

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 144 of 2020**

K. Kanchana Mala

.... COMPLAINANT

Vs.

M/s.VGN Developers Pvt.Ltd.
Rep. by its M.D.
(TN/29/Building/0066/2017)

.... RESPONDENT

Complainant : Rep. by Mrs. A. Smrithi, Advocate.

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

Heard on : 17.09.2021

Delivered on : 28.09.2021

ORDER

The complaint 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, "VGN FAIRMONT", at Guindy Thiru-vi-ka Industrial Estate, Alandur Village, Guindy, Chennai and paid advance amount and further amounts. The total cost of the flat was fixed at Rs.2,05,20,347/-.

(b) On 28.01.2016, the complainant and the respondent entered into a sale agreement and also a construction agreement. The respondent undertook to

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handover possession of the flat with grace period in July 2019. The complainant in total paid a sum of Rs.1,79,81,546/-, nearly 90% of the total cost of the flat. In addition, the complainant also paid Rs.3,02,400/- towards registration of the construction agreement. The respondent postponed the date of hand over of the flat several times until February 2020.

(c) On 29.02.2020, the complainant visited the construction site and found that the project building is still under construction with hardly any construction work going in a pace to honor hand over of flat by February 2020. Because of the delay, the complainant was put to hardship. Therefore, the complainant opted to cancel the flat booked and to seek for refund of amount paid to the respondent with interest, compensation and cost. The complainant is entitled for all the reliefs.

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

(a) Except admitted, all the averments are denied. The project had commenced in the year 2015 after obtaining all the necessary approvals from the concerned authorities. But, in December 2016, the CBI has filed an FIR against the respondent by charging false allegations. The Enforcement Directorate attached the property in the month of January 2018. All the construction works were to be stopped. After extensive legal battle, the CBI filed closure report of the case. The attachment was lifted on 14.02.2019. The respondent resumed the construction works and all the possible efforts were taken by the respondent to complete the project at the earliest.

(b) In March 2020, due to the spread of COVID-19 which caused lot of issues and the lockdown, there was delay in completion of the construction works. Under clause 11(c) of the construction agreement, the respondent is entitled

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for suitable extensions, if the delay is beyond the control of the respondent. The complainant sent legal notice dated 04.06.2020 and a reply notice was issued by the respondent on 23.07.2020. In the event of cancellation of booking of flat, a sum of 5% of the total cost will be deducted towards cancellation charges and the remaining amount will be refunded as per the clause in the booking/application form.

(c) The respondent is no way liable for compensation for the delay in construction, as there is no default on their part. The compensation amount should be calculated as per the agreement between the parties. The respondent company is committed for early completion and hand over the flat to the complainant by May 2021. The complainant has shown unwillingness in taking possession of the property. The complainant is not entitled for any reliefs. Hence the complaint is liable to be dismissed.

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 complainant is entitled for refund of the amounts paid to the respondent together with interest, compensation and cost on the ground of failure on the part of the respondent to deliver the apartment as per the terms of the agreement?
 - ii. What are the reliefs, the complainant is entitled to?

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7. Answer for Point No.(i)

(a) The learned counsel for the respondent filed written argument notes contending that the project commenced in the year 2015, but, in December 2016, the CBI filed an FIR against the respondent with regard to transactions which happened at the time of purchase of the land for the project and subsequently, the Enforcement Directorate (ED) attached the property in December 2018 and the respondent was forced to stop the construction of the project and the respondent approached Hon'ble PMLA Tribunal and the Tribunal by its order dated 14.02.2019 lifted the attachment by the ED and during March 2020, due to the spread of COVID-19, the construction work could not be carried out to complete the project and Clause 11(c) of the construction agreement provides for extension of the period if any delay in completion was due to reasons beyond the control of the respondent and therefore, the complainant is not entitled any to any reliefs .

(b) Section 18 of RERA Act gives a 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. The provisions of the RERA Act do not rewrite the clause of completion or handing over possession in the agreement for construction or sale. In Ex.A1, construction agreement dated 28.01.2016, the respondent undertook to complete and handover the flat by the end of 36 months, plus additional grace period of 6 months. Admittedly, the period was over by July 2019. It is not in dispute that out of the sale price of Rs.2,05,20,347/-, the complainant has paid Rs.1,79,81,546/-. According to the complainant, the respondent postponed the date of handing over several

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times and by e-mails dated 14.03.2019 and 30.09.2019 assured to handover the flat in the month of February 2020. Till date the respondent was not able to complete the construction of flat, even though the attachment by ED was released by order of Hon'ble PMLA Tribunal on 10.02.2019.

(c) The learned counsel for the respondent further relied on sections 56 and also 55 of the Indian Contract Act and contended that the complainant cannot claim compensation for any loss in view of the above sections of the Contract Act. Section 56 deals with agreement to do an act impossible in itself is void and also to do an act which, after the contract is made becoming impossible or unlawful. The construction of flats in the project cannot be construed as an impossible act or an act afterwards becoming impossible or unlawful. Admittedly, there is inordinate delay in construction. Even in his reply legal notice dated 23.07.2020, the respondent made it clear that the reasons stated is only for the delay in the project and requested the complainant to withdraw the cancellation request as the construction work was completed upto 80% and the unit will be handed over to the complainant as early as possible. The respondent has not given up the project.

(d) Real Estate (Regulation and Development) Act, 2016 was passed by the Parliament with various objects including protection of the interest of consumers in the Real Estate Sector and also for establishment of an adjudicating mechanism for speedy disputes redressal. It is a special enactment. In view of section 18 of the Act, the respondent cannot claim exception from payment of compensation and interest. It is well settled that compensation and interest to be awarded under section 18 are compensatory in nature and not penal. Since the respondent retains the property, in which

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the amounts paid by the complainant is invested and which got appreciation in value subsequently, the right of the complainant as consumer is protected to claim compensation and interest for the use of money of the complainant by the respondent. Therefore, sections 55 and 56 of the Contract Act are not at all applicable to the facts of the case. The complainant is entitled for return of the amount with interest and compensation. Thus the point is answered accordingly.

8. Answer for Point No.(ii):

(a) There is no dispute that the complainant paid Rs.1,79,81,546/- to the respondent towards sale consideration of the flat and also paid Rs.3,02,400/- towards registration of the construction agreement. In view of the answer for Point Nos.(i), the complainant is entitled to refund of the amount of Rs.1,82,83,946/- with interest and compensation from the respondent.

(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, at the time of filing of the complaint, plus 2% per annum i.e., 9.30% per annum for the amounts paid from the dates of respective payments till repayment by the respondent.

(c) Apart from the above, considering the circumstances of the case, the compensation towards mental agony and inconvenience to the complainant and deficiency by the respondent at Rs.7,00,000/- and towards litigation expenses at Rs.30,000/- is fixed. The complainant is entitled for the 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 from the date of issue of the 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 this order to the Sub-Registrar concerned.
- (3) The complainant shall execute cancellation of the agreements, on satisfaction of her claim as per the order at the respondent's cost.

Sd/- 28.09.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1--- K.Kanchana Mala
RW-1--- A.Rangappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	28.01.2016	Agreement for construction
Ex.A2	28.01.2016	Agreement for sale
Ex.A3	---	Payment schedule

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Ex.A4	18.01.2017	E-mail communication
Ex.A5	---	Demand letter
Ex.A6	04.06.2020	Legal notice
Ex.A7	23.07.2020	Reply notice

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	28.01.2016	Agreement for Construction
Ex.B2	28.12.2016	FIR filed by CBI
Ex.B3	13.02.2018	Provisional attachment order
Ex.B4	14.02.2019	Copy of order from PMLA
Ex.B5	26.04.2019	Final report by CBI
Ex.B6	04.06.2020	Legal notice
Ex.B7	23.07.2020	Reply notice

**Sd/- 28.09.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.**

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28.9.2021
LAW OFFICER
THE REAL ESTATE REGULATORY AUTHORITY