

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.100 of 2020**

1. Sivakami Marikani
2. Arunn K.R.
Both Rep. by POA, K.Rathinamuthu COMPLAINANTS

Vs.

M/s. Mantri Technology Constellation Private Ltd,
Rep. by its CMD, Susheel Mantri
(Project Not registered) RESPONDENT

Complainants : Party-in-person
Respondent : Rep. by M/s. Sarvabhauman Associates, Advocates.

Heard on : 07.10.2021
Delivered on : 29.10.2021

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of a villa 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 complainants, in brief, as follows:**

(a) The complainants booked a villa in the project of the respondent, namely, "MANTRI SOLITUDE", at Sholinganallur Village, Kancheepuram District and paid advance amount and further amounts. The total cost of the villa is Rs.1,18,32,000/-.

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(b) The complainants and the respondent entered into a construction agreement and sale agreement. The sale consideration of the land was fixed at Rs.78,88,000/-and the construction cost was fixed at Rs.39,44,000/-. The complainants in total paid a sum of Rs.1,03,32,769/- to the respondent.

(c) The respondent undertook to complete the construction and to handover the villa on or before November 2017. Till the filling of the complaint, the construction is pending. There was a delay of more than 32 months. There is no sign of any further development in the property site for completion of the villa in the near future. Hence, the complainants seek refund of the amount with interest, compensation and cost.

3. Counter Averments of the respondent, in brief, as follows:-

(a) Except admitted, all the allegations of the complainants are denied as false and baseless. The complainants approached the respondent for purchase of villa in their project.The consideration for construction agreement of the villa was fixed as Rs.78,88,000/- and sale agreement was fixed as Rs.39,44,000/-, totaling to Rs.1,18,32,000/-. The complainants paid Rs.1,03,32,769/-only.

(b)The complainants paid the consideration in a belated manner and failed to adhere to the payment schedule. Therefore, the delay was caused. The complainants accepted the delay. Due to Covid-19 Pandemic and lockdown the construction could not be completed and the villa was not handed over possession to the complainants. Under the construction agreement, there is a force majeure clause.

(c) Under the construction agreement, there is an arbitration clause to refer the dispute to arbitrator. Therefore, the complainants ought not to have invoked the jurisdiction of RERA. The project has been completed and is ready for handing over in October 2021. As per the terms of the construction agreement, the compensation for delay is payable by the respondent only at Rs.3.00 per sq.ft. till the handing over possession of the villa. The unilateral cancellation by the complainants is untenable.

(d) The respondent is entitled to forfeit 10% of the value as liquidated damages and the complainants are entitled for the remaining compensation as per the agreements. If the claim of the complainants for refund of the entire amount and compensation is allowed, the respondent would be put to irreparable hardship. Hence the respondent prays 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 for refund of the amounts paid to the respondent together with interest and compensation on the ground of failure to deliver the villa as per the terms of the agreements?
- ii. What are the reliefs, the complainants are entitled to?

7. Answer for Point No.(i):

(a) The learned counsel for the complainants filed written notes of arguments and submitted that on 19.10.2015, the complainants approached the respondent for purchase of a villa in their project and entered into agreements of sale and construction with the respondent for a total sale consideration of Rs.1,18,32,000/- and paid Rs.1,03,32,769/- and the respondent undertook to complete the construction and handover delivery of possession of the villa by November 2017 and the respondent was not able to complete the construction and handover possession of the villa within the agreed time and the complainants are entitled for all the reliefs.

(b) However, the learned counsel for the respondent also filed written notes of arguments and contended that the complainants paid a sum of Rs.1,03,32,769/- in pursuance of the sale and construction agreements for a total sale consideration of the villa at Rs.1,18,32,000/-, but, the complainants paid the consideration in a belated manner and failed to adhere to the payment schedule and the delay in construction was due to COVID-19 pandemic and lockdown and there is also an arbitration clause in the agreements to refer the dispute to arbitrator and there is a specific clause on the procedure to cancel the agreements and the respondent is entitled to forfeit 10% of the total value of the agreement on cancellation and the complainants are entitled for compensation only as per the agreement for construction at Rs.3.00 per sq.ft. till the handing over of the possession of the villa and due to the unilateral cancellation by the complainants, the respondent is put to irreparable loss and therefore the complaint is liable to

be dismissed with cost and the complainants are to be directed to pay the remaining consideration and to take possession of the villa.

(c) Section 18 of the RERA Act gives right to allottee to withdraw from the project and demand the amount paid by him with interest including the compensation, if a promoter fails or is unable to give possession of the flat on the dates specified in the agreement. As per Annexure-B1 of the Ex.A2, construction agreement, the respondent undertook to complete the construction and to deliver the possession by November 2017. It is not in dispute that as on 27.07.2020, the date of filing of the complaint, the villa was not completed in construction and ready for delivery of possession. In the counter of the respondent filed on 09.04.2021, the respondent stated that the project has been completed and ready for handing over in October 2021. Even in the written notes of arguments filed on behalf of the respondent, there is not even a mention of the date on which the villa was completed in construction and ready for delivery of possession. It is also not the case of the respondent that any notice of completion of construction and delivery of possession of the villa was given to the complainants.

(d) The learned counsel for the respondent pointed out that there is an arbitration clause in the agreements and any dispute is to be referred to arbitrator. It is settled law that the remedy under Section 18 of the RERA Act is without prejudice to any other remedies available under the law. Therefore, the clause for arbitration in the agreements is not a bar for grant of relief under the provisions of the RERA Act. Though the respondent alleged that the complainants paid the consideration in a belated manner and failed to adhere to the payment schedule, there is no evidence of issue

of any notice of payment by the respondent to the complainants on completion of each stage of construction. Therefore, the contentions of the learned counsel for the respondent are not sustainable.

(e) In this regard, it is relevant to note that Hon'ble Supreme court in Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors., reported in Manu/SC/0463/2019 held that the builder could not seek to bind the buyer with one sided contractual terms and once the builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the respondent-purchaser within the time stipulated in the agreement, or within a reasonable time thereafter, the purchaser could not be compelled to take possession of the flat even though it was offered almost two years after the grace period under the Agreement expired.

(f) In the above circumstances, it is held that the complainants are entitled for refund of the amount paid to the respondent with interest, including compensation on the ground of failure on the part of the respondent to complete the construction of the villa as per the terms and conditions of the construction agreement. Thus, the point is answered accordingly.

8. Answer for Point No.(ii):

(a) There is no dispute that the complainants paid Rs.1,03,32,769/- to the respondent towards sale consideration of the villa. In view of the answer for point No.(i), the complainants are entitled for refund of the amount of Rs.1,03,32,769/- with interest and compensation from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainants are entitled for the interest at the rate of 7.30% per annum which is currently the highest marginal cost of lending rate of interest of SBI, at the time of filing of the complaint plus 2%, i.e., 9.30% per annum for the amounts paid from the dates of respective payments till repayment by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, it is held that the complainants are entitled for a sum of Rs.5,00,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by them. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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.8 of this order within 30 days from the date of issue of the order.
- (2) The charge of the aforesaid amount as encumbrance shall be on the villa booked by the complainants till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in this order to the Sub-Registrar concerned.
- (3) The complainants shall execute cancellation of the agreements, as the case may be, on satisfaction of his claim as per the order at the respondent's cost.

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- (4) A copy of this order is directed to be forwarded to the Additional Director, TNRERA to examine whether the project is an ongoing project required registration and for necessary and proper action.

Sd/- 29.10.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1--- K.Rathinamuthu
RW-1--- Girish Gupta

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	...	Sale deed
Ex.A2	...	Construction agreement
Ex.A3	...	Statement of accounts and payment receipts (series)
Ex.A4	...	Photos of dilapidated villa
EX.A5	...	GPA executed by the complainant
Ex.A6	...	ID proof of 2 nd complainant
Ex.A7	...	ID proof of PoA
Ex.A8	14.08.2020	Life certificate

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	26.11.2020	Board resolution copy

Sd/- 29.10.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

CERTIFIED TO BE TRUE COPY

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29.10.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY