

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

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

CCP No.120 of 2020

1. Jeevan Singh Gopinath
 2. Mrs.Babu Sony
Rep by their PoA R.Babu Govind Singh
- ... COMPLAINANTS

Vs.

M/s. Hazel Realty Pvt. Ltd.,
(formerly VGN Pragnya Realty Pvt Ltd.,)
Rep by its Authorized Signatory
(Regn. No.TN/002/Building/0074/2017)

... RESPONDENT

Complainants : Rep. by Mr. K.R. Ramesh Kumar, Advocate
Respondent : Rep. by Mr. Krishna Ravindran, Advocate

Heard on : 17.02.2022
Delivered on : 25.02.2022

ORDER

The complaint by the above complainants claiming compensation for the delay in handing over possession of the flat and also for mental agony and hardship with cost of litigation 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) On 15.11.2012, the complainants booked a flat with the respondent in their project, namely, **VGN HAZEL**, Paruthipattu Village, Poonamallee Taluk, Thiruvallur District. On 05.12.2012, the complainants and the respondent entered into an agreement of sale and construction of the flat. The total sale consideration of the flat is Rs.52,88,862/-.

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(b) The respondent undertook to complete the construction and to deliver the flat by 05.06.2015, with a grace period of 6 months. The complainants have made a total payment of Rs.44,95,532/- but, the respondent failed to complete the construction and handover possession of the apartment as agreed by them under the agreement.

(c) The respondent finally handed over possession of the apartment on 09.07.2021, i.e. after filing of the complaint. The complainants availed loan from the bank and foreclosed their fixed deposit and were put to loss and hardship and are entitled for all the reliefs.

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

(a) The complaint is not maintainable. All the allegations, except admitted, are denied. The complainants booked the apartment and entered into a construction agreement and agreement for sale with the respondent. The respondent has not committed any violation to the agreed terms and conditions of the construction agreement.

(b) The delay in handing over was caused due to inevitable force majeure events of unexpected floods in 2015, demonetization by the government, cyclone in 2016, implementation of GST by the government and other reasons. The money received from various buyers in the project was invested in the project.

(c) The agreement between the complainants and the respondent was prior to the enactment of the TNRERA Act/Rules and therefore the present complaint is not maintainable. The complainants have paid only Rs.47,48,864/- . The respondent has been paying the compensation as per the agreement. The complainants are not entitled for any additional compensation. Hence the respondent prays for dismissal of the complaint with cost.

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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 complainants are entitled for compensation for delay and for mental agony and litigation cost from the respondent on the ground of failure on the part of the respondent to complete construction and deliver the flat as per the terms of the agreement?
 - ii. What are the reliefs, the complainants are entitled to?

7. Answer for Point No: (i)

(a) The Learned Counsel for the complainants booked a flat with the respondent and paid advance amount and further amounts as per the agreements for sale and construction and have paid more than 80% of the total sale consideration and the respondent undertook to complete the construction and handover the apartment on or before 05.06.2015, with a grace period of 6 months and the time limit including the grace period expired on 05.12.2015 and the complainants foreclosed their fixed deposit and investment to pay the sale consideration of Rs.44,95,532/- and also availed loan from the bank and due to the inordinate delay, the complainants were put to hardship and are entitled for compensation, other reliefs and cost as prayed for.

(b) However, the learned counsel for the respondent submitted that the delay in construction and delivery of the apartment to the complainants is admitted by the respondent, but, the delay was due to various reasons beyond the control of the respondent and the project was completed and possession of the apartment was handed over to the complainants on 09.07.2021 and the

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respondent gave discount in the sale consideration and set off the same in the balance sale consideration payable by the complainants and settled the claim of compensation to the complainants and the complainants are not entitled for any additional compensation and by letter dated 09.07.2021, the complainants gave final confirmation of settlement of amount by the respondent and therefore the complaint is liable to be dismissed with cost.

(c) It is not in dispute that there is delay on the part of the builder in completing and handing over possession of the apartment to the complainants. Admittedly, the complainants have not paid the entire sale consideration to the respondent. As per Ex.A5, payment statement, the complainants paid in total only a sum of Rs.44,95,532, out of the total sale consideration of Rs.52,88,862/- As per Ex.B8, possession letter and other connected documents produced by the respondent, the payment statement reveals that out of the total sale consideration of Rs.53,11,262/-, the complainants paid as on the date, i.e. 09.07.2021, Rs.47,83,068/- and discount (credit) is given by the respondent for a sum of Rs.5,28,194/-. In the letter, final confirmation of statement dated 09.07.2021, the complainants confirmed the amount paid by them and also endorsed that their account with the respondent stands fully settled and further undertaken not to make claims on any account whatsoever and also not to raise any objection or make any claim, demand, damages/compensation, etc. from the respondent in any manner or for any reasons whatsoever.

(d) Admittedly, the complainants accepted the settlement as final and have not reserved their right to contest the claim without prejudice. There is no specific mention of the pending claim of compensation before this Forum. Therefore, the complainants are not entitled for any reliefs towards compensation for the delay and other reliefs. Thus the point is answered accordingly.

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8. Answer for point no.(ii):

(a) In view of the answer for Point No.(i), the complainants are not entitled for any reliefs. Hence the complaint is liable to be dismissed, but, without cost. Thus the point is answered accordingly,

In the result, the complaint is dismissed. No costs.

Sd/- 25.02.2022
G. SARAVANAN
ADJUDICATING OFFICER

List of Witnesses

CW1 – R.Babu Govind Singh

RW1 – Deepak Reddy

List of document filed by the complainants

EX. No.	Date	Documents
A1	15.11.2012	Allotment Letter
A2	24.08.2018	Copy of order in C.No.40/2017
A3	05.12.2012	Construction Agreement
A4	05.12.2012	Agreement for sale
A5	--	Payment statement
A6	27.12.2012	Home loan agreement
A7	20.09.2017	Form 'M' filed by the complainants
A8	16.08.2018	Typed set of documents in Form 'M'
A9	11.02.2014	Fresh certificate of incorporation
A10	24.06.2019	General power of attorney
A11	...	Letter from the respondent
A12	07.03.2019	Affidavit of the respondent
A13	08.04.2019	Affidavit of the respondent

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List of documents filed by the respondent

EX. No.	Date	Documents
B1	05.04.2021	Board Resolution
B2	16.05.2012	Planning Permit
B3	14.10.2015	Extended Planning Permit
B4	08.08.2011	Building Permit
B5	31.03.2017	Extended Building Permit
B6	13.01.2021	Partial Completion Certificate
B7	13.01.2021	Second partial completion certificate
B8	09.07.2021	Possession letter

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 25.2.2022
 LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY

Sd/- 25.02.2022
 G. SARAVANAN
 ADJUDICATING OFFICER
 TNRERA, CHENNAI