Section 12, which deals with the obligations of promoters regarding veracity of the advertisement or prospectus, also provides, in case of incorrect and false statement by the promoter, for refund of the investment made by the buyer with interest and compensation. The claim of refund of money is clubbed with interest and compensation to be arrived at under both the Sections 12 and 18, so as to mean to adjudge the amount refundable in case of dispute with interest and compensation to be arrived at.

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Harmonious reading of the Sections 71, 12, 14, 18 and 19 indicate that this Forum can award the refund of the amount with interest including compensation sought by the complainants. Therefore, the contention of the learned counsel is not sustainable.

(d) The learned counsel for respondent further contended that the complainant has committed a series of default in making the periodical stage-wise payments even before the alleged delay in completion of the project. The learned counsel also relied Rule 19(2) of the TNRERA Rules and the decision of the Hon'ble Supreme Court dated 09.08.2019 in Pioneer Urban Land & Infrastructure Ltd., and another vs. Union of India and Ors. (W.P (Civil) No.43 of 2019), in support of his contention that the allottee once defaulted in making the timely payment as per the terms of the agreement, the allottee is not entitled to claim interest or compensation from the promoter.

(e) It is the case of the complainant that she was availing loan from financial institution. Even in her letter in Ex.A-13 dated 02.08.2014, to the respondent, she made it clear that she is also availing loan from LIC and the construction was not progressing as per the schedule and even though the delivery of the flat was due by November 2013, only in the months of May and June 2014, the respondent was progressing in 13<sup>th</sup> floor, in which, she was allotted the flat. Even as per the email dated 30.08.2018 by the respondent, which is marked as Ex.B-4, the complainant was informed as her apartment was ready and called for inspection of her flat. When the payment of due by the allottees is linked with the progress of the construction of the project and there was no progress as per schedule, the

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complainant cannot be blamed or held liable for non-payment of dues as per the schedule.

(f) Reading of the terms and conditions of the agreements for construction reveals that the terms and conditions are only in favour of the respondent builder. Under clause 5, payments are to be made by the purchaser without any demand and the builder is not required to give demand notice or to inform progress stage of construction. Clauses 6 and 7 on time for completion of construction and unforeseen delay are only to the advantage of the builder. Clause 13 stipulates payment of at 18% p.a. on delayed due amount to the builder whereas clause 8 prescribes rental compensation by the builder, which is paltry in terms of investment made by the purchaser. The terms which are extremely unfair and one sided, gives an unfair advantage to the builder over the purchaser.

(g) In this regard, it is relevant to note that Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors.*, reported in Manu/SC/0463/2019 held that the builder could not seek to bind the buyer with one sided contractual terms and *once the builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the respondent-purchaser within the time stipulated in the agreement, or within a reasonable time thereafter, the respondent flat purchaser could not be compelled to take possession of the flat even though it was offered almost two years after the grace period under the Agreement expired.*

(h) The learned counsel for respondent raised various contentions on compensation and interest as the complainant is not entitled for any

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compensation and awarding both compensation and interest as the complainant on amount paid will amount to double jeopardy and double compensation. Sections 18 and 19 (4) give right to allottees to demand the amounts paid by them with interest including compensation, if a promoter is unable to give possession of the flat on the date as agreed in the agreement. Award of interest of principal amount is towards appreciation of the value of the amount. Section 72 prescribes the procedure and the factors to be taken into consideration. Therefore, all the contentions of the respondent are not sustainable.


(i) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid with interest and compensation on the ground of failure on the part of the respondent to give possession of the apartment booked by her in accordance with the terms and conditions of the agreements of sale and construction. Thus, the point is answered accordingly.

9. **Answer for Point No.(iii)**

(a) In view of the answer for point No.(i) & (ii), the complainant is entitled for refund of the amount paid by her to the respondent towards the purchase of the flat together with interest, compensation and cost. The complainant has paid Rs.28,33,440/- on various dates to the respondent. There is no dispute on the amount paid by the complainant. Hence the complainant is entitled for refund of Rs.28,33,440/- from the respondent.

(b) The complaint has claimed interest at the rate of 18% p.a on the amount paid. 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

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of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 8.15% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.15% p.a for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) As a result of the delay, the amount of disproportionate gain or unfair advantage to the respondent is not quantifiable exactly. Considering the facts and circumstances of the case, 9% of the amount paid i.e., Rs.28,33,440/- is fixed towards compensation for mental agony and inconvenience and towards litigation expenses a sum of Rs.25,000/- is fixed as payable by the respondent to the complainant. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (1) The respondents shall pay the complainant the amount at the interest rate, compensation and cost as per the findings in the answer for Point No.(iii), Para 9 of this order within 30 days from the date of issue of this order.
- (2) The charge of the aforesaid amount shall be on the flat booked by the complainant till their repayment.

**CERTIFIED TO BE TRUE**

Sd/-17.09.2019

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

*N. Nimmayya*  
17/9/19  
**ADMINISTRATIVE OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY**  
17/9/2019