

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 64 of 2019**

K.Saravana Easwaran ... **COMPLAINANT**

Vs.

M/s. Eco Bay Developers And Builders Pvt Ltd
(Regn. No.TN/02/Building/0047/2018) ... **RESPONDENT**

Complainant : Represented by Mr. M. Nirajan,
Authorized Representative.
Respondent : Represented by Mr. Gowtham S.Raman,
Advocate

Heard on : 09.07.2019

Delivered on : 24.07.2019


ORDER

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

The complainant booked a flat with the respondent in their project "ECO BAY VIOLET" at Thiruvallur District and an agreement was entered and registered on 03.08.2015 on payment of total amount of Rs.19,16,150/- towards cost of the flat and other charges. The respondent promised to complete the construction and to deliver the apartment on or before 31.12.2015. The respondent stopped construction in 2015 and not completed the apartment even after three years of due date. Hence the complainant withdraws from the project and seeks full refund of entire amount with interest, compensation, other charges and costs.

TRUE COPY


24/7/2019

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

(a) All the allegations are false. Except admitted, the complainant is put to strict proof of all the allegations. The complainant booked the flat with the respondent in their project and paid total sum of Rs.19,16,150/-. The amount includes purchase of UDS land, cost of construction and other statutory charges. As per the agreement entered between the complainant and the respondent on 03.08.2015, in the event of cancellation, refund will be made without any interest and after sale of booked apartment to another buyer and subject to 10% reduction for cancellation charges.


(b) The respondent agreed to complete the construction of apartment by 31.12.2015 with a grace period of three months but subject to other conditions. During December 2015, there was flood and recessions. The respondent was not able to proceed with the construction. The delay was due to unforeseen event beyond control of the respondent. There is specific clause in the agreement on force majeure conditions. As on date, the construction work is progressing and it will be completed by May 2019 for delivery of the apartment to the buyers. There was no violation on the part of the respondent. Hence the respondent prays for the dismissal of the complaint.

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

5. Both the parties 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:

TRUE COPY


24/12/2019

- i. Whether the complainant is entitled to refund of the amount paid to the respondent with interest, compensation and cost on the ground of failure on the part of the respondent, to complete the construction and to give possession of the apartment booked by him in accordance with the terms of the agreement?
- ii. Whether the complainant is 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 dates specified in the agreement.

(b) As per the agreement entered between the complainant and respondent, the respondent agreed to complete the construction of the apartment by 31.12.2015 with a grace period of three months. Admittedly, till date the construction of the apartment was not completed. It is the case of the respondent that due to flood during December 2015, the construction work of the project came to grinding halt. When the due date was fixed at 31.12.2015, if the construction work was carried on regularly as per the schedule, by November 2015, the project work would have been nearing completion. But even after more than three years, the respondent was not able to complete the construction and hand over the apartment as agreed by him.

(c) The respondent also listed the implementation of demonetization, GST and other circumstances as reasons for the delay. Even if the above reasons were causes for the delay, there is no reason for such a long period of delay

TRUE COPY

8
24/7/2019

for not completing the construction work to hand over the flat to the complainant as agreed by the respondent. Therefore, the above contentions for the delay are not at all sustainable.


(d) In the above circumstances, it is held that the complainant is 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 him 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 as to the amounts paid by the complainant to the respondent. Admittedly, the complainant paid a total sum of Rs.19,16,150/- to the respondent towards sale of UDS, cost of construction and other charges. The respondent contended that as per the agreement, in the event of cancellation of the agreement, the complainant is not entitled for interest and the amount will be paid after reduction of 10% towards cancellation charges and after sale of the booked flat to another buyer. Such a contention is not acceptable. The respondent failed to complete the construction by due date fixed as per the agreement. The complainant is not withdrawing from the project on his own but for want of completion of the project by due date. Therefore, the complainant is entitled for refund of entire amount of Rs.19,16,150/- paid to the respondent.

(b) As per the Rule 18 of the TNRERA Rules, the rate of interest payable by the promoter to the allottee is to be the State Bank of India's highest marginal cost of lending rate plus 2%. Currently, the highest marginal cost of lending rate of interest of SBI is 8.70 % per annum. Therefore, the complainant is entitled for interest on the amount of Rs.19,16,150/- at the rate of 10.70% per

TRUE COPY


24/7/2019

annum (8.70% + 2%) from the date of respective payment till repayment by the respondent.

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

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


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

- (1) The respondent shall pay the complainant the amounts at the interest rate, compensation and other charges and cost as per the findings in the answer for Point No.(ii), Para 8 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 flats booked by the complainant till the repayment.
- (3) The complainant shall execute the cancellation of Agreements and Sale Deed of the UDS land, as the case may be, on satisfaction of their claims at respondent's cost.

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

CERTIFIED TO BE TRUE COPY


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


24/7/2018