

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.101 of 2020**

K.V. Arunkumar Complainant

Vs.

M/s. Marg Properties Limited

Rep by its MD, G.R.K. Reddy.

(Regn. No.TN/01/Building/0055/2018)

..... Respondent

Complainant : Rep. by Mr. D.Aravinth Kumar, Advocate

Respondent : Rep. by Dr.(Mrs.) S. Padma, Advocate

Heard on : 23.07.2021

Delivered on : 19.08.2021

ORDER

The above complaint filed by the complainant seeking refund of the entire amount paid to the respondent towards purchase and construction of booked flat 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 complainant booked a flat with the respondent in their project, namely, "**Brindavan**", Pondur Village, Sriperumbudur Taluk, Kancheepuram District and paid advance and further amounts as agreed by them.

(b) The respondent allotted flat No.8012, 7th floor, Block-E, to the complainant. The total cost of the flat is Rs.22,49,626/-. Agreements for sale and construction were entered on 09.08.2011 between the complainant and the respondent. Out of the sale consideration of

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Rs.22,49,626/-, the complainant paid Rs.4,00,000/-. The respondent undertook to hand over the flat by June 2013 with a grace period of *four* months. But construction was not further carried out and the respondent has not completed development as promised by them.

(c) As per the provisions of the RERA Act, the respondent is liable to return the amount with interest, compensation and cost to the complainant. The complainant withdraws from the project and is entitled for reliefs.

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

(a) The claim petition is not maintainable. The respondent denies all the allegations, except admitted and put the complainant to the strict proof of the same.

(b) The complainant has not paid the balance amount towards the demanded amount and total apartment cost. Without payments, the flat will not be handed over. Due to delay in getting approvals from the statutory bodies and other natural disaster, labor issue, material issue, the project got delayed. The respondent is ready to perform their part. But, the complainant failed to pay the demanded amount.

(c) The claim of the complainant is barred by limitation and is liable to be dismissed. The respondent denies the cause of action made in the complaint. The repayment of an amount of Rs.4,00,000/- invested by the complainant with 20% of annual interest is barred by limitation, misconceived, not properly arrayed and a sum of Rs.3,00,000/- towards mental agony and loss for the said complaint could be granted by this Court, because the complainant never made the payments on time. 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 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 give possession of the apartment booked by them in accordance with the date and terms of agreements for sale and construction?
 - ii. Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The learned counsel for complainant submitted that the complainant booked an apartment in the project of the respondent on payment of booking advance of Rs.50,000/- on 19.01.2011 and subsequently paid Rs.3,50,000/- on 29.04.2011 and the respondent has not carried out and completed the development and as per the construction agreement dated 09.08.2011, the respondent undertook to complete the construction and handover the possession of the apartment on or before June 2013 and the respondent failed to discharge the same and he is liable to return the amount with interest and compensation as per section 18 of the RERA Act, 2016.

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(b) The learned counsel for the respondent contended that the complainant has not paid the balance amount towards the demanded amount of total apartment cost and without payments, the flat will not be handed over and there was delay in getting approvals and due to natural disasters, the project got delayed and there is no cause of action for the complaint and the complaint is liable to be dismissed.

(c) The agreement is for delivery of possession of the constructed apartment by the respondent to the complainant. Admittedly, on the expected delivery date, the respondent has not completed construction of the apartment as undertaken by them. Only on completion of construction, the limitation will begin. In the said circumstances, the claims of the complainant cannot be said as barred by law of limitation.

(d) It is relevant to note that in a similar case in Smt. Saraswathamma Vs. H. Sharad Shrikande and Ors reported in AIR 2005 Kant 292 the Hon'ble High Court of Karnataka held as follows:

28. The meaning of the expression 'date fixed for the performance' has to be understood in the context of the agreement, the obligations undertaken by the respective parties in the agreement. Even if a date is fixed initially for the performance of the contract and if the performance itself is dependent on the discharge of several other obligations undertaken by the promisor himself what should happen is a question to be considered.

29. If in a given case, the promisor himself has not performed the obligations undertaken by him, so as to enable the specific enforcement of the agreement, is it open for him to contend that whether he performs his part or not and whether or not the agreement has become enforceable or not limitation starts once the date fixed is over. As has happened in this case, the promisor (vendor) has herself undertaken to put up

the construction and complete the same within 90 days in all respects and execute the sale deed. If the construction is not completed, the question of the promisee enforcing specific performance of the contract does not arise. If the conduct of the parties reveal that the promisor took time to complete the construction, secure the occupancy certificate and also electricity, water and other necessary requirements at a later date, then it cannot be said that the time fixed (90 days) for performance of the contract would have the effect of setting the period of limitation to run. Limitation starts to run when the flat is ready, vacant possession is kept ready to be handed over to the promisee and if despite the same the promisor fails to handover the same.

30. *The promisor having committed default in not putting up the construction and keeping ready in all respects within 90 days, say that a compulsory cause of action had in fact arisen to the promisee after the lapse of 90 days when he did not complete the construction, to enforce the agreement. The agreement entered into is not for enforcing the construction of the building by the purchaser. The specific enforcement contemplated is the sale of a constructed flat. Therefore, until the construction is completed in all respects, as agreed, the promisor cannot be heard to say that the delay and default committed by him set the limitation to run for the purpose the vendee to initiate the suit for specific performance:*

In view of the above judgment, it is obvious that the time for specific performance of agreement to purchase a flat will not begin unless construction is completed and the promoters fails to hand over its possession to the purchaser. Therefore, the question of application of limitation to the claims of the complainant does not arise.

- (e) In view of the discussion above and the circumstances of the case, it is held that the above complainant is entitled to get back the amounts

paid to the respondent with interest and compensation on the ground that there was no progress of construction in the project and 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 agreements of sale and construction. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

(a) There is no dispute to the amounts paid by the complainant to the respondent. In view of the answer for Point No.(ii), the complainant is entitled for refund of the amount of Rs.4,00,000/- with interest and compensation.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 8.15% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.15% p.a for the entire amount paid from the date of respective payment till repayment by the respondent. Apart from the above, the complainant is entitled to Rs.50,000/- towards compensation for mental agony and inconvenience and Rs.20,000/- towards legal expenses incurred by him. The complainant is entitled for reliefs as detailed below. 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 other charges 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 flats booked by the complainant till the repayment.

Sd/- 19.08.2021
G. SARAVANAN
ADJUDICATING OFFICER

List of Witnesses

CW1 -- K.V.Arunkumar
RW1 -- K.S.Gajendra Babu

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	07.12.2019	E-mail communication regarding registration
Ex.A2	09.08.2011	Construction agreement
Ex.A3	09.08.2011	Agreement for sale
Ex.A4	11.02.2020	Bank Statement from 01.05.2011 to 30.06.2011
Ex.A5	02.03.2021	E-mail communications

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List of documents filed by the respondent

Ex.No	Date	Documents Name
Ex.B1	..	News paper article

Sd: 19.08.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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N. 
Administrative Officer