

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 12 of 2020

1. D.T. Udhayam Malar
2. K. Mohan Venkataram ...Complainants

Vs.

1. M/s. Cybercity Mangadu Project Pvt Ltd
Rep by its director, Vedra Venu Vinod
2. M/s. Shriram Properties Limited
Rep by its director, Murali Malayappan ...Respondents

Complainants : Rep. by Mr. A. Karthikeyan, Advocate.
1st Respondent : Rep. by Mr. S. Rajasekar, Advocate.
2nd Respondent : Rep. by Mr. P. Mathivanan, Advocate.

Heard on : 19.03.2021
Delivered on : 01.04.2021

ORDER

The complaint filed by the above complainants seeking refund of advance amount paid to the respondents towards purchase of a flat, 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 complainants, in brief, as follows:

(a) The complainants booked a flat with the first respondent in their project, namely, "Shriram Divine City-Mangadu". The total cost of the flat is Rs.38,70,619/- which includes GST charges. The complainants paid, in total a sum of Rs.3,83,190/-.

(b) No agreement was entered between the complainants and the first respondent who was interested only in collecting money. The second respondent is the marketing agent of the first respondent. The second respondent failed to discharge their duty by not providing a hard copy of

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the booking form and other related documents of the project to the complainants.

(c) At the time of booking, the complainants told the marketing staff of the second respondent that they will pay the initial amount of Rs.5,00,000/- and further payments will be made as per their convenience, since the complainants were not going for any home loan. The marketing staff agreed and informed that payment can be made as per their convenience, but full payment should be made before delivery of the flat under construction.

(d) However, the second respondent suddenly insisted to make payment of Rs.9,00,000/- and go for a home loan. Due to the conduct of the respondents, the complainants lost trust and confidence and sent a request letter for cancellation and refund of the amount paid by them. The second respondent sent a letter that the amount of advance has been forfeited which amounts to rank fraud and breach of trust. The complainants are entitled for refund of the entire amount paid as advance with interest, compensation and cost.

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

(a) The complainants approached this Forum with unclean hands suppressing facts and documents. The respondents have acted in accordance with provisions of the RERA Act. The complainants booked the flat and opted to cancel the booking on their own motion citing financial inability to pursue the same. The complainants were informed of all the details and information of the project.

(b) The first respondent is the developer and the second respondent is marketing the project. There is no question of delay in executing the

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construction agreement. There is no violation of Section 10(d) of the Act by the second respondent. The respondents never agreed for any payment mode as stated by them. The payment schedule was drawn up in accordance with the Act and the complainants also agreed to the same.

(c) The representatives of the second respondent in good faith had suggested the complainants to opt for a home loan due to the inability of the complainants to make timely payments in accordance with the payment schedule. In cases where the customers opt for cancellation after allotment of flat and prior to execution of the agreements, the entire amount paid as advance is forfeited as cancellation charges. Hence, the respondents informed the complainants accordingly. The complainants suffered no loss. The complainants are not entitled for any reliefs and the complaint is liable to be dismissed.

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

5. On the both sides, evidence on affidavits was filed and documents were marked.

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

- i. Whether the complainants are entitled to get refund of the advance amount paid to the respondents on the ground of loss of trust and confidence on the respondents?
- ii. What are the reliefs, the complainants are entitled to?

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7. Answer for Point No. (i)

(a) The learned counsels for the respondents contended that the complainants were given all the details and information regarding the project and they booked the flat and made initial payment of booking advance and subsequently opted to cancel the booking of the flat on their own motion due to financial inability to follow the stage wise payment towards cost of the flat and the amount was forfeited as per the terms and conditions on cancellation charges in Ex.A2, the booking form and the complainants are not entitled for any reliefs.

(b) However, the learned counsel for the complainants submitted that the complainants booked the flat after meeting one Mr. Adhithiyan, the marketing staff of the second respondent and informed to him that they would pay the initial amount of Rs.5,00,000/- and further amount could be made as per their convenience and the marketing staff agreed and informed that the payment can be made as per their convenience, but full payment should be made before the delivery of the flat and the second respondent suddenly called them to make payment of Rs. 9,00,000/- which caused a rude shock to the complainants and they sought for cancellation of the flat and were informed that the amounts were forfeited and the acts of the respondents caused mental agony and hardship to the complainants and they are entitled for all the reliefs.

(c) It is the evidence of the first complainant that at the time of booking of the flat, they explained the mode of payment to one Mr. Adhithiyan, the marketing staff of the second respondent and he assured that after initial payment of 10% of the total cost, further payment can be made at their convenience. In Ex.B1, e-mail communications, it is seen that by e-mail sent on 13.11.2019, the first complainant stated the same and

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further pointed out that she got a call from one Rebecca Jasmine, another consultant of the respondents and she explained the situation and the conversation she had with the said Adhithiyan, and then said Rebecca Jasmine accepted and told her to pay the remaining amount as per their choice and also referred calls from another consultant, Kala and others.

(d) The evidence of the CW-1 is not disputed. In the counter, the respondents vaguely stated that representatives of the second respondent in good faith suggested the complainants to opt for a home loan. From the above circumstances, it is clear that in spite of the specific proposal regarding the mode of payment by the complainants, the representatives of the respondents by their conduct made the complainants to believe that they accept the proposal and made them to book the flat and thereafter insisted for payment. The representatives of the respondents acted in an unfair manner which tantamount to unfair trade practice. Therefore, the contentions of the learned counsel for the complainants that the complainants are made to book the flat and subsequently asked to go for bank loan and it amounts to breach of trust are acceptable.

(e) So far as the terms and conditions in Ex.A2, the booking form on cancellation charges are concerned, no doubt, it is stated that the entire amount paid on the cancellation date would be forfeited post allotment but before agreement. Forfeiture means to incur a penalty. The question of forfeiture will arise only on breaches of conditions of written agreement with forfeiture clause where it is stipulated that the breaches shall occasion forfeiture. The terms and conditions on the cancellation charges in the Ex.A2, the booking form are unjust, unfair and one-sided to

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the advantage of the respondents. For no loss suffered and no work done, the respondents cannot forfeit the amount. The complainants cannot be penalized by forfeiture of entire amount for no fault of them.

(f) The very object of the RERA Act is to ensure sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers and also to ensure greater accountability towards consumers. The representatives of the respondents acted in an unfair manner with total lack of transparency. Therefore, considering the facts and circumstances of the case, it is held that the complainants are entitled for refund of the entire amount paid to the respondents with interest, compensation and cost. Thus, the point is accordingly.

8. Answer for Point No. (ii)

(a) In view of the answer for the point No (i), the complainants are entitled for refund of advance amount paid to the respondents with interest, compensation and cost from the respondents. It is not in dispute that the complainants have paid a sum of Rs.3,83,190/- to the respondents. Therefore, the complainants are entitled for refund of the said amount from the respondents.

(b) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainants are entitled for the interest at the rate of 7.30% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2%, i.e., 9.30% per annum for the amounts paid from the date of payment till repayment by the respondents.

(c) Considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed as compensation towards mental agony and hardship

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caused to the complainants. Apart from the above, the complainant are also entitled for litigation expenses of Rs.25,000/-. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:-

The respondents shall either jointly or severally 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.

**G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1 --- D.T. Udhayam Malar
RW-1 --- R. Murugesan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	----	RERA Registration details
Ex.A2	14.03.2019	Booking form
Ex.A3	13.07.2019	Allotment letter
Ex.A4	----	Cheque payment details
Ex.A5	15.10.2019	E-payment receipt
Ex.A6	-----	E-mail communications between the parties
Ex.A7	28.11.2019	Letter by complainants
Ex.A8	----	E-mail communications

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LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Ex.No	Date	Documents Name
Ex.B1	----	E-mail communications

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N. Prasad
/H (d)
Administrative Officer

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.