

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 080 of 2019**

N. Ramanathan

..... COMPLAINANT

**Vs.**

M/s. Real Value Promoters Pvt Ltd.,  
Rep. by V.S. Suresh, Director  
**(Regn. No.TN/01/Buildings/0316/2018)**

..... RESPONDENT

Complainant : Rep. by M/s. Nathan & Associates, Advocates  
Respondent : Rep. by M/s. K.S.L. Narain, Advocate

**Heard on** : 08.07.2019

**Delivered on:** 23.07.2019


**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 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:**

- a) The complainant booked a flat with the respondent in their project namely "**PADMALAYA**" at Pudupakkam Village, Kancheepuram District. The Respondent allotted Flat No.8-D, in Block-'B', of the project.
- b) The total cost of the flat is Rs.37,43,901/-. The complainant paid Rs.32,39,987/-. The complainant and the respondent entered into agreements for sale of UDS and construction of the apartment on 02.08.2013. As per the construction agreement, the respondent undertook to complete the construction and to hand over possession of the flat within 30 months with a grace period of 6 months from the date of obtaining all

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statutory approvals. The complainant availed bank loan to pay the respondent.

c) Till the month of February 2019, the construction was not completed and the respondent was not making any progress of the construction. The complainant requested for the amounts paid by him from the respondent. But the respondent has not paid the amount so far. As per the provisions of TNRERA Act, the respondent is liable to return the amount with interest and compensation and cost. Hence the complaint.


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

a) All the averments are denied. The respondent denies that time is essence of the contract and the complainant has every right to reclaim the amount paid under the contract. Out of the amount paid by the complainant, a sum of Rs.24,39,987/- was disbursed by State Bank of India towards loan amount of the complainant. The bank alone has the right to claim back the amount of loan disbursed by them to the respondent.

b) The respondent took all the steps for completion of the project within the time limit. But due to force majeure conditions, the project is being delayed. As per the terms and conditions of the booking form, the complainant is eligible to get back the amount after deduction of Rs.25,000/- and taxes.

c) There is no willful delay. Only on willful delay, compensation is to be paid by the respondent. The claim of compensation is not maintainable. There is arbitration clause in the agreement. The complainant ought to have taken steps to arbitration proceedings. Hence, respondent prays for the dismissal of the complaint with costs.

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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 complainant is entitled to get back the amount paid to the respondent with interest, compensation and costs 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?
  - ii. Whether the complainant is entitled for all the reliefs as prayed for?

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

a) The learned counsel for the complainant submitted that as per the agreements dated 02.08.2013, the respondent promised to complete the construction and hand over the flat within 30 months with a grace period of 6 months but the respondent failed to complete the construction till now and since the respondent is unable to hand over the possession of the flat on completion of the project, the complainant is entitled for all the relief as prayed by him.

b) However, the learned counsel for the respondent submitted that out of the amount of Rs.32,39,987/- paid to the respondent by the complainant, Rs.24,39,987/- was disbursed by the State Bank of India, towards the loan amount of the complainant and in view of the quadripartite agreement, the bank alone has the sole right to claim back the amount of loan disbursed on

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behalf of the complainant and the complainant cannot claim the entire amount and the respondent took all the steps to complete the project but due to force majeure conditions the project is delayed and as per the terms and conditions of the booking form, the complainant is eligible to get back the amount only after deduction of Rs.25,000/- and taxes and there was no willful delay and the respondent is not liable to pay compensation to the complainant and the agreement provides for arbitration and therefore the present complaint is liable to be dismissed with costs.


c) It is not in dispute that the respondent received Rs.32,39,987/- towards the sale of the flat on behalf of the complainant. Out of the total amount, a sum of Rs.24,39,987/- was disbursed by the State Bank of India to the respondent as loan amount of the complainant and the same is repayable by the complainant. Therefore, the contention that the bank alone has the sole right to claim back the amount of loan disbursed is not sustainable.

d) It is the case of the respondent that due to force majeure conditions, the project was delayed. However no specific force majeure condition was pleaded and proved by the respondent. Therefore, the contention regarding force majeure conditions is liable to be rejected.

e) Next contention of the learned counsel for respondent is that as per the terms and conditions of the booking form the complainant is eligible to get back the amount only after deduction of Rs.25,000/- and taxes. Obviously, the complainant is not withdrawing from the contract on his own, but for want of progress of the construction of the project.

f) So far as the arbitration clause in the agreement is concerned, the existence of a remedy by way of arbitration clause does not bar an

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aggrieved home buyer from seeking redressal before this Forum under RERA Act, which is a special statute enacted by Parliament for specific purpose of providing for speedy dispute redressal resolution. Therefore, all the contentions of the Counsel for respondent are not at all sustainable.


g) In the above circumstances, it is held that the complainant is 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 complete the construction of the project and hand over possession of the flat as promised by him. Thus, the point is answered accordingly.

8. **Answer for Point No: (i)**

a) There is no dispute on the amount paid by the complainant to the respondent. In view of the answer for Point No.(i), the complainant is entitled to get back Rs.32,39,987/- from the respondent. As per Rule 18 of the TNRERA Rules, the rate of interest shall be the highest marginal cost of lending rate of interest of SBI plus 2% per annum. Therefore, the complainant is entitled to interest at the rate of 8.70% , which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum from the date of respective payments till repayment by the respondent.

b) The amount paid by the complainant was utilized by the respondent in their project. Considering the circumstances and facts of the case, it is held that the complainant is entitled to get compensation at the rate of 9% on Rs.32,39,917/- towards mental agony, inconvenience and unfair trade practice by the respondent. Towards litigation expenses, a sum of Rs.20,000/- is fixed. The complainant is entitled for reliefs as detailed above. Thus, the point is answered accordingly.

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

- 1) The respondent shall pay the complainant the amounts at the interest rate, compensation and cost as per the findings in the answer for *Point No. (ii), Para 8* of this order within 60 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/xxxx  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

N. Aravindhan  
23/7/18  
ADMINISTRATIVE OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY

23/7/2018