

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.11 of 2020

1. R.Ravi
2. Yamuna Ravi

..... Complainants

Vs.

M/s. Jain Housing and Construction Ltd,
(PROJECT NOT REGISTERED)

..... Respondent

Complainant : Rep. by Mr. Mani Sundar Gopal, Advocate.

Respondent : Rep. by Mr.Sai Sathyajith, Advocate

Heard on : 09.11.2021

Delivered on : 30.11.2021

ORDER

The above complaint by the complainants claiming compensation for delay in handing over of the flat and for mental agony from the respondent 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 first complainant, through his firm, is engaged in the business of electrification works in buildings. The firm was given electrification works in a project by M/s. Jain Constructions, which is a group concern of the respondent company. For the work done under a contract, M/s. Jain Constructions was liable to pay Rs.59,39,871/- to the first complainant. There was delay in settling the amount by the said concern.

(b) In pursuance of settlement talks, an agreement for settlement was arrived in July,2018 and a portion of the amount due was agreed to be settled by purchase

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of a flat in the project of the respondent, namely, "Adwitiya" at Ambattur, Chennai. For the balance amount, the complainants were making arrangements to avail loan from bank. After adjusting a sum of Rs.20,00,000/- towards sale consideration, the bank also sanctioned and disbursed a sum of Rs.51,50,000/- to the respondent under the loan availed by the complainants.

(c) On 29.08.2018, a construction agreement was entered between the complainants and the respondent for purchase of the flat. On the same day, sale deed dated 09.11.2018 for the UDS land was also executed between them. The construction agreement was signed only on 23.11.2018. The respondent had ante-dated the document to 29.08.2018 with ulterior purpose. The respondent sold the flat to the complainants at higher price than the price offered to other purchasers.

(d) Even after the entire amount was paid by the complainants for the apartment, the respondent has not handed over the apartment to the complainants. The respondent has not responded to the request made by the complainants for handing over of the apartment. Hence the complainants are entitled for compensation for the delay, mental agony and litigation cost.

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

(a) Except admitted, the entire averments in the complaint are denied. The complaint is filed without jurisdiction and is not at all maintainable under the RERA Act and TNRERA Rules. The project was completed by the respondent as early as on 2016. Completion certificate of the project was obtained on 17.05.2017.

(b) The complainants offered to purchase the flat by virtue of a settlement arrived in a prior dispute between the parties on civil works carried out by the

complainants. The rights of the parties arise out of the settlement agreement between them. The complainants are yet to make full payment with interest as per the terms of the settlement agreement. Therefore, the complaint is not maintainable on that ground also.

(c) The issue revolves around the contractual agreement between the parties and there is a total breach of contract by the complainants as per Section 54 and 55 of Indian Contracts Act, 1872. The complainants also initiated parallel proceedings before the Authority in complaint No.478 of 2019 which is pending for adjudication. The complainants failed to perform and complete their obligations and are not entitled for any reliefs.

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 rival contentions of the parties, the following points arise for determination:-

- i. Whether the complaint is maintainable?
- ii. Whether the complainants are entitled for compensation for delay and mental agony on the ground of failure on the part of the respondent to complete the construction and to handover possession of the flat as per the terms and conditions of the agreement?
- iii. What are the reliefs, the complainants are entitled to?

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

(a) The learned counsel for the respondent filed written notes of argument contending that the complaint is not at all maintainable and is beyond the scope of the TNRERA Act and the project was completed as early as on 2016 and a completion certificate by the competent authority was also obtained on 17.05.2017 and the project is not an ongoing project and therefore this Forum has no jurisdiction and the complainants are yet to make full payment along with interest as per settlement agreement and they failed to perform and complete their obligations as per section-19 of the RERA Act and the claim for compensation is also pending determination of liability of the respondent in the connected complaint in C.No.478 of 2019 before the Authority and the claim of compensation for delay in handing over lacks merits.

(b) However, the learned counsel for the complainants submitted that the cause of action for the complaint is that the respondent has failed to deliver possession of the apartment to the complainants in spite of receipt of the entire sale consideration and the complainants are entitled to be compensated under the provisions of the RERA Act for the delay in handing over possession of the flat and the mere fact that the flat purchased by the complainants was completed in the year 2016 does not absolve the respondent of its liability to deliver possession as and when the sale consideration was paid and the complaint is well maintainable and this Forum has jurisdiction to decide the case.

(c) It is not in dispute that Ex.B1, completion certificate dated 17.05.2017 of the project was obtained by the respondent on completion of the project. Completion certificate is issued if the construction is structurally completed meaning that all the columns, beams and slabs have been erected and certified

by the architect or structural engineer associated with the project. It cannot be taken as the flat was completed in all respects and fit for occupancy unless occupancy certificate as contemplated under section 2(zf) is obtained or otherwise proved. Therefore, it does not mean that the flat was ready for occupancy. So far as a flat is concerned, all the internal facilities are to be made ready to make it fit for occupancy. If the flat was ready for occupancy and handing over on the date on which the booking was made, nothing prevented the respondent directly to enter into an agreement of sale with the complainants. However, the respondent entered into a construction agreement with the complainants with an undertaking to handover possession of the flat within one month on receipt of the entire amount due from the complainants.

(d) The learned counsel for the respondent relied on the decision of the Authority in C.No.400/19 dated 30.01.2020 on the ground that the complaint is not maintainable, since the project was not an ongoing project. But, it is relevant to note that in the order in Appeal No.75 of 2019 dated 09.11.2020, the Hon'ble Appellate Tribunal under the RERA Act analysed the provisions of the Act and held that the applicability of the RERA Act is not limited to the registered projects alone and nowhere in the RERA Act it is stated that the provisions of the RERA Act are applicable only to the registered projects alone and the intention of the legislature is to bring the disputes and the grievances regarding to the real estate sector under the single roof namely RERA Act. Therefore, the contentions of the learned counsel for the respondent that the project was not an ongoing project and not registered with the TNRERA and this Forum has no jurisdiction and the complaint is not maintainable are not sustainable.

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(e) Even otherwise, the completion certificate has been issued on 17.05.2017, i.e. after the RERA Act came into force as on that date of the commencement of the Act, the project was an ongoing project requiring registration under the Act with the TNRERA. Even if the respondent applied for the completion certificate prior to the commencement of the Act, the Hon'ble High Court in the case in Subashini Thulasiram Vs. M/s. SPR & RG Constructions Private Limited by the Hon'ble Division Bench of Madras High Court which is reported in 2020-4 – LW – 865 held that the subordinate legislation cannot be in violation of the Act and Rule 2(h)(ii) is in contrary to section 3 of the Act, Therefore considering the above, it is held that this Forum has jurisdiction to decide the case and the complaint is maintainable.

(f) The respondent claims that the complainants are yet to make full payment along with interest as per the settlement agreement between them and the cash flow chart invoice includes payment of interest towards their defaults. It is not in dispute that total sale price agreed between the parties is Rs.67,78,131/- and out of which the bank released and disbursed a sum of Rs.51,50,000/- to the respondent and a sum of Rs.20,00,000/- towards sale consideration was adjusted in pursuance of the settlement agreement. No notice for any balance sale amount or interest was issued by the respondent to the complainants. There are no merits in the contentions of the respondent. The reasons stated by the respondent for not handing over the possession of the flat to the complainants are not acceptable.

(g) In the above circumstances, it is held that the complainants are entitled for compensation for the delay and also mental agony and inconvenience due to the delay and cost of the litigation. Thus, the point is answered accordingly.

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8. Answer for point No.(iii)

(a) In view of the answer for point nos.(i) and (ii), the complainants are entitled for compensation for the delay and also mental agony and inconvenience caused to them. As per proviso of section 18(i) of the RERA Act, where the allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. Therefore, the complainants are entitled for compensation by way of interest on the total admitted amount paid, which is a sum of Rs.71,50,000/-.

(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 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, i.e., Rs.71,50,000/- from the dates of construction agreement and respective payments till handing over possession of the flat.

(c) Apart from the above, considering the facts and circumstances of the case, it is held that the complainants are 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 them. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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In the result, the first respondent is directed as follows:-

The respondent shall pay the compensation for mental agony and legal expenses to the complainants as per the findings in the answer for Point No.(ii), Para No.8 of this order within 30 days of issue of this order.

Sd/- 30.11.2021
G. SARAVANAN,
ADJUDICATING OFFICER.

LIST OF WITNESSES

CW-1--- R.Ravi

RW-1--- Sandeep Mehta

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	---	Agreement for settlement
Ex.A2	05.12.2018	Bank loan document
Ex.A3	29.08.2018	Construction agreement
Ex.A4	09.11.2018	Sale Deed
Ex.A5	11.12.2018	Receipt for maintenance
Ex.A6	...	Details of interest paid
Ex.A7	...	Details of rent paid
Ex.A8	03.10.2019	Letter to respondent
Ex.A9	25.09.2019	Demand draft
Ex.A10	14.10.2019	Reply by respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	17.05.2017	Completion certificate
Ex.B2	30.01.2020	Copy of order in C.No.400/2019
Ex.B3	27.11.2019	Copy of complaint in C.No.478/3029
Ex.B4	30.09.2020	Copy of order in C.No.01/2020

Ex.B5	25.01.2019	Cash flow chart
Ex.B6	...	Booking agreement

Sd/- 30.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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LAW OFFICER
TNRERA, CHENNAI