

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

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

CCP No. 133 of 2020

J. Kalaivani Complainant

Vs.

M/s. VGN Developers Private Ltd.,
Rep by its Managing Director.
(TN/29/Building/0066/2017)

..... Respondent

Complainant : Rep by Mr. P.Anbarasan, Advocate.

Respondent : Rep by Mr. K. Harishankar, Advocate.

Heard on : 12.11.2021

Delivered on : 03.12.2021

ORDER

The complaint by the above complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together with interest, compensation and costs 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) On 30.10.2015, the complainant booked an apartment with the respondent in their project, namely, " VGN Fairmont" at Alandur village, Chennai on payment of Rs.25,000/- as booking advance. On 30.11.2015, the complainant and the respondent entered into agreements for sale and construction. The total sale consideration of the flat is Rs.53,29,310.37. The complainant has in total paid Rs.43,43,153/-.

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(b) The complainant availed loan from M/s. Indiabulls Housing Finance Ltd and is paying EMI every month. Out of the total sale consideration, 82% of the total cost of the flat has been paid by the complainant. There was no progress in the construction of the project. The respondent failed to update the complainant about the stage-wise schedule of completion of the project. The flat was supposed to be handed over on or before 29.11.2018. The respondent is not able to hand over the flat. Hence the complainant seeks for refund of the amount with interest, compensation and cost.

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

(a) All the allegations except admitted are denied. It is admitted that the complainant booked a flat in the project of the respondent and also entered into agreements for construction and sale on 30.11.2015. The project commenced in the year 2015 after getting necessary permission and approval from the appropriate authorities.

(b) In December 2016, the CBI filed an FIR against the respondent company with regard to the transactions on purchase of the land for the project. In January 2018, the Enforcement Directorate attached the property and the construction work was stopped. After an extensive legal battle, the Tribunal for PMLA, New Delhi had lifted the attachment by order dated 14.02.2019. Subsequently, the CBI filed the closure report. There is no attachment or stay with regard to the project.

(c) In the month of March 2020, Covid-19 pandemic caused a lot of issues relating to lockdowns, stretching of supply chains, constraints in the availability of men and material. Under clause-11(c) of the construction

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agreement, the respondent is entitled for extensions if delay was caused beyond the control of the respondent. The complainant was also explained the reasons for the delay. In the event of cancellation of booking, 5% of the total cost is liable to be deducted towards cancellation charges.

(d) On cancellation, the amount will be directly paid to the financial institution under intimation to the borrowers for appropriation and adjustment of the amount due to them. The complainant is not entitled for refund of the entire amount. Hence the respondent prays for dismissal of the complainant.

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 rival contentions of the parties, the following points arise for determination:-

- i. Whether the complainant is entitled for refund of the amount paid to the respondent together with interest and compensation on the ground of failure on the part of the respondent to give possession of the apartment booked by her in accordance with the date and terms of agreements for sale and 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 booked an apartment in the project of the respondent and entered into agreement of sale and construction and out of the total cost of

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the flat i.e. Rs.53,29,310.37, the complainant paid Rs.43,43,153/- and the complainant also availed loan from private financial institution to pay the sale consideration and the respondent undertook to complete the construction and handover the possession of the flat on or before 29.11.2018 and the respondent is yet to handover the flat and the complainant is entitled for refund of the amount with interest, compensation and cost.

(b) However, the learned counsel for the respondent contended that the project commenced in the year 2015, but in December 2016, the CBI filed an FIR against the respondent with regard to the transactions on purchase of land for the project and after an extensive legal battle, the respondent lifted the order of attachment and resumed the construction works of the project and subsequently Covid-19 pandemic delayed the construction work on various grounds and the respondent is entitled for extension as per the provisions of the construction agreement and only on deduction of cancellation charges, the complainant is entitled to get refund of the amount and the claim of the refund of the entire amount paid is not sustainable and the complaint is liable to be dismissed.

(c) Section 18 of RERA Act gives right to flat purchasers 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. Under the construction agreement, the respondent undertook to complete the construction of the apartment by the end of 36 months plus additional grace period of 6 months from the

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date of the agreement which is made on 30.11.2015. Admittedly, till the filing of the complaint, the respondent has not completed the construction of flat allotted to the complainant and not even able to execute sale deed for the UDS in favour of the complainant. As on the date, a period of 5 years elapsed. It is also not in dispute that the complainant availed loan from a financial institution for Rs.40,00,000/- to purchase the flat and is paying EMI every month, which also includes the interest. The complainant cannot be made to wait indefinitely refusing her right to seek the remedy under the RERA Act, which is beneficial piece of legislation.

(d) The delay was caused not due to any of the acts of the complainant. For no fault of the complainant she cannot be made to pay cancellation charges as claimed by the respondent. The term on cancellation charges is one sided and only to the advantage of the respondent. A real estate company cannot be allowed to bind the home buyers with one sided contractual terms. It is also relevant to mention that the home buyers are invariably at a disadvantage in a flat purchase agreement. Therefore the respondent is not entitled to deduct the cancellation charges from the amount payable to the complainant.

(e) It is also relevant to mention that in a recent decision in *M/s.Newtech Promoters and Developers Pvt.Ltd. vs State of UP & Ors, etc. reported in 2021 SCC Online 1044*, the Hon'ble Supreme Court was pleased to observe that when it comes to refund of the amount and interest on the refund of amount, or directing payment of interest for delayed delivery of possession or penalty and the interest thereon, it is the regulatory authority which has

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the power to examine and determine the outcome of a complaint. It is also very much relevant to note that for the same decision, the Hon'ble Supreme Court has held that ***"the provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence"***.

(f) The Hon'ble Supreme Court in ***Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65 (75): AIR 2004 SC 2141*** made it clear that". Compensation, according to dictionary, it means, ***"compensating or being compensated; thing given as recompense;"***. In legal sense it may constitute ***actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss"***. In ***IRC vs. Glasgow South Western Railway Co., (1887) 12 App Cas 315 (HL)***, the British Court held that ***"compensation or purchase money are the same thing under different names"***. Compensation includes refund of the amount paid by the complainant which is an actual loss. It is obvious that compensation includes refund of money with interest also. Considering all the above, it is clear that this Forum can order or award refund of the amount with interest by way of compensation.

(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.

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8. **Answer for Point No. (ii)**

(a) It is not in dispute that the complainant paid a sum of Rs.43,43,153/- in total towards the purchase of the flat to the respondent. Therefore, the complainant is entitled for refund of the said amount 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 that the complainant started making payments to the respondent towards purchase of the flat from the year 2015 and is also paying EMI with interest to the financial institution on availing loan for the purchase and the respondent invested all the amounts received from the complainant in the project which has appreciated value even after a lapse of time and the amount of such gain and benefits of the unfair advantage is not quantifiable, 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 agreements for construction and sale, as the case may be, at the expense of the respondent.

Sd/- 03.12.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES
CW-1--- J.Kalaivani
RW-1--- A. Rangappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Cost breakup of the fat
Ex.A2	30.11.2015	Agreement for construction
Ex.A3	08.01.2016	Bank loan sanction letter
Ex.A4	19.11.2019	Consolidated payment receipt
Ex.A5	14.11.2015	Invoice/demand letter

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	30.11.2015	Agreement for construction
Ex.B2	30.11.2015	Agreement for sale
Ex.B3	28.12.2016	FIR filed by the CBI
Ex.B4	13.02.2018	Provisional attachment order
Ex.B5	14.02.2019	Order copy of the PMLA Tribunal
Ex.B6	26.04.2019	CBI final report
Ex.B7	...	Booking form
Ex.B8	30.12.2015	Tripartite agreement

Sd/- 03.12.2021
G.SARAVANAN,
ADJUDICATING OFFICER,
TNRERA, CHENNAI.

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY