

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 123 of 2020**

G. Lakshmi

..... COMPLAINANT

Vs.

M/s. Adinath Srinivasa Foundations LLP,
Rep. by its Managing Partner.
(TN/01/Building/0177/2017)

..... RESPONDENT

Complainant

: Rep. by Mr. Ralph. V. Manohar, Advocate.

Respondent

: Remained absent.

Heard on : 15.04.2021

Delivered on : 22.06.2021

ORDER

The complaint filed by the above complainant seeking refund of amount paid to the respondent towards purchase and construction 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 a twin house with the respondent in their project namely, "Serene Kshetra", in Nathapettai Village, Kancheepuram district and paid a booking advance and further amounts.

(b) The respondent allotted a twin house at bearing No.T2-9, measuring a carpet area of 401sq.ft. The total cost of the house was Rs.23,38, 936/- excluding GST and other charges. In their allotment letter, the respondent undertook to complete construction and to hand over the house by March 2019 with a grace period of 3 months. The complainant made all the

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payments without any delay as and when demanded by the respondent. The complainant in total paid a sum of Rs.21,00,000/- to the respondent.

(c) The respondent agreed to execute the agreements for sale and construction and sale deed on payment of 80% of the total sale consideration. There was no progress in construction. The respondent has not come forward to execute the documents. Hence, the complainant requested to hand over possession of the unit or to return the sale consideration. By e-mail dated 01.04.2019, the respondent promised to refund the amount within 90 days. The respondent has not taken any steps to refund the amount. Hence, the complainant is entitled for refund of the amount and other reliefs.

3. In spite of service and receipt of the notice of hearing, the respondent remained absent.

4. On her side, the complainant filed her evidence on affidavit with documents.

5. On the basis of the contentions of the complainant, the following points arise for determination:

- i. Whether the complainant is entitled for refund of the amount paid to the respondent towards purchase of twin house with interest and compensation on the ground of failure on the part of the respondent to execute documents and to give possession of completed apartment in accordance with the date and terms of the allotment letter?
- ii. What are the reliefs, the complainant is entitled to?

6. **Answer for Point No: (i):-**

(a) The learned counsel for the complainant submitted that the respondent launched the project namely, "Serene Kshetra", as being developed as a

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Senior Citizen Retirement Community and the complainant booked a twin house in the project for a total sale consideration of Rs.23,38,936/- and the respondent issued allotment letter and also undertook to hand over the constructed house by March 2019 with a grace period of 3 months and the complainant in total paid a sum of Rs.21,00,000/-, but the respondent has not come forward to execute agreements of sale and construction and sale deed even after receipt of 80% of the sale consideration and therefore, the complainant sought refund of the amount and the respondent also agreed to refund the amount, but has not refunded the amount as on date and the complainant is entitled for all the reliefs.

(b) The complainant, who was examined as CW1, stated that she booked a twin house in the project of the respondent for a total sale consideration of Rs.23,38,936/- and paid booking advance and further amounts and in total, paid a sum of Rs.21,00,000/- before the end of February 2019 and the respondent has not executed sale deed and other documents in her favor as per the terms of the allotment letter and therefore she requested the respondent to return the amount for want of her medical expenses and the respondent also promised to refund the amount within 90 days but has not taken any steps to refund the amount to the complainant and she is entitled for all the reliefs.

(c) As per Ex.A1, series of payment receipts, the complainant has paid a sum of Rs.21,00,000/- to the respondent. As per Ex.A2, the allotment letter, the respondent promised to complete the construction by March 2019 with a grace period of 3 months. Ex.A8 series are the e-mail communications between the complainant and the respondent. By the e-mail letter dated 01.04.2019, the respondent intimated acceptance of cancellation of allotment of flat and promised to refund amount within 90 days from the date of e-mail

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for cancellation. Subsequently, by e-mail dated 01.11.2019, the respondent intimated that current financial position was not good and they will be in a position to make part payment only in the financial year 2020 and once the funds are available, she will be communicated.

(d) The evidence of the complainant proved that she paid the amount to the respondent towards purchase of twin house and the respondent has not come forward to execute the documents and failed to hand over the possession of the completed unit to her and on cancellation, undertook to repay the amount on cancellation of the unit, but not returned the amount.

(e) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid by her to the respondent towards purchase of the twin house with interest, compensation and cost. Thus, the point is answered accordingly.

7. Answer for Point No.(ii)

(a) In view of the answer for point No.(i), the complainant is entitled for refund of the amount paid to the respondent with interest and compensation. The complainant paid Rs.21,00,000/- to the respondent for purchase of twin house. Therefore, the complainant is entitled for refund of the amount of Rs.21,00,000/- with interest and compensation from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest payable shall be at the highest marginal cost of lending rate of SBI plus 2%. By the e-mail dated 01.04.2019, the respondent undertook to make the refund. Hence, the complainant is entitled for the interest at the rate of 8.70% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of undertaking plus 2% per annum, i.e.,

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10.70% per annum for the amount paid from the dates of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed as compensation towards mental agony, hardship and inconvenience caused to the complainant . Towards litigation expenses a sum of Rs.25,000/- is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows;-

1. The respondent shall pay the amounts at the interest rate, compensation and cost as per the findings in answer for Point No.(ii), Para No.7 of this order within 30 days of issue of this order.
2. The charge of the aforesaid 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.

**G. SARAVANAN
ADJUDICATING OFFICER**

List of witness

CW-1 --- G. Lakshmi

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	----	Payment receipts
Ex.A2	02.01.2019	Allotment letter by the respondent
Ex.A3	03.01.2019	Payment request letter
Ex.A4	----	Draft agreement for sale

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Ex.A5	----	Draft construction agreement
Ex.A6	----	Copy of the plan
Ex.A7	----	Site layout
Ex.A8	----	E-mail communications

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22.6.2024
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI