

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.109 of 2020

C. Lakshmi Narayanan

..... Complainant

Vs.

M/s. Pacifica (Chennai Project) Infrastructure
Company Private Ltd.,
Rep by its MD, Rocky Israni
(TN/01/Building/0181/2019)

..... Respondent

Complainant : Rep. by M/s. Ganesh & Ganesh, Advocates.

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

Heard on : 24.08.2021

Delivered on : 14.09.2021

ORDER

The complaint filed by the above complainant 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 complainant, in brief, as follows:

(a) The complainant booked an apartment with the respondent in their project, namely, "Pride Towers" in the township of "Pacifica Aurum", at Padur Village, Kancheepuram District. The total cost of the flat including taxes is Rs.48,27,559/-.

(b) On 22.01.2015, the complainant entered into an agreement of sale and also a construction agreement with the respondent for purchase of an apartment. The respondent undertook to complete construction and handover

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the flat by 30.06.2015 with a grace period of 6 months. The sale deed for UDS land was also executed by the respondent. The complainant in total paid a sum of Rs.43,09,870/-. Till date, the construction of the flat is not completed. There was no default of payment by the complainant.

(c) The respondent has not even started the construction and violated Section 18 of the RERA Act. The complainant is entitled for refund of the amount with interest, compensation and cost. Hence, the complainant is entitled for all the reliefs.

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

(a) All the averments in the complaint are false. It is true that the complainant entered into sale and construction agreement with the respondent for purchase of flat in the project of the respondent and paid amounts towards sale consideration. The respondent has not handed over possession to the complainant 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 litigations. The complainant should wait till the completion of the project period for possession of his flat. The interest claimed is exorbitant. The complaint is abuse of process of law. Hence, the complaint is liable to be dismissed.

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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 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 complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that on 22.01.2015, the complainant entered into an agreement of sale for UDS 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 by 30.06.2015 with a grace period of 6 months which also expired by 30.12.2015 and out of the total sale consideration of Rs. 48,27,559/-, the complainant paid a sum of Rs.43,09,870/- and the respondent has executed sale deed for the UDS land but failed to handover the flat and to fulfill their obligations and the complainant is entitled for all the reliefs.

(b) The learned counsel for the respondent contended that the respondent had already executed sale deed for UDS land in favor of the complainant and has not violated any terms and conditions of the construction agreement and as per the registration certificate issued by the TNRERA, stipulated time limit is

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available to complete the project and the respondent is willing to deliver new apartment in another block against the booked apartment to the complainant within the stipulated period in the registration certificate and the complainant had already agreed for swapping the apartment and therefore the complainant cannot question the delay in delivery of the apartment and the complaint is hit by Arbitration and Conciliation Act in view of the arbitration clause in the construction agreement and the complaint is liable to be dismissed with cost.

(c) It is not in dispute that as per Ex.A1, the construction agreement entered with the complainant on 22.01.2015, the respondent undertook to complete the construction and to handover the flat by 30.06.2015 with a grace period of 6 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.

(d) RERA Act is a special enactment to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal. Section 88 of the Act makes it clear that the provisions of the Act is in addition to, and not in derogation of, the provisions of any other law for time being in force. Therefore, arbitration clause in agreement is not a bar for seeking reliefs under the Act by the complainant. Section 79 of the Act bars the jurisdiction of civil court to entertain any matter which the Authority or the Adjudicating Officer is empowered to determine under the Act. Therefore, the contentions of the learned counsel on jurisdiction of this Forum are not sustainable.

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(e) In the above circumstances, it is held that the complainant is entitled for refund of the entire sale consideration paid to the respondent together with interest, compensation and costs. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

(a) It is not in dispute that the complainant paid a sum of Rs.43,09,870/- in total towards the purchase of the flat to the respondent. Therefore, the complainant is entitled for refund of the said amount 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 at the time of filing of the complaint plus 2% per annum i.e., 10.15% 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 complainant is 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 and litigation cost as per the findings in answer for Point No.(ii), Para No.8 of this order within 30 days of issue of this order.

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2. The charge of the amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order.

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

Sd/- 14.09.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1--- C. Lakshmi Narayanan
RW-1--- S. Vijayaraghavan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	22.01.2015	Construction agreement
Ex.A2	22.01.2015	Sale Deed
Ex.A3	...	Payment receipts (series)
Ex.A4	...	Party statement

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	...	Authorisation letter
Ex.B2	30.10.2019	Project registration by TNRERA

Sd/- 14.09.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

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14.9.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY