

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**

**CCP No. 103 of 2020**

1. K.Shanthi  
2. K.Ravikumar ..... Complainants

**Vs.**

M/s. Pacifica (Chennai Project) Infrastructure  
Company Private Ltd.,  
Rep by its Director, Samuel Rohan Prabal  
(TN/01/Building/0181/2019) ..... Respondent

Complainants : Rep. by Mr. E.Girirajan, Advocate.

Respondent : Rep. by Mr. Stephen C.Kumar, Advocate.

Heard on : 23.09.2021

Delivered on : 21.10.2021

**ORDER**

The complaint filed by the above complainants seeking refund of amount paid to the respondent towards purchase of an apartment with interest, compensation and cost 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) On 30.03.2014, the complainants booked a flat with the respondent in their project, namely, "**Pride Towers**", B706, 7<sup>th</sup> Floor, at Padur Village, Kancheepuram District, and paid advance amount and further amounts. The complainants availed bank loan for purchase of the flat.

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(b) On 16.05.2014 and on 30.10.2014, the complainants entered into sale agreement and also a construction agreement respectively with the respondent for purchase of the apartment. The respondent undertook to complete construction and handover the flat on 30.06. 2015. The complainants in total paid a sum of Rs.47,46,864/- out of the sale consideration of Rs.54,39,803/-. Till date, the construction of the flat is not completed. There was no default of payment by the complainants.

(c) The bank started collecting Pre-EMI even before completion of the project and handing over of flat. This led to severe financial strain. The respondent has not even updated the actual situation of the project. The complainants are entitled for refund of the amount with interest, compensation and cost. Hence, the complainants pray for all the reliefs.

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

(a) All the averments in the complaint are denied as false and incorrect. It is true that the complainants entered into sale and construction agreements with the respondent for purchase of a flat in the project of the respondent and paid amounts towards sale consideration. The respondent has not handed over possession to the complainants in time.

(b) The project construction was already completed before the Act came into force. But the podium was not connected with main building. The project was registered with the Authority and the Authority granted time to complete the project till 30.10.2021.

(c) Due to COVID-19, situation, the matter is being delayed. Many home buyers in the project have been put into possession of their respective flats. The respondent made substantial investment in the project. Any direction for refund of the amount will suffer the project and will open the gate for

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litigations. The complainants should wait till the completion of the project period for possession of their flat. The interest claimed is exorbitant. The complaint is abuse of process of law. Hence, the complaint is liable to be dismissed.

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 with interest, compensation and cost on the ground of failure on the part of the respondent to give possession of the apartment booked in accordance with the date and terms of the agreement for construction?
  - ii. What are the reliefs, the complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that on 16.05.2014 and 30.10.2014, the complainants entered into an agreement of sale and also a construction agreement with the respondent towards purchase of a flat and the respondent undertook to complete the construction and to handover the flat on 30.06.2015 and out of the total sale consideration of Rs.54,39,803/-, the complainants paid Rs.47,46,864/- and the complainants availed bank loan for payment of the sale consideration and they are paying pre-EMI to the bank and the respondent failed to handover the flat and to fulfill the obligations and the complainants are entitled for all the reliefs.

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(b) The learned counsel for the respondent contended that the respondent had already executed sale deed for the UDS in favor of the complainants and has not violated any terms and conditions of the construction agreement and as per the registration certificate issued by the TNRERA, the time limit to complete construction is available till 30.10.2021 and there are many home buyers who purchased house plots and homes in the project and they had been put into possession of their respective plots, as well as, flats and the respondent made substantial investment in the project and the complainants are to be directed to wait till the completion of the project and therefore the complaint is liable to be dismissed with cost.

(c) It is not in dispute that as per Ex.A4, construction agreement entered with the complainants on 30.10.2014, the respondent undertook to complete the construction and to handover the flat by 30.6.2015, with a grace period of six months and the time limit including the grace period was over by 30.12.2015. Section 18 of RERA Act gives an option to allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the flat on the date specified in the agreement. The provisions of RERA Act do not rewrite the clause of completion or handing over possession of flat in the agreement for sale and construction. The time line under Section 4(2)(I)(C) does not absolve the liability under the agreement. Therefore the contentions of the counsel for the respondent are not sustainable.

(d) In the above facts and circumstances of the case, it is held that the complainants are entitled for refund of the entire sale consideration paid to the respondent together with interest, compensation and cost. Thus, the point is answered accordingly.

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

(a) It is not in dispute that the complainants paid a sum of Rs.47,46,864/- in total towards the purchase of the flat to the respondent. Therefore, the complainants are entitled for refund of the said amount of Rs.47,46,864/- 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 complainants are entitled for the interest at the rate of 7.30% per annum which was currently the highest marginal cost of lending rate of interest of SBI at the time of filing of the complaint plus 2% per annum i.e., 9.30% p.a for the entire amount paid from the date of respective payments till repayment by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, a sum of Rs.2,00,000/- towards compensation for mental agony and inconvenience and a sum of Rs.25,000/- towards legal expenses is fixed. The complainants are entitled for 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, litigation cost and also the loan amount due with interest to the bank as per the findings in answer for Point No.(ii), Para No.8 of this order within 30 days of issue of this order.
2. The charge of the amount as encumbrance shall be on the flat booked by the complainants till repayment of the claim as per this order.

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3. On repayment of the claim as per this order, the complainants shall execute the cancellation of the construction agreement and the sale deed, as the case may be, at the expense of the respondent.

**G. SARAVANAN**  
**ADJUDICATING OFFICER**

**LIST OF WITNESSES**

CW-1--- K.Ravikumar

RW-1--- S. Vijayaraghavan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	30.03.2014	Booking form
Ex.A2	16.05.2014	Agreement for sale
Ex.A3	30.10.2014	Sale deed
Ex.A4	30.10.2014	Construction agreement
Ex.A5	27.06.2014	Letter from SBI
Ex.A6	21.05.2014	Demand letter, statement of payments and receipts (series)
Ex.A7	06.12.2013	Online tax accounting system
Ex.A8	20.11.2020	SBI housing loan statement

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	07.10.2020	Board resolution copy
Ex.B2	12.05.2021	Extension of time granted by TNRERA

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21.10.2021  
**LAW OFFICER**  
**TN REAL ESTATE REGULATORY AUTHORITY**

Sd/- 21.10.2021  
**G. SARAVANAN,**  
**ADJUDICATING OFFICER,**  
**TNRERA, CHENNAI.**