

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.122 of 2020**

S. Abirami

..... Complainant

Vs.

M/s. Pacifica (Chennai Project) Infrastructure
Company Private Ltd.,
Rep by its Authorised Signatory , Vikram Agnihotri
(TN/01/Building/0181/2019)

..... Respondent

Complainant : Rep. by M/s. Raj and Raj Associates, Advocates.

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

Heard on : 28.10.2021

Delivered on : 19.11.2021

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 is Rs.53,04,774/-.

(b) On 11.07.2014, the complainant entered into a construction agreement with the respondent for construction of the flat. On 07.08.2014, the sale deed for UDS land was also executed by the respondent. The respondent undertook to complete construction and handover the flat by 30.06.2015 with a grace period of 6 months. For more than 6 years, the construction has only been

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partially completed. Till date, the construction of the flat is not completed. The complainant has paid in total Rs.58,80,922/-, which is more than the agreement amount and there was no default of payment by the complainant.

(c) The project of the respondent was not registered under TNRERA. The home buyers filed a complaint against the respondent and the TNRERA ordered on 08.02.2019 to register the project and the project was registered on 30.10.2019. In the said registration, the scheduled completion of tower A1 is stated as 31.10.2020 declaring as if the project is a fresh project.

(d) The respondent has violated the provisions 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 agreements 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 complainants in time.

(b) As per the terms of the buyers' agreement, the respondent is liable to pay the damages after the grace period of 6 months and the amount of damages is restricted to 1% of the amount received per month for such a delay subject to a maximum of 3% of the total amount received. The consideration is linked with construction plan and was payable in installments at various stages of the construction. The complainant is not entitled to claim interest from 21.06.2014 for Rs.58,80,922/-

(c) The complainant approached the National Consumer Forum vide complaint No.3336/2017 for the same relief. If the complainant wants remedy under

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TNRERA, she should seek permission from NCRF and withdraw the complaint. No prior permission was obtained by the complainant while she filed the complaint before this Forum. The complaint is not maintainable under section 71(1) of the RERA Act.

(d) Due to COVID-19, situation, the matter being gets delayed. Many home buyers in the other project have been put into possession of their 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 the flat. The interest claimed is exorbitant. The complaint is filed without following due process of law. The complaint is liable to be dismissed.

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

5. In both the cases, 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 the complainant and the respondent entered into an agreement for construction on 11.07.2014

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and the sale deed for the UDS land was executed in favor of the complainant by the respondent on 07.08.2014 and the complainant had paid Rs.58,80,922/- and the respondent undertook to handover the flat by 30.06.2015 with a grace period of six months i.e., by 31.12.2015 and the respondent has not completed construction and failed to handover the flat and fulfill their obligation and the complainant is entitled for all the reliefs.

(b) The learned counsel for the respondent fairly conceded that the complainant and the respondent entered into agreements for sale and construction of apartment and the complainant paid amounts towards sale consideration, but contended that due to inevitable circumstances the construction of the flat could not be completed in time for delivery of the same to the complainant as agreed under the terms of the agreement for construction and the project was registered with TNRERA and was granted time to complete till 30.10.2021 and the rate of interest claimed by the complainant is exorbitant and they are not entitled for compensation as per their claims and the complaint is liable to be dismissed with cost. The learned counsel also further contended that in view of section 71(1) of the RERA Act since the complainant approached the National Consumer Forum for the same relief and without withdrawing the complaint before the NCRF, the complaint is not maintainable.

(c) Regarding the complaint before the National Consumer Forum, it is relevant to note that section 18 of the RERA Act itself makes it clear that the remedy available under the section is without prejudice to any other remedy. However, section 88 of the RERA Act also makes it clear that the provisions of the RERA Act shall be in addition to and not in derogation of the provisions of any other

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law for the time being in force. Therefore, the above objection of the respondent is not sustainable.

(d) It is not in dispute that as per the construction agreement entered with the complainant, the respondent undertook to complete the construction and to handover the flats by 31.12.2015 inclusive of grace period. 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.

(e) The respondent also stated that the matter was delayed due to Covid-19 situation and all the pending works are carried out by the respondents to handover possession to the buyers. In this regard, it is relevant to note that in Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors., the Hon'ble Supreme Court is held that the appellant-builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the respondent-purchaser within the time stipulated in the agreement, or within a reasonable time thereafter and the respondent-flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired.

(f) The learned counsel for the respondent also submitted that the project was also registered with the Authority and the Authority granted time to complete the project till 30.10.2021 and the builder has time till then for completion of the project. In Neelkamal Realtor Suburban pvt.Ltd. and Ors vs Union of India and Ors. reported in MANU/MH/3135/2017 held as "The provisions of the RERA Act do not rewrite the clause of completion or handing over possession in the agreement for sale or construction. Section 4(2)(l)(c) of the Act enables the

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promoter to give fresh time line independent of the time period stipulated in the agreements entered between the promoter and the allottees, so that the promoter is not visited with penal consequences laid down under the RERA Act. In other words, by giving an opportunity to the promoter to prescribe fresh time line under section 4(2)(l)(c), the promoter is not absolved of the liability under the agreement". Hence the above contention of the counsel is not sustainable.

(g) 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.58,80,922/- in total towards the purchase of the flat to the respondent. Therefore, the complainant is entitled for refund of Rs.58,80,922/- 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 7.30% 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., 9.30% 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.

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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.
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. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
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/- 19.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1--- S.Abirami
RW-1--- S. Vijayaraghavan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	11.07.2014	Construction agreement
Ex.A2	07.08.2014	Sale Deed
Ex.A3	...	Payment receipt and summary
Ex.A4	08.02.2019	TNRERA order in C.No.156/2017 (batch)
Ex.A5	06.11.2019	Order in Appeal No.06/2019(batch)

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	...	Board resolution copy
Ex.B2	12.04.2021	Extension of time by TNRERA

Sd/- 19.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

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19.11.2021
LAW OFFICER
TNRERA REAL ESTATE REGULATORY AUTHORITY