

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.118 of 2020**

Dr. M. Ramachandran

.... COMPLAINANT

Vs.

1. M/s. Green Avenue Homes & Gardens
Rep. by its Proprietor, D. Dinakaran
2. M/s. Bennett Property Holding Company Ltd,
Formerly known as, Artha Properties
Rep. by its CEO, Suresh Rangarajan
(Project not registered)

.... RESPONDENTS

Complainant : Rep. by Mrs.P. Bagyalakshmi, Advocate

First Respondent : Rep. by Mr. Ramesh kumar Chopra, Advocate

Second Respondent : Rep. by M/s.Tatva Legal, Advocates.

Heard on : 21.09.2022

Delivered on: 17.10.2022

ORDER

The above complaint claiming compensation for the delay in construction and delivery of constructed villa/house by the complainant from the respondents 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) In the year 2012, on the representations of the respondents, the complainant agreed to purchase land and house from the respondents in their project namely "DHAKSHIN AVENUE - IV" in Unamancheri Village, Chengalpet Taluk, Kancheepuram District and paid the amounts towards sale consideration. The total sale consideration of the villa is Rs.66,95,000/-. The complainant paid Rs.61,32,005/-.

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(b) On 27.12.2012, the complainant and the first respondent entered into a sale cum construction agreement. The first respondent undertook to complete construction and deliver the house within 15 months. On 08.03.2013, the first respondent executed sale deed of the land in favor of the complainant.

(c) Both the respondents failed to complete construction and deliver the villa as per the terms of the agreement. Hence the complainant approached the Authority and the Authority directed the first respondent to handover the villa on or before 26.02.2020. The respondents made promise to handover the villa on 27.01.2014, but handed over only on 26.02.2020. Hence the complainant is entitled for compensation for the delay and other reliefs.

3. The first respondent has not filed any counter.

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

(a) Except admitted, all the averments are denied. The villa/house in the project was marketed by the second respondent on the basis of marketing agreement dated 06.09.2012 entered with the first respondent. The complainant accepted the offer and the terms and conditions of the first respondent and entered into an agreement for sale and construction dated 27.12.2012. On 08.03.2013, the first respondent executed sale deed of the plot in which the villa was proposed to be constructed. The second respondent was merely an agent of the first respondent for marketing and identifying buyers in the project and had no role in construction or completion and delivery of the villa in question.

(b) The role of the second respondent is only a marketing agent and not a promoter as defined in the RERA Act. Section 71 of the RERA Act is not applicable to the real estate agent. The RERA Act is prospective in nature and cannot be made applicable for the activities that were already completed much prior to the

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coming into effect of the Act. Hence the complaint is liable to be dismissed as against the second respondent.

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

6. Both the parties have filed their respective evidence on affidavit with documents.

7. On the basis of the rival contentions of the parties, the following points arise for determination:-

i. Whether the complainant is entitled for the compensation for delay and mental agony and litigation cost from the respondents on the ground of failure on the part of the respondents to complete construction and deliver the villa/house as per the terms of the agreement?

ii. What are the reliefs, the complainant is entitled to?

8. **Answer for point no.(i):**

(a) The learned counsel for the complainant filed written argument notes and submitted that on 27.12.2012, the complainant entered into an agreement for sale-cum-construction of villa/house in the project of the first respondent and the first respondent executed sale deed of the land on 14.01.2013 in favour of the complainant and the first and second respondents have agreed and assured to deliver the house within 15 months from the date of registration and they have not completed and handed over the villa as per their undertaking and the complainant preferred a complaint before the Authority in C.No.402 of 2019 and the Authority, by the order dated 26.02.2020, directed the first respondent to handover the constructed villa on or before 31.03.2020 and the respondent handed over the villa on 26.02.2020 and the complainant was put to loss on

rentals, mental agony and suffering and therefore entitled for all the reliefs. The learned counsel for the complainant also relied on various decisions in support of her contentions.

(b) The learned counsel for the second respondent contended that the first respondent is the promoter of the project and the second respondent is only a real estate agent, who booked the villa/house for the complainant with the first respondent and section 71 of the RERA Act does not confer any right to claim compensation under sections 12, 14, 18 and 19 of the Act from the real estate agent for the delay caused by the promoter and by a scheme of arrangement between the first and second respondents, all the assets and liabilities of all the projects, except RERA regulated projects of the first respondent, got transferred to the second respondent and since the present project is a non RERA regulated project, the books of accounts and all relevant documents concerning the project was transferred by the first respondent to the second respondent and even the role of the second respondent is only a real estate marketing agent and not a promoter and the respondent is not liable to pay any compensation and the provisions of RERA Act is prospective in nature and cannot be made applicable to the project which came into existence prior to the enactment of the RERA Act and further at the time of filing the complaint, a complaint preferred by the complainant was pending before the State Consumer Disputes Redressal Commission and the complainant has not withdrawn the complaint before the Consumer Commission prior to the filing of the present complaint and therefore the complaint is not maintainable against the second respondent and is liable to be dismissed as against them. The learned counsel for the respondents also relied on various decisions in support of his contentions.

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(c) It is not in dispute that the first respondent as promoter entered into an agreement for sale-cum-construction dated 27.12.2012 with the complainant for sale of the villa/house in the project and received the sale consideration and also undertook to complete the construction and to handover the delivery of the villa within 15 months from the date of the agreement and also executed the sale deed of the land on 08.03.2013 in favor of the complainant. The due date for delivery of the constructed villa/house by the first respondent expired by 27.03.2014. Admittedly, the construction of the villa/house was not completed within the period undertaken by the first respondent. The complainant has approached the Authority in complaint in C.No.402/2019 for necessary directions for delivery of the villa/house. By Order dated 26.02.2020, the Authority directed the first respondent to handover possession of the villa before 31.03.2020. In pursuance of the order, the first respondent completed the construction and handed over the constructed villa/house on 26.02.2020.

(d) The first respondent has not filed any counter denying the averments in the complaint. Therefore, the liability of the second respondent to pay the compensation is to be examined. It is not in dispute that the second respondent acted only as a real estate agent at the time of booking of the villa/house and the second respondent issued only Ex.A6, the receipt on receiving Rs.1,00,000/-. Section-10 of the RERA Act deals with the functions of the real estate agent. The complainant has not made any specific lapse on the part of the second respondent with regard to their functions as real estate agent. Therefore, the second respondent as a real estate agent at the time of booking of the villa/house cannot be held liable for payment of compensation for delay of the

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project by the first respondent. Therefore, the complaint as against the second respondent is liable to be dismissed.

(e) As per proviso to section 18(1) of the RERA Act, if the promoter fails to complete or is unable to give possession of the apartment in accordance with the terms of the agreement for sale, the allottee shall be paid by the promoter, interest for every month of delay till the handing over possession of the apartment. Considering all the above circumstances and facts, it is held that the complainant is entitled for compensation for the delay and other reliefs only from the first respondent. Thus the point is answered accordingly.

9. Answer for point No.(ii):

(a) In view of the answer for point No.(i), the complainant is entitled for compensation for the delay, mental agony, and also cost of the litigation from the first respondent in the following manner.

(b) As per Rule 18 of TNRERA Rules, the rate of interest 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 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% per annum for the amounts paid from April, 2014, till delivery of the constructed villa/house by the respondent, i.e., 26.02.2020. Apart from the above, the complainant is entitled for a sum of Rs.50,000/- towards mental agony and a sum of Rs.20,000/- towards litigation expenses.

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

The first respondent shall pay the complainant the amounts of compensation and cost as per the findings in Answer for Point No.(ii), Para 9 of this order within 30 days from the date of issue of this order. The complaint is dismissed against second respondent.

Sd/- 17.10.2022
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- Dr. M. Ramachandran
RW-1 --- Senthilkumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	27.12.2012	Sale cum Construction Agreement
Ex.A2	08.03.2013	Sale Deed
Ex.A3	04.02.2013	NOC Letter by R1 to HDFC Bank
Ex.A4 (Series)	12.07.2017	Email sent by R1
Ex.A5 (Series)	27.01.2012	Payment – Receipts issued by R1
Ex.A6	17.12.2012	Payment – Receipt issued by R2
Ex.A7	15.02.2013	Building Permission issued by Unamancherry Panchayat
Ex.A8(Series)	01.04.2012 – 31.03.2013	Ledger Account
Ex.A9(Series)	11.05.2013	Demand Letter
Ex.A10	24.11.2017	Legal Notice issued by the Complainant
Ex.A11	Copy of the Returned cover
Ex.A12	Delivery Status of R2 (Postal Tracking Receipt)
Ex.A13	Form 'M' in C.No.402/2019
Ex.A14	26.02.2020	Copy of the Order in C.No.402/2019

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	27.09.2018	Copy of the Board Resolution copy by R2
Ex.B2	06.09.2012	Marketing Agreement
Ex.B3	01.12.2013	Email to complainant by R1
Ex.B4	28.01.2022	Copy of the Order in CCP 139/2019

Sd/- 17.10.2022
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

