

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP Nos. 095 of 2019**

Karthisanker K.M AND Nirmala G ... **COMPLAINANTS**

**Vs.**

M/s. Phoenix Serene Spaces Private Limited,  
(Formerly known as M/s. Phoenix Hodu Developers  
Pvt Ltd.,

Rep. by its Chairman Mr. Suresh Chakkapalli,  
(Regn. No.TN/01/Building/0163/2017)

... **RESPONDENT**

Complainant : Rep. by M/s. Chennai Law Associates  
Respondents : Remained Absent

Heard on : 04.06.2019  
Delivered on : 24.06.2019



**ORDER**

The above complaint by the complainants 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 "The Village" at Kalavakkam Village, Chengalpattu Taluk, Kancheepuram District.

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24/6/2019

(b) The Respondent allotted a flat bearing No.N502 on the 5<sup>th</sup> floor of Tower No.3 of the project. The total cost of the flat Rs.51,87,969/-. The registered agreements for sale of undivided share of land and a construction of the flat were entered between the complainants and the respondent.

(c) Out of the total cost of the flat, the complainants made payment of Rs.48,94,038/- as per the terms of the revised agreements. As per the agreements, the due date for delivery of the flat is October 2015. Even after three years of the due date, the completed flat was not handed over to the complainants.

(d) The complainants also called upon the respondent to cancel the flat allotment and refund the amount with interest. But the respondent has not repaid the amount. As per the provision of the RERA Act, the complainants are entitled for the refund of the entire amount with interest, compensation and costs. Hence, the complaint.


3. The respondent received notice and remained absent.

4. On consideration of pleadings and evidence of the complainants and documents filed by them, the following points are framed for consideration:

- 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?

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


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

(a) The learned counsel for the complainants submitted that the complainants were allotted flat in the project of the respondent and towards purchase of the flat, they paid a total sum of Rs.48,94,368/- as on 23.11.2016 i.e., almost 90% of the sale consideration and the respondent undertook to hand over the delivery of the flat by October 2015 but failed to comply with the terms of time limit and as per the provisions of the RERA Act, the complainants are entitled for refund of the amount with interest and compensation.

(b) The first complainant filed proof affidavit marking Ex.A1 to A44 documents. Ex.A12 is the Agreement to sell and Ex.A13 is the construction agreement entered between the complainants and the respondents, under which, the respondent along with owners of the land agreed to sell the UDS land and also undertook to construct and complete the construction of the flat and delivery possession of the flat on or before April 2015 with six months period for the sale consideration. ExA18 and 19 are the Deeds of Rectification for re-allotment of different flat. Ex.A2, A13, A123, A125, A127, A129, A134 and A138, the payment receipts of the complainants proved the payment of amount of Rs.48,94,038/- to the respondent.

(c) Section 18 of the RERA Act, give an option to allottees to withdraw from the project and demand the amount paid by them with interest

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including compensation, if a promoter fails to complete or is unable to give possession of the flat on the dates specified in the agreement.

(d) In the said circumstances, it is held that the complainants are entitled to get back the amount paid by them to the respondent with interest and compensation on the ground of failure on the part of the respondent to complete the construction and to give possession of the apartment booked by them in accordance with the terms and conditions, agreement of sale and construction. Thus the point is answered accordingly.

6. **Answer for Point No: (ii)**

(a) From ExA2, A13, A123, A125, A127, A129, A134 and A138, the receipts for payments, it is proved that the complainants have paid a total sum of Rs.48,94,038/- to the respondent towards the purchase of the unit. The complainants are entitled for the refund of the said amount from the respondent. 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. 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 respective 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 of service by the respondent is fixed at 9% on Rs.48,94,038/- till the repayment and towards litigation expenses, Rs.20,000/- is fixed. The complainants are entitled for reliefs as detailed above. Thus, the point is answered accordingly.

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24/6/2019

**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.6 of this order within 60 days of issue 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 Agreements and Sale Deed of the UDS land, as the case may be, on satisfaction of their claims at respondent's cost.



**G. SARAVANAN  
ADJUDICATING OFFICER**

**CERTIFIED TO BE TRUE COPY TNRERA, CHENNAI**

  
**ADMINISTRATIVE OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY**

  
24/6/2019