

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 062 of 2019**

Balaji Pattabhiraman AND Latha Balaji
Rep. by PoA Uma Maheswari Ravi Venkataraman ... **COMPLAINANTS**

Vs.

1. M/s. Real Value Promoters (P) Ltd.,
Rep. by its Managing Director Mr V.S. Suresh
(Regn. No.TN/01/Building/0090/2018) ... **RESPONDENT**

Complainant : Rep. by M/s. Chennai Law Associates

Respondents : Rep. by Mr. K.S.L. Narain, Advocate

Heard on : 22.05.2019

Delivered on : 31.05.2019

ORDER

The above complaint by the complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the booked flat, interest, compensation and costs 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 complaint in brief as follows:**

(a) The complainants booked a flat with the respondent in their project namely "NEEL KAMAL APARTMENTS" at Kazhipattur Village, Chengalpet Taluk, Kanchipuram District, Tamil Nadu.

(b) On 24.09.2013, the respondent allotted apartment No.5B, 5th Floor, Annexe Block of the project. The complainants made booking advance and subsequent payments. On 30.09.2013, the complainants entered into an

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agreement of project promotion and construction with the respondent. The respondent undertook to complete construction and deliver the flat on or before March 2014 with a grace period of six months. The total cost of flat is Rs.64,15,109/-. The complainant paid Rs.49,39,634/- as on 12.08.2014. On 05.11.2014, the respondent executed sale deed for the undivided share of the land to an extent of 323 sq.ft

(c) The flat was not constructed within the time limit agreed by the respondent. Till now, the construction was not completed. The complainant was put to hardship since the complainants availed bank loan and paying interest for the loan amount. Hence, the complainants withdraw from the project and seek for refund of the amount with interest and compensation.

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

(a) All the allegations except admitted are denied by the respondent. The complainants are not entitled for any refund of the amount paid by them as they are still original allottees of the flat and have not sought for the cancellation of the allotment. In the case of cancellation of the booking, the complainants are entitled to receive only balance amount after deduction of Rs.25,000/- and tax applicable.

(b) The complainants are not entitled for compensation, as there was no deficiency of service and unfair trade practices by respondent. As per the agreement, the complainants are required to give consent in writing for cancellation of the sale deed for the UDS portion.

(c) Only in case of willful delay, the respondent is liable to pay compensation. There is no willful delay in construction and the delay was only caused by force majeure conditions. The agreement provides for

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arbitration in resolving all disputes arising out of the agreements. The complaint is an abuse of process of law. The complainants are not entitled for any reliefs. Hence, the respondent prays for dismissal of the complaint with exemplary costs.

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 get back the amounts paid to the respondent with interest and compensation 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?

ii. Whether the complainants are entitled for all the reliefs as prayed for?

7. Answer for Point No: (i)

(a) The Learned Counsel for the complainants submitted that the complainants were allotted apartment in the project of the respondent on booking and the complainants made payment of booking amount and further amounts as agreed under the Ex.A8 agreement and the respondent also executed the ExA14 sale deed for the UDS of land in favour of the complainants and as per the agreement, the respondent undertook to complete the construction and hand over the possession of the apartment on or before March 2014 with a grace period of six months and the flat was not constructed within the agreed time limit and the respondent

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failed to respond when the complainants approached the respondent over phone and through email and as per the provisions of the RERA Act, the complainants are entitled for refund of the amount paid to the respondent with interest and compensation.

(b) However, the Learned Counsel for the respondent contended that the complainants only asked as how to get back their amounts paid to the respondent through email dated 31.03.2015 and they are not entitled for any refund and the complainants are entitled to receive the balance amount after deducting Rs.25,000/- and tax applicable as per the terms and conditions in the booking form and there was no deficiency of service and unfair trade practice by the respondent and even if there was any willful delay on the part of the respondent, the compensation is to be paid only as per the terms and the delay was caused by force majeure conditions and the agreement provides for arbitration for resolving the disputes and the complaint is liable to be dismissed with exemplary costs.

(c) Section 18 of the RERA Act gives an option to allottees / buyers to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails to complete or is unable to give possession of the apartment on the dates specified in the agreement. There is no dispute that as per ExA8, agreement for project promotion and construction entered between the complainants and the respondent, the respondent undertook to complete construction and hand over possession of the apartment on or before March 2014 with a grace period of six months subject to force majeure conditions. Admittedly, the respondent has not completed the construction of the apartment till date. Even though in the counter and proof affidavit of the respondent to

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respondent stated the delay was caused by force majeure conditions, no such conditions and circumstances with details were specifically pleaded by the respondent.

(d) The respondent contended that the complainants are entitled to receive the amount if payable, only after deduction of Rs.25,000/- and taxes as per the terms and conditions of the booking form. The complainants are not withdrawing from the project on their own but for want of progress of construction of the project as per the time schedule agreed by the respondent. Therefore, the respondent is not entitled for any deduction and the contention is not sustainable.

(e) So far as the contentions of the arbitration clause in the agreement are concerned, the clause for arbitration is not a bar in respect of reliefs claimed under RERA Act in view of sections 88 and 89 of the RERA Act.

(f) In the said circumstances and in view of the above discussion, it is held that the complainants are entitled to get back the amount paid to the respondent with interest and compensation 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 and conditions of the agreement. Thus, the point is answered accordingly.

8. Answer for Point No: (ii)

(a) There is no dispute that out of the total consideration of the flat, the complainants paid Rs.49,39,634/- to the respondent. In view of the answer for Point No.1, the complainants are entitled to refund of the amount with interest and compensation from the respondent.

(b) As per rule 18 of the TNRERA rules, the complainants are entitled to interest for the amount paid to the respondent at the rate of highest marginal cost of

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lending rate of interest of SBI plus 2% per annum. The present rate of highest marginal cost of lending rate of interest of SBI is 8.70% per annum. Therefore, the complainants are entitled for the interest on the amount paid to the respondent at the rate of 8.70% plus 2% per annum from the date of payments till repayment by the respondent. Apart from the above, considering the circumstances of the case, the compensation towards mental agony and inconvenience to the complainants and deficiency by the respondent is fixed at 9% on Rs.49,39,634/- and towards litigation expenses, Rs.20,000/- is fixed. 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 litigation cost as per the findings in answer for Point No.(ii), Para No.8 of this order within 60 days of this order.
- (2) The charge of the aforesaid amount shall be on the flat booked by the complainant till the repayment.
- (3) The complainants shall execute the cancellation of the agreement and sale deed of the UDS land on satisfaction of their claim as per the order at the respondent's cost.

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


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