

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer
CCP No.105 of 2020**

K.R.Latha

.... COMPLAINANT

Vs.

M/s.Manju Foundations (P) Ltd,
Rep. by its MD, K.M.Vidyasagar
(Project not registered)

.... RESPONDENT

Complainant : Rep. by Mr.R.Prabhakaran, Advocate.

Respondent : Rep. by M/s.Sarvabhauman Associates, Advocate

Heard on : 11.11.2021
Delivered on : 26.11.2021

ORDER

The complaint by the above complainant seeking refund of the amount paid to the respondent towards purchase of an apartment 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 complainant, in brief, as follows:

(a) On 09.01.2014, the complainant entered into a tripartite agreement with the respondent and LIC Housing Finance Ltd. for availing loan for purchase of plot and also construction of an independent house in the project of the respondent, namely, "Havisha Homes" at Pennalur Village, Sriperumbudur Taluk, Kancheepuram District.

(b) On 17.12.2014, the complainant entered into an agreement of sale for purchase of vacant housing plot in the project for a sale consideration of

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Rs.5,50,800/-. As per the construction agreement with the respondent, the total cost of construction is Rs.14,49,200/-. The respondent undertook to complete the construction and handover delivery of the house on or before 18.06.2016. The respondent in total received a sum of Rs.16,50,000/- from the complainant.

(c) Even after lapse of six years, the respondent has not completed the construction of the house. The complainant came to know that the respondent received money from several persons and committed cheating by not constructing flats. The complainant is repaying loan availed by her, apart from the payment of rent for the house in a rental accommodation. The complainant is entitled for refund the amount with interest, compensation and cost.

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

(a) Except admitted, all the averments and allegations are denied as false and baseless. The complaint is filed with an intention to harass and cause damage to the reputation of the respondent. The complaint is not maintainable and this Forum has no jurisdiction.

(b) The complainant approached the respondent to build an independent house named "Havisha Homes" in the property and entered into a construction agreement with the respondent on 18.12.2014 for a total sale consideration of Rs.20,49,200/- . The respondent started construction work in the property. As per the construction agreement, both the complainant and the respondent agreed to resolve any dispute between them through arbitration. Therefore, the present complaint without resorting to arbitration is not maintainable. The complainant defaulted in payment of the amount as agreed under the construction agreement and breached the terms of the agreement. The

respondent suffered huge loss in the project. The complainant ought to have invoked arbitration within three years from the date of default in payment. The present complaint is time barred and is liable to be dismissed.

(c) The complainant is not an allottee and the respondent is not a promoter to invoke section 31 of the RERA Act. The complainant is not an aggrieved party under the Act. Construction of single apartment will not come under the purview of the Act. Therefore the complaint is not maintainable. The respondent is not a primary party to the sale deed executed between the complainant and the owner of the land. The respondent is not liable to pay compensation. Therefore, the complaint is liable to be dismissed with cost.

4. An attempt to settle the matter amicably has failed.

5. On both sides, 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 complaint is maintainable?
- ii. Whether the complainant is entitled for refund of the amounts paid to the respondent together with interest and compensation on the ground of failure to deliver the house as per the terms of the agreement?
- iii. What are the reliefs, the complainant is entitled to?

7. Answer for Point Nos.(i) and (ii):

(a) The learned counsel for the respondent contended that the complaint is not maintainable under section 31 of the RERA Act and the project is not an ongoing

project and the respondent had agreed to put up independent house with super built up area of 850 sq.ft. and the project will not fall under the ambit of Section 3(2)(a) and the registration under the Act is not compulsory for the project where the land proposed to be developed does not exceed 500 sq.m and the complainant and the respondent will not come under the definitions of allottee and promoter respectively under the RERA Act and the complaint is barred by limitation and therefore liable to be dismissed with cost. The learned counsel further contended that the complainant has not paid the amount to the respondent as per the payment schedule in the construction agreement and the respondent is entitled for interest at the rate of 24% p.a. for the unpaid amount and also relied the following decisions in support of his contention:

(i) M/s.A.T.Brij Paul Singh and others Vs State of Gujarat. (1984) 4 SCC 59

(ii) Maula Bux Vs Union of India. 1969 (2) SCC 554

(iii) State of Rajasthan and Another Vs Ferro Concrete Construction Pvt. Ltd. (2009) 12 SCC 1

(b) However, the learned counsel for the complainant submitted that the respondent promoted the project and the complainant entered into an agreement of sale with the owners of the land in the project for a sale consideration and also entered into a construction agreement with the respondent for construction of independent house at a total cost of Rs.14,49,200/- and the respondent agreed to complete the construction within 18 months and the payment of Rs.5,50,000/- was made by the complainant as advance amount and the balance amount was arranged by raising loan from LIC Housing Finance Ltd. and the respondent received a total sum of Rs.16,50,000/-

and the respondent has not bothered to complete the construction and the complainant is entitled for all the reliefs.

(c) It is not in dispute that under Ex.B1, construction agreement entered with the complainant, the respondent undertook to construct the independent house in the plot in the project, namely, Havisha Homes for a sale consideration and also undertook to complete the construction within a period of 18 months from the date of execution of the sale deed in favor of the complainant. Ex.A9 is the prospectus of the project issued by the respondent under the name Havisha Homes with details of layout and area statement with a promise for a self sufficient and residential township with world class amenities such as swimming pool, water facilities, landscaped gardens, jogging track, school, etc. and also club house with gymnasium. Merely the respondent made arrangements for execution of the sale deed by the respective owners of the land to the buyers, the respondent cannot contend they are not promoters of the project. Under section (zk), the definition of promoter means a person who constructs or causes to be constructed an independent building or a building consisting of apartments. Under section 2(d) allottee in relation to real estate project means a person to whom a plot, apartment or building as the case may be, has been allotted and sold or otherwise transferred by the promoters. Therefore, it is clear that the complainant is the allottee and the respondent is the promoter of the project. The respondent cannot also contend they had agreed to put up independent house only and the project will not fall under the provisions of the RERA Act.

(d) So far as the question of limitation is concerned, the respondent contended that the construction agreement was entered on 18.12.2014 and the sale deed was executed on 12.06.2015 and the complainant agreed to remit the stipulated

amount on 12.06.2015 and since the complainant has failed to remit the said amount, the cause of action for preferring a complaint starts on the said date and the limitations comes to end on 12.06.2018. Ex.A6, payment receipts, reveals that on 06.10.2015, the respondent received Rs,3,00,000/- cash from the complainant and also entered into a tripartite agreement with the complainant and the LIC Housing finance Ltd with regard to the loan amount availed by the complainant to pay the respondent. Admittedly, Ex.B1, the construction agreement is a specific performance agreement to purchase the independent house or building to be constructed by the respondent. The time for specific performance of agreement to purchase a flat or building will not begin unless construction is completed and the promoter fails to handover its possession to the purchaser. Admittedly, till date construction of house is not complete. Therefore the question of application of limitation to the claims of complainant does not arise.

(e) So far as the question of arbitration is concerned, section 88 of the RERA Act makes it clear that the provision under the Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force. Section 18 of the Act also asserts the rights of the allottee by reading that, the remedy for seeking return of the amount under section 18, if the promoter fails to complete or is unable to given possession of the apartment, flat or building, is without prejudice of any other remedy available. Therefore, the clause of arbitration in the construction agreement is not at all a bar for seeking the relief under the Act.

(f) It is the case of the respondent that the complainant has not paid any amount as per schedule 'D' of the construction agreement and breached the terms of the agreement. The schedule in the agreement mentions the payment to be made by

the complainant on different stages of construction from booking till handing over. There is no specific date given for completion of stage-wise construction, so that the payment schedule is linked with every stage of construction with specific dates. In the absence any time schedule for stage wise completion of construction to be followed by the respondent so as to provide the flat within the date fixed under the agreement, the respondent cannot expect the complainants to make payment as per the payment schedule without specific dates for payment. Where the promises are reciprocal, each party has the option to perform his part of the contract but cannot insist on the other party performing his part without himself performing what he was agreed to do. The respondent has not produced any demand notice for payment sent by him to the complainant on completion of particular stage of construction as per the schedule. Therefore, the complainant cannot be blamed for not adhering to the payment schedule when the project itself was delayed due to various reasons and not for any lapses on the part of the complainant.

(g) As per the version of the complainant, she had paid Rs.8,50,000/- from her own funds and by availing loan from LIC Housing Ltd. under the tripartite agreement, a sum of Rs.8,00,000/- was released to the respondent and in total, she paid Rs.16,50,000/- to the respondent. In the counter, the respondent admitted the initial payment of Rs.5,00,000/- made while entering into the construction agreement on 18.12.2014 and left a blank with regard to the subsequent payment received by them. The payment receipts and statement from LIC Housing finance Ltd. proves that the complainant has paid Rs.16,50,000/- to the respondent, out of the total cost of the house of Rs.20,49,200/- which includes cost of construction of Rs.17,00,000/-, the land

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development charges of Rs.72,950/- and Rs.2,76,250/- towards other amenity charges. It is also not the case of the respondent that the construction of the building was completed till date. The contention of the complainant that the project is stretching to an area of 16 acres of land and with 232 homes with committed amenities like parks, water facilities, schools, compound walls, super market is supported by Ex.A9, prospectus issued by the respondent. However, the respondent tactfully projects it as an independent undertaking of construction of house to the complainant and thereby evaded to register the project with the TNRERA. Compensation includes refund of the amount paid by the complainant which is an actual loss. It is obvious that compensation includes refund of money with interest also. Considering all the above, it is clear that this Forum can order or award refund of the amount with interest by way of compensation. The decisions relied by the learned counsel for the respondent are not applicable to the facts of the case.

(h) In the above circumstances, it is held that the complaint is maintainable before this Forum and the complainant is entitled for refund of the amount and compensation. Thus, the point is answered accordingly.

8. Answer for Point No.(iii):

(a) The complainant is claiming a sum of Rs.16,50,000/- paid to the respondent along with interest portion of Rs.2,75,000/- paid to the LIC Housing Finance Ltd. Since the amount paid by the complainant to the respondent is ordered to be returned with interest from the respective dates of payment, till repayment, the claim of interest under separate head paid to the LIC Housing Finance Ltd. is not maintainable and is rejected. In view of the answer for the point No. (i), the complainant is entitled for refund of the amount paid to the respondent with

interest and compensation. The complainant paid in total Rs.16,50,000/- to the respondent for purchase and construction of house. Therefore, the complainant is entitled for refund of the amount of Rs. 16,50,000/- with interest, compensation and cost.

(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 8.20% 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., 10.20% 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, it is held that the complainant is entitled for a sum of Rs.1,00,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by him. The complainant is 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.(iii), 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 house 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 the order to the Sub-Registrar concerned.

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

4. Copies of the order and Ex-A9 prospectus are directed to be forwarded to the Additional Director, TNRERA to examine whether the project is an ongoing project required registration as on the date of commencement of the RERA Act and subsequently and also for necessary and proper action.

Sd/- 26.11.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- K.R. Latha
RW-1--- K.M.Vidhyasagar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	09.01.2014	Tripartite agreement
Ex.A2	17.12.2014	Agreement of sale
Ex.A3	18.12.2014	Construction agreement
Ex.A4	09.01.2015	Declaration deed
EX.A5	26.03.2015	Loan sanction letter
Ex.A6	...	Payment receipt (series)
Ex.A7	21.06.2017	Letters from LICHFL
Ex.A8	...	Photograph of the site
Ex.A9	...	Prospectus
Ex.A10	18.02.2015	Sale deed

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	12.06.2015	Construction agreement
Ex.B2	12.06.2015	Sale deed

Sd/- 26.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

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26.11.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY