

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 087 of 2019**

B. Karthick AND K. Lokeswari ... **COMPLAINANTS**

Vs.

- (1) M/s. Real Value Promoters Pvt Ltd.,
Rep. by its Managing Director.
- (2) M/s. Ambojini Property Developers Pvt Ltd.,
Rep. by its Authorized Signatory,
(TN/01/Building/0090/2018 dated 16.03.2018) ... **RESPONDENTS**

Complainants : Rep. by Mr. G. Arul Murugan AND Mr.
S. Vinodh Kumar, Advocates

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

Heard on : 21.06.2019

Delivered on : 28.06.2019

ORDER

The above complaint filed by the complainants seeking refund of the amounts paid to the respondents towards the purchase and construction of the flat with interest, compensation, damages 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 1st respondent in their project namely "SAI PEACE AND PROSPERITY" Taramani, Chennai. The 1st respondent allotted a flat in Flat No.15-F, in the 15th Floor of the 1st Block having built up area of 1710 sq.ft in their project.

(b) The total cost of the flat is Rs.1,20,78,645/-. The complainants paid a sum of Rs.36,81,648/- to the respondents. The 1st respondent through the

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2nd respondent entered into agreement for sale and construction on 17.10.2015 for sale of the undivided share of the land and construction of the flat with the complainants. The 2nd respondent undertook to complete the construction and hand over the flat within 36 months from the date of the agreement of the agreement with a grace period of 6 months.

(c) Even after a lapse of two years, there was no construction work started at all. The complainants cancelled the booking and requested the 1st respondent to refund the amount paid towards purchase of the flat. The respondents failed to refund the amount. As per the provisions of the RERA Act, the respondents are liable to return the amount with interest, compensation, damages and also cost to the complainants. Hence the complaint.

3. Counter averments of the 1st respondent adopted by the 2nd respondent also, in brief as follows:

(a) All the averments are denied. The 1st respondent was updating the progress of the project to all the allottees. The 1st respondent took all the steps sincerely for the completion of the project within the committed time limit. However, due to force majeure conditions and unexpected filing of suits in Bombay High Court, the project is being delayed. The complainants are not entitled to refund of the amount with interest and compensation. As per the terms and conditions in the booking form, after cancellation of the booking, the complainants are eligible to get the amount paid only after deduction of Rs.25,000/- and taxes applicable and only after resale of the booked flat. As per the agreement, if there is a willful delay by the respondents, the applicants are entitled to compensation. There was no willful delay. Hence, the complaint is not maintainable. There is arbitration clause in the agreement. Hence, the

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approach by the complainants to this Forum is an abuse of process of law. Hence respondents pray for 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 get back the amounts paid to the respondents with interest and compensation on the ground of failure on the part of the respondents 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) The learned counsel for the complainants submitted that the 1st respondent is a promoter and the 2nd respondent is a group company and the 1st respondent promoted the residential apartment project and all the payments by the complainants were made to the respondents and as per the agreements for sale and construction and the 2nd respondent promised to complete the construction and hand over the flat within 36 months from the date of agreement which is dated 17.10.2015 but the project has not even started as on date and the complainants paid a sum of Rs.36,81,648/- out of the total sale consideration of Rs.1,20,89.645/- and since the respondents are unable to carry on the construction of the flats, the complainants are entitled for all the reliefs as prayed by them.

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(b) However, the learned counsel for the respondents submitted that the complainants are not entitled for refund of the amount with interest and compensation and at the time of booking of the flat, the complainants agreed to for the terms and conditions of the booking form and as per the terms and conditions of the booking form, the complainants are eligible to get the amount paid after deduction of Rs.25,000/- and taxes and also after resale of the booked flats to other third parties and there was no willful delay on the part of the respondents company and only due to force majeure conditions and the suit filed before the Bombay High court, the project is being delayed and therefore the complainants are not entitled for any compensation and further the agreement provides for arbitration and therefore the complainants approaching this Forum is an abuse of process of law and the complaint is liable to be dismissed with cost.

(c) It is not in dispute that the complainants paid Rs.36,81,648/- to the respondents towards purchase of the flat booked by them and as per Ex.A4 construction agreement, the 2nd respondent undertook to complete the construction of the flat within 36 months from the date of the agreement. Ex.A3 and Ex.A4 agreements are dated 17.10.2015. The time limit expired by October 2018. It is categorically admitted by the respondents that there was no progress of construction of the flat. It is the case of the respondents that due to force majeure conditions and unexpected filing of suits in Bombay High Court, the project is being delayed. No specific force majeure condition is pleaded and proved by the respondents. There is also no evidence as to how filing of suit in Bombay High Court affected the progress of the project.

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(d) Another contention of the learned counsel for the respondents are that as per the terms and conditions of the booking forms, the complainants are eligible to get back the amounts after deduction of Rs.25,000/- and taxes applicable and after resale of the booked flat to third parties. From the evidence, it is clear that the complainants are withdrawing from the project not on their own, but for want of progress of construction of the project.

(e) So far as the arbitration clause in the agreement is concerned, the existence of a remedy by way of arbitration clause does not preclude an aggrieved home-buyers 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 respondents are not at all sustainable.

(f) In the above circumstances, it is held that the complainants are entitled to get back the amounts paid by them to the respondents with interest and compensation on the ground of failure on the part of the respondent no. 2, complete the project construction of project and hand over the possession of the flat as promised by them. Thus the point is answered accordingly.

8. Answer for Point No: (ii)

There is no dispute on the amount paid by the complainants to the respondents. In view of the answer for Point No.(i) the complainants are entitled to get Rs.36,81,648/- from the respondents. As per rule 18 of the TNRERA Rules, the complainants are entitled for interest at the highest marginal cost of lending rate of interest of SBI plus 2% per annum.

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Therefore, the complainants are entitled to the rate of interest of 8.70% per annum which is currently highest marginal cost of lending rate of SBI plus 2% per annum from the date of respective payments till repayment by the respondents. The amounts paid by the complainants were utilized by the respondents in their project. Considering the circumstances, it is held that the complainants are entitled to get compensation at 9% on Rs.36,81,648/- towards mental agony, inconvenience and unfair trade practice by the respondents. Towards litigation expenses, a sum of Rs.20,000/- is fixed. The claim of damages of Rs.5,00,000/- is rejected in view of the compensation awarded to the complainants. The complainants are entitled to reliefs as detailed above. Thus, the point is answered accordingly.


In the result, the respondents are directed as follows:-

- (1) The respondents, either jointly or severally, shall pay the complainants 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 repayment by the respondents.


G. SARAVANAN

CERTIFIED TO BE TRUE COPY ADJUDICATING OFFICER
TNRERA, CHENNAI


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


28/6/2019