

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 096 of 2019**

K.P. Somanathan,

.... COMPLAINANT

Vs.

- (1) M/s. Sheltrex Developers Private Limited
 - (2) Subramania Muthu Krishnan, Director
 - (3) Anil Subhash Sawant, Director
- (Regn. No.TN/01/Building/0238/2017)**

.... RESPONDENTS

Complainant : Represented by Mr. S. Udayakumar, Advocate

Respondents 1 to 3 : Represented by Mr. S.B. Viswanathan, Advocate

Heard on : 25.07.2019

Delivered on: 31.07.2019

ORDER


The above complainant filed the 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 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 in the project namely Sheltrex Maraimalai Nagar on 21.06.2013 and paid booking amount of Rs.2,92,684/- to M/s. Sheltrex Housing Pvt Ltd. The said company issued allotment letter dated 12.07.2013 for allotment of a flat in Enclave-A-C4-2013 in the project and the date of possession as December 2015.

(b) Subsequently, there was no progress at the project site. On 02.04.2014, the complainant received intimation about the shifting of the project site to Oragadam and arrangement of a meeting at the site. The

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complainant attended a meeting arranged by the respondent company, which is also group company of Sheltrax. The complainant was promised interest for the amount already paid to Sheltrax Housing Pvt Ltd., till 31.03.2014 at Rs.88,272/- and was also offered a flat in the new project at Oragadam launched by the respondent.


(c) On 15.06.2014, the complainant received allotment letter from the respondent allotting a flat in their Oragadam Project for a cost of Rs.17,22,288.50 giving credit to the amount already received with interest to Rs.3,74,956/-. Subsequently, there was no progress of construction in the site. However, the complainant received demand for further amounts from the respondent. The complainant cancelled the booking and sought refund of the amount. The respondents paid Rs.50,000/- only by two installments of each Rs.25,000/-. As per the provisions of RERA Act, the respondent is liable to return the balance amount with interest and cost. Hence the complaint.

2. Counter Averments of the 1st respondent adopted by the 2nd and 3rd respondents in brief as follows:

(a) The complaint is not maintainable in law or on facts. All the allegations except admitted specifically are denied. The respondent came to know about disputes relating to title of land in Maraimalai Project of M/s. Sheltrax Housing Pvt Ltd., which was stalled. The name of the promoter of the respondent company was used by M/s. Sheltrax Housing Pvt Ltd., for marketing and sales activities. The complainant approached the respondent for help.

(b) Due to pressure of the complainant and other customers of the said company, the promoter of the respondent company arranged for a meeting

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and he was forced to offer transfer of booking to respondent company in their project. There was no transfer of money received from the complainant to respondent company. The respondent is a separate legal entity. There was no agreement between the complainant and the respondent.

(c) The complainant cannot seek refund of any amount from the respondent. Only on humanitarian grounds the respondents sent allotment letter to the complainant. The project was progressing. However the complainant cancelled the allotment and claimed refund paid to M/s. Sheltrax Housing Pvt Ltd. Hence the respondent prays for the dismissal of the complaint without cost.

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 rival contentions of the parties, the following points arise for determination:-

i. Whether the complainant is entitled to get back the advance booking amount paid to M/s. Sheltrax Housing Pvt Ltd., from the Respondent with interest on the ground of failure on the part of the Respondent to commence and complete the project in accordance with the date agreed by the Respondent?

ii. To what reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that the complainant booked a flat with M/s. Sheltrax Housing Pvt Ltd., in their

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project at Maraimalai Nagar and paid initial booking advance of Rs.1,00,000/- and subsequently Rs.1,92,684/- and in total Rs.2,92,684/- and received intimation from the said company that they are unable to continue development of the project and they are shifting to new project at Oragadam and he was asked to take a flat in the Oragadam project of the respondent and the respondent also issued letter allotting a flat in the new project and confirming the receipt of the amount and as there was no progress of construction, he cancelled the booking and sought refund of the amount for which the respondent refunded only Rs.50,000/- and the complainant is entitled for refund of the balance amount with interest.

(b) The learned counsel for the respondent contended that the complaint is not maintainable and the complainant never paid any amount to the respondents and the amount was paid to M/s. Sheltrax Housing Pvt Ltd., and due to some dispute, the project was stalled and the name of the promoter of the respondent company was used by M/s. Sheltrax Housing Pvt Ltd., and due to pressure, the respondents offered to transfer the booking of the complainant to their project at Oragadam and there was no transfer of money received by M/s. Sheltrax Housing Pvt Ltd., from the complainant to the respondents and there was no agreement between the complainant and the respondents and the complainant cannot seek any refund from the respondents and the complaint is liable to be dismissed with costs.

(c) As per Ex.A-1 Receipt, Ex.A-2 Allotment letter and the evidence of the complainant, he paid Rs.2,92,684/- to M/s. Sheltrax Housing Pvt Ltd., towards the purchase of a flat in their project at Maraimalai Nagar and

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subsequently he was informed about the inability to continue the project due to dispute among the land owners and there was change of location of the project to a new area and was offered a flat in the project namely Sheltrax Oragadam and the same was accepted by the complainant. In Ex.A5 allotment letter of the respondents sent to the complainant, the respondents confirmed the allotment of specific flat in their project and also gave credit to the amount paid to M/s. Sheltrax Housing Pvt Ltd., with interest calculated till 31.03.2014 Rs.88,272/- and thereby acknowledging receipt of Rs.3,74,956/-. None of the documents filed by the complainant is disputed by the respondents.

(d) In their Counter, the respondents stated that the complainant approached the 1st respondent and one Mr. Rajesh Krishnan, who was the promoter of the respondents company was forced to offer transfer of booking of the complainant to their project and the transfer was made on humanitarian basis and there was no transfer of actual money from the complainant to the 1st respondent and there was no agreement between the complainant and the respondent. But the evidence proves contrary. From Ex.A-3 letter, it is clear that the said Rajesh Krishnan, is the Chairman of the Sheltrax group companies including the respondents company and he made the offer of transfer of apartment in the new project as the Chairman of the group of companies.

(e) Admittedly, the respondent company is incorporated under the Companies Act, 1956 as a private limited company which is bound by the provisions of the Companies. Act. As a legal entity, the 1st respondent company was under no obligation to take the responsibilities and liability of another company, namely M/s. Sheltrax Housing Pvt Ltd., on the grounds

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alleged by the respondents. The respondents produced Ex.B3 certificate of change of name of M/s. Sheltrax Housing Pvt Ltd., as MMN Housing Pvt Ltd., with effect from the date of certificate i.e., 09.03.2016. Ex.B2 is the certificate of incorporation of 1st respondent company. 1st respondent has not filed any documents to show who are all the Directors of both the companies and Chairman of group of companies. The respondent has never disputed their liability in the email correspondence with the complainant. Admittedly, the respondents made refund of Rs.50,000/- after the complainant sent cancellation request. The respondents cannot deny their liability to pay the balance.


Considering all the above circumstances, it is held that the respondents are liable for the amounts paid by the complainant. Thus the point is answered accordingly.

8. **Answer for Point No.(ii)**

(a) There is no dispute on the amount paid by the complainant. However, the complainant received Rs.50,000/- towards part refund of the amount from the respondents.. Hence, the complainant is entitled for refund of the balance amount i.e., Rs.3,24,956/-.

(b) As per Rule 18 of the TNRERA, the rate of interest payable by the promoter to the allottees is to be State Bank of India's highest marginal cost of lending rate plus 2% per annum. The present rate of highest marginal cost of lending rate of interest of SBI is 8.60% p.a. The complainant is entitled for interest on the amount of Rs.3,24,956/- at the rate of 10.60% per annum (8.60% +2%) from the date of respective

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payment till repayment by the respondent. Towards cost of litigation, a sum of Rs.10,000/- is fixed. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:

- i. The respondents, either jointly or severally, shall pay the complainant the amounts at the interest rate 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.
- ii. The charge of the aforesaid amount shall be on the flat booked by the complainant till the repayment.

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

N. Ramesh
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

3/7/19
3/7/2019