

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

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

CCP No. 060 of 2019

- (1) R. Santhanaraj ,
(2) S. Krishnaveni AND
(3) R. Sankara Avudaiyammal COMPLAINANTS

Vs.

- (1) M/s. Eco Bay Developers and
Builders Pvt Ltd.,
Rep. by its Sebastian B.M. Gomes , Managing Director.
(Unregistered Project) RESPONDENT

Complainants : Rep. by Mr. M. Niranjan, Authorized
Representative

Respondent : Rep. by Mr. S. Vasu, Advocate

Heard on : 09.07.2019

Delivered on: 24.07.2019

ORDER

The above 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 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 a flat with the respondent in their project namely, "**ECOBAY VIOLET**" at Pollivakkam Village, Thiruvallur Taluk, Thiruvallur District and paid Rs.20,00,000/- as on 02.06.2015.

(b) On the same day, the agreement to sell UDS and for construction of apartment was entered between the complainants and the respondent. The respondent promised to complete the construction and deliver the apartment by 02.06.2017 but the respondent did not even start the foundation work for the block in which the flat was allotted to the

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complainants. Hence, the complainants withdraw from the project and seek full refund of the amount with rental compensation, compensation for mental agony and cost.


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

(a) Except admitted all the allegations are false. It is admitted that the complainants entered an agreement with the respondent on 02.06.2015 and paid Rs.20,00,000/- towards the purchase of the flat. As per the agreement, the respondent offered rental compensation of Rs.40,000/- per month from 02.06.2015 upto the actual date of handing over possession of the apartment. The respondent was paying the rental compensation from June 2015 to November 2015. For subsequent period of December 2015 to October 2016, the respondent issued cheques towards rental compensation to the complainants but the cheques were returned unpaid.

(b) The respondent agreed to complete the construction of the apartment by 02.06.2017. As per the agreement, in the event of cancellation, the complainants will be entitled for the refund of the amount with rental compensation for mental agony and cost within 90 days of receiving a request for cancellation in writing. The complainants also purchased another apartment in Block 'A' in the same project. Therefore, the purchase of the flat in this case by the complainants was by way of investment. The RERA Act is designed to help home buyers and not investors.

(c) The complainants also filed criminal cases on the unpaid cheques under section 138 of Negotiable Instrument Act. In the said cases, part of the amounts towards the returned cheques was settled to the complainants. The complainants suppressed the pending criminal cases.

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(d) The respondent is willing to return the amount to the complainants upon closure of pending criminal cases as per the agreement. The respondent also proposed to adjust the amount in other block. But the complainants filed several cases. There is no violation on the part of the respondent falling under the provision of RERA Act. Hence, 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 the rival contentions of the parties, the following points arise for determination:


- i. Whether the complainants are entitled to refund of the amount with other reliefs on the ground of failure on the part of the respondent to give possession of the apartment booked by them in accordance with the terms of the agreements?
- ii. Whether the complainants are entitled for all the reliefs as prayed for?

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

(a) Section 18 of the RERA Act, gives an option to allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter is unable to give possession of the flat on the date specified in the agreement.

(b) As per the agreement entered between the complainants and respondent on 02.06.2015, the respondent agreed to complete the

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construction and to hand over the apartment by 02.06.2017. Admittedly, till date the construction of the apartment was not completed. However, the Counsel for the respondent pointed out that the complainants purchased another apartment in Block 'A' of the same project, which was registered in their favour and the investment for block in 'C' was made by the complainants for the purpose of investment and the complainants are not entitled for the benefit under the RERA Act.

(c) Nowhere, in any of the sections of the RERA Act, any distinction was made between the home buyers for their own occupation and the home buyers for investment purpose. Therefore, the above contention is not all acceptable.

(d) In the above circumstances, it is held that the complainants are entitled to get back the amounts with other reliefs on the ground of failure on the part of the respondent to give possession of the apartment booked by them in accordance with the terms of the agreement. Thus, the point is answered accordingly.

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

(a) There is no dispute on the amount paid by the complainants to the respondent. The complainants sought rental compensation under clause 13 of the agreement. As per clause 13 of the Agreement, the rental compensation of Rs.40,000/- per month is to be paid by the respondent from 02.06.2015, i.e., the date of agreement upto the actual date of handing over of the apartment. Rental compensation can be claimed by the complainants only in the event of taking delivery of flat after completion of construction. Since it is a case where the complainants withdraw from the project under the provisions of the RERA Act, the

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complainants are not entitled to rental compensation but they are entitled for refund of the amount with interest, compensation for mental agony and cost from the respondent as prescribed under the rules. The complainants received the rental compensation from the respondent for some period. The amounts paid by the respondent towards rental compensation is to be adjusted from the total amount due as per this order.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable by the promoter to the allottees is to be State Bank of India highest marginal cost of lending rate plus 2% per annum. Currently, the highest marginal cost of lending rate of State Bank of India is 8.70% per annum. Therefore, the complainants are entitled for the interest on the amount to Rs.20,00,000/- at the rate of 10.70% per annum from the date of respective payment till repayment by the respondent. However, the repayment of the amount shall be subject to deduction of the rental compensation received by the complainants from respective dates of receipt of said compensation.


(c) The amount received from the complainants was utilized by the respondent for construction activities of the project. Considering the circumstances of the case, a sum of Rs.2,00,000/- is fixed as compensation towards mental agony undergone by the complainants and a sum of Rs.20,000/- is fixed towards litigation expenses.

The complainants are entitled for the relief as detailed above. Thus the point is answered accordingly.

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

- 1) The respondent shall refund of the amount with interest compensation for mental agony and cost subject to

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deduction as per the findings in the answer for Point No.(ii), Para 8 of this order within 90 days from the date of issue of this order.

- 2) The charge of the aforesaid amount shall be on the flat booked by the complainants till their repayment.
- 3) The complainants shall execute the Cancellation of Agreements and other documents, if any, as the case may be, on satisfaction of their claim at the respondent's cost.

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


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


24/7/2015