

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.142 of 2020

1. Sini P.P.
2. Jiju Varghese. G

.... COMPLAINANTS

Vs.

1. M/s.Optima Homes Private Limited,
Rep. by its MD, V.Sudhakar
(TN/02/Building/0085/2018)

.... RESPONDENT

Complainants : Rep. by Mr. R.Ramasubramaniam Raja, Advocate.
Respondent : Rep. by Mr. Senthilkumar, Advocate.

Heard on : 29.07.2021
Delivered on : 24.08.2021

ORDER

The complaint by the above complainants seeking refund of amount paid to the respondent towards purchase of an apartment 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 complainants, in brief, as follows:**

(a) On 10.6.2017, the complainants booked a flat with the respondent in their project namely, "OPTIMA UPGRADE", at Paleripattu Village, Thiruvallur District and paid advance amount and further amounts.

(b) On 24.06.2017, the complainants and the respondent as a power agent of the land owner, entered into an agreement of sale of UDS land and also construction agreement. The respondent undertook to complete and handover possession of the constructed flat within 30 months from the date of the agreement, with three months grace period. The period for

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completion and handing over of flat as per the agreement for construction was 23.12.2019. Out of the total sale consideration of Rs.50,00,000/-, the complainants paid a sum of Rs.20,00,000/-.

(c) Till October 2020, the respondent has not commenced the project. The representatives of the respondent gave various promises to commence the project within a particular period, but, of no use. Hence the complainants requested the respondent to return the money with interest. The respondent issued two cheques towards refund of the amount, each for a sum of Rs.10,00,000/-, but the cheques issued were dishonored. The complainants also initiated action under section 138 of the Negotiable Instruments Act. The respondent is liable to return the amount with interest, compensation and cost. The complainants are entitled for the reliefs.

3. In spite of sufficient time being given, the respondent has not filed any counter.

4. The complainants filed the proof affidavit with documents.

5. On the averments of the complainants, the following points arise for determination.

- i. Whether the complainants are entitled for refund of the amounts paid to the respondent together with interest and compensation on the ground of failure to commence construction of the project to deliver the apartment to the complainants as per the terms of the agreements?
- ii. What are the reliefs, the complainants are entitled to?

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6. Answer for Point No. (i)

(a) The learned counsel for the complainants submitted that the respondent is the promoter of the project in which the complainants booked apartment and paid Rs.20,00,000/- out of the total sale consideration of Rs.50,00,000/- and the respondent undertook to complete the construction and handover the flat within 30 months from the date of signing the construction agreement, which was entered on 24.06.2017 between the complainants and the respondent and the respondent has not commenced any construction activity in the project site and the complainants sought for refund of the amounts from the respondent and the respondent also issued cheques towards repayment of the sale consideration, but the cheques were dishonored and the complainants were put to hardship and they are entitled for all the reliefs.

(b) Ex.A2, the series of payment receipts reveals that the complainants paid in total Rs.20,00,000/- to the respondent towards purchase of the apartment on various dates. Ex.A6 is the letter from the respondent confirming the receipt of Rs.20,00,000/- as advance money in June 2017. In Ex.A6, the letter, the respondent informed to the complainants that they are awaiting for a minimum booking before the commencement of the project. Ex.A7 are cheques issued by the respondent to the complainants for return of Rs.20,00,000/-, each for Rs.10,00,000/- with the memo issued by the bank for return of the cheques for want of sufficient funds.

(c) Through the evidence, the complaints proved their case. The complainants are entitled for return of the amount with interest, compensation and cost. Thus, the point is answered accordingly.

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7. Answer for Point No. (ii)

(a) In view of the answer for the point No (i), the complainants are entitled for refund of the amount of Rs.20,00,000/-

(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 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 plus 2%, i.e., 9.30% per annum for the amounts paid from the date of respective payments till repayment by the respondent.

(c) The complainants are claiming a sum of Rs.90,000/- towards rental expenses incurred by them. The complainants filed Ex-A8, proof of payment of house rents. Hence the complainants are entitled for Rs.90,000/- as compensation towards rental expenses.

(d) Apart from the above, considering the facts and circumstances of the case, it is held that the complainants are entitled for a sum of Rs.1,00,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

8. 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.

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3. On repayment of the claim as per the order, the complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 24.08.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES
CW-1--- Jiju Varghese.G

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	10.06.2017	Allotment letter
Ex.A2	---	Payment receipts (series)
Ex.A3	24.06.2017	Agreement for sale
Ex.A4	24.06.2017	Construction agreement
Ex.A5	---	Status of progress(quarterly report)
Ex.A6	22.02.2019	Letter from the respondent
Ex.A7	---	Cheques issued by the respondent
Ex.A8	---	Proof of payment of house rent
Ex.A9	03.01.2020	Legal notice issued by the complainant

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 24.8.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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24.8.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY