

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

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

CCP Nos. 106, 112 AND 113 of 2020

- | | |
|-------------------------------------|-----------------------|
| 1. Prabhakaran Parthasarathy | ... (CCP No.106/2020) |
| 2. S. Kavitha | ... (CCP No.112/2020) |
| 3. S. Sangeetha and K. Thiyagarajan | ... (CCP No.113/2020) |
- COMPLAINANTS

Vs.

M/s. Metroline Promoters (P) Ltd
Rep.by its Director Amit Gupta
(Project not registered)

..... RESPONDENT

Complainants (in above CCPs) : Rep. by Mr. V. Manohar, Advocate.
Respondent : Remained absent.

Heard on : 12.03.2021

Delivered on : 25.03.2021

ORDER


The complaints claiming the refund of the amounts paid by the above complainants to the respondent towards purchase of constructed commercial units with interest and compensation are filed *u/s 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016* (hereinafter referred to as RERA Act).

2. Since the above complaints are relating to same project of the respondent and the same points arise for determination, all the above complaints are heard together and disposed of by a common order.

3. Averments of the complainants in brief as follows:

(a) The complainants made applications for allotment of commercial units which are shops in a commercial complex, namely, "**GOLD SOUK GRANDE**" at GST Road, Vandalur, Chengalpet Taluk, promoted by the respondent and paid the amounts.

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(b) The shops allotted to the complainants, the agreed price, the amounts paid by them and due dates for delivery of the constructed shops to the respective complainants are as follows:

Complainants Name	CCP Nos	Allotted Shop No	Price Agreed Rs.	Amount Paid Rs.	Due Date for delivery of the shop (including grace period)
(1)	(2)	(3)	(4)	(5)	(6)
Prabhakaran Parthasarathy	106/2020	LG-04 Lower Ground Floor	40,30,400/-	40,30,400/-	30.06.2013
S. Kavitha	112/2020	FF-106A 1st Floor	44,79,948/-	44,79,948/-	30.06.2013
1. S. Sangeetha 2. K. Thiyagarajan	113/2020	FF-103 1 st Floor	32,00,000/-	32,00,000/-	30.06.2013

(c) Subsequently, separate unit buyer agreements were entered between the complainants and respondent. Under the agreements, monthly returns for the amount invested in the respective units was fixed at Rs.33,586/- with effect from 01.04.2012 in CCP.No.106/2020, at Rs.37,710/- with effect from 15.10.2011 in CCP.No.112/2020 and at Rs.37,800/- with effect from 10.07.2011 in CCP.No.113/2020 till the date of offer of possession of the respective units. The respondent also paid the rents as promised only for a few months.

(d) In spite of payment of the entire money and since possession of the shops were not handed over, the complainants approached the District Crime Branch Police, Kancheepuram by way of complaints on 13.10.2016. The representative of the respondent attended the enquiry with a proposal to hand over the units and also for payment of interest. There was no progress thereafter.

(e) As on date of the commencement of the Act, the project was not given completion certificate and still it is an ongoing project. As per the provisions of the RERA Act, the respondent is liable to return the amount with interest and

compensation to the complainants and hence, the complainants withdraw from the project and seek full refund of entire amount with interest and compensation.

4. On receipt of the notices of hearing in the above complaints, the respondent remained absent.

5. On the side of the complainants, the complainants in the above complaints filed their respective evidence on affidavit with documents.

6. On the basis of the contentions of the complainants, the following points arise for détermination:


- i. Whether the complainants are entitled for refund of the amounts paid to the respondent towards purchase of the constructed shops with interest and compensation on the ground of failure on the part of the respondent to give possession of completed shops booked by them in accordance with the date and terms of agreements?
- 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 the respondent launched the project, namely, "GOLD SOUK GRANDE" which is a commercial complex and invited applications for allotment of units and the complainants submitted application forms for allotment of units in pursuance of which unit buyers agreements were entered between the complainants and respondent and also followed by the memorandum of understanding over the construction of the unit allotted to the complainants and the complainants paid entire amount and subsequently there was no progress and therefore the complainants are entitled for the reliefs prayed by them.

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(b) In CCP No.106 of 2020, the complainant himself was examined as CW1. The complainant stated that he made the application on 04.06.2011 which is marked as Ex.A1 for allotment of the shop and paid a sum of Rs.40,30,400/- in total and on various dates and Ex.A2, the unit buyer agreement was entered on 23.03.2012 and as per Ex.A3, the memorandum of understanding, the respondent acknowledged the receipt of total sum of Rs.40,30,400/- and promised to pay monthly rents for the unit. As per the Ex.A1, the application form and allotment, the date of promised delivery was on 31.12.2012. Subsequently, since there was no progress, he and other allottees filed a complaint with the District Crime Branch Police, Kancheepuram on 13.10.2016 and the representative of the respondent attended the enquiry and requested time to hand over possession of the unit and till date the unit was not handed over.

(c) In CCP No.112 of 2020, the complainant herself was examined as CW1. The complainant stated that she made the application on 31.08.2011 which is marked as Ex.A1 for allotment of the shop and paid a sum of Rs. 44,79,948/- in total and on various dates and Ex.A3, the unit buyer agreement was entered on 12.10.2011 and as per Ex.A4, the memorandum of understanding, the respondent acknowledged the receipt of total sum of Rs. 44,79,948/- and promised to pay monthly rents for the unit. As per the Ex.A1, the application form and allotment, the date of promised delivery was on 31.12.2012. Subsequently, since there was no progress, she and other allottees filed a complaint with the District Crime Branch Police, Kancheepuram on 13.10.2016 and the representative of the respondent attended the enquiry and requested time to hand over possession of the unit and till date the unit was not handed over.

(d) In CCP No.113 of 2020, the first complainant was examined as CW1. She stated that she made the application on 15.12.2010 which is marked as Ex.A1, for allotment of the shop and paid a sum of Rs.32, 00,000/- in total and on various dates and Ex.A2, the unit buyer agreement was entered on 02.08.2011 and as per Ex.A3, the memorandum of understanding, the respondent acknowledged the receipt of total sum of Rs. 32,00,000/- and promised to pay monthly rents for the unit and also collected Rs.82,400/- as service tax. As per the Ex.A1, the application form and allotment, the date of promised delivery was on 31.12.2012. Subsequently, since there was no progress, she and other allottees filed a complaint with the District Crime Branch Police, Kancheepuram on 13.10.2016 and the representative of the respondent attended the enquiry and requested time to hand over possession of the unit and till date the unit was not handed over.

(e) The evidence of respective complainants in all the cases proved that they paid the amounts to the respondent towards purchase of the constructed commercial units and till date, the respondent has not completed the construction and failed to hand over the possession of the completed unit to them.

(f) *Section 18 of the 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 is unable to give possession of the shops on the dates specified in the agreement.

(g) In the above facts and circumstances, it is held that the complainants in the above cases are entitled for the refund of the amount paid by them to respondent towards the purchase of shops with interest and compensation on the ground to failure on the part of the respondent to complete and hand

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over the constructed units to the respective complainants. Thus, the point is answered accordingly.

8. Answer for Point No.(ii)

(a) In view of the answer for point No.(i) the complainants are entitled for refund of the amounts paid to the respondent with interest and compensation.

(b) CCP No.106/2020: The complainant paid Rs.40,30,400/- to the respondent as per the Ex.A3, memorandum of understanding. Therefore, the complainant is entitled for refund of the amount of Rs. 40,30,400/- with interest and compensation from the respondent. As per Rule 18 of TNRERA Rules, rate of interest payable shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% per annum for the amounts paid from the dates of respective payment till repayment by the respondent. Considering the facts and circumstances of the case, compensation of a sum of Rs.2,00,000/- is fixed towards mental agony, hardship and inconvenience caused to complainant. Towards litigation expenses a sum of Rs.20,000/- is fixed.

(c) CCP No.112/2020: The complainant paid Rs.44,79,948/- to the respondent as per the Ex.A4, memorandum of understanding. Therefore, the complainant is entitled for refund of the amount of Rs. 44,79,948/- with interest and compensation from the respondent. As per Rule 18 of TNRERA Rules, rate of interest payable shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest

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marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% per annum for the amounts paid from the dates of respective payment till repayment by the respondent. Considering the facts and circumstances of the case, compensation of a sum of Rs.2,00,000/- is fixed as towards mental agony, hardship and inconvenience caused to complainants. Towards litigation expenses a sum of Rs.20,000/- is fixed.

(d) CCP No.113/2020: The complainants paid Rs.32,00,000/- to the respondent as per the Ex.A3, memorandum of understanding. It is the evidence of the respondent that the respondent collected Rs.82,400/ as service tax. Therefore, the complainant is entitled for refund of the amount of Rs.32,82,400/- with interest and compensation from the respondent. As per Rule 18 of TNRERA Rules, rate of interest payable shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% per annum for the amounts paid from the dates of respective payment till repayment by the respondent. Considering the facts and circumstances of the case, compensation of a sum of Rs.2,00,000/- is fixed as towards mental agony, hardship and inconvenience caused to complainants. Towards litigation expenses a sum of Rs.20,000/- is fixed.

As discussed and found above, the respective complainants are entitled for the reliefs. Thus, the point is answered accordingly.

In the result, in all the complaints, the respondent is directed as follows:-

- (1) The respondent shall pay the respective complainants the amounts at the interest rate, compensation and litigation cost

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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.

- (2) The charge of the aforesaid amount shall be on the units booked by the complainants till the repayment.
- (3) On payment of the claim as per the order in CCP.No.112/2020, the complainant shall execute the cancellation of the sale deed at the expense of the respondent.

G. SARAVANAN
ADJUDICATING OFFICER

C.C.P.No. 106/2020

List of witness

CW-1 --- Prabhakaran Parthasarathy

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	04.06.2011	Application form
Ex.A2	23.03.2012	Unit buyer agreement
Ex.A3	24.05.2012	Memorandum of understanding

C.C.P.No.112/2020

List of witness

CW-1 --- S. Kavitha

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	31.08.2011	Application form
Ex.A2	12.10.2011	Acknowledgement Receipt
Ex.A3	12.10.2011	Unit buyer agreement
Ex.A4	12.10.2011	Memorandum of understanding
Ex.A5	----	E-mail communication between the parties
Ex.A6	26.08.2016	Sale deed

C.C.P.No.113/2020

List of witness

CW-1 --- S. Sangeetha

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	15.12.2010	Application form
Ex.A2	02.08.2011	Unit buyer agreement
Ex.A3	02.08.2011	Memorandum of understanding
Ex.A4	----	Bank statement of the complainant

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

[Handwritten Signature]
LAW OFFICER 23/2021
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