

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

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

CCP No.146 of 2020

P.Jai Narayanan Raj

.... COMPLAINANT

Vs.

M/s.TVH Estates Chennai Private Limited,
Rep. by its MD, Ravichandran Narayanan
(Project not registered)

.... RESPONDENT

Complainant : Rep. by M/s.Chennai Law Associates, Advocates.

Respondent : Rep. by Mr.P.Vinodh Kumar, Advocate

Heard on : 29.10.2021

Delivered on : 18.11.2021

ORDER

The complaint by the above complainant seeking refund of the 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 complainant, in brief, as follows:

(a) On 15.12.2012, the complainant booked an apartment in the project of the respondent, namely, "TVH-OURANYA BAY" at Kazhipattur Village, Chengalpet Taluk, Kancheepuram District. The total sale consideration of the apartment is Rs.49,49,590/-.

(b) On 22.12.2012, the complainant was allotted flat No.5252 on the 25th floor of Tower-5 of the project. On 04.02.2013, the respondent and the complainant entered into an agreement to sell and also a construction agreement. The

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respondent undertook to complete construction and handover delivery of flat in September 2013. However, vide letter dated 14.03.2015, the respondent unilaterally postponed the delivery date to 15.08.2015. The complainants paid in total Rs.47,00,000/-

(c) The construction of the flat moved at snail's pace and there was very little progress and even after expiry of more than 4 years from August 2015, nothing has been done to ensure handing over of the flat. On 09.12.2019, through e-mail, the respondent demanded as final payment of Rs.8,98,480/- is due, failing which, threatened to cancel the allotment and sell it to some other buyer. The complainant has paid all stage-wise payments. After inspection of the flat, the complainant was not satisfied with the quality and punctuality in the deliverables. The respondent has not kept their promise at any point of time and even after more than 6 years the project is not completed.

(d) As there was inordinate delay in handing over the allotted flat and the respondent was demanding further payment without any basis, the complainant sent a legal notice on 19.03.2020 through SPAD for cancellation of the flat due to the facts of misrepresentation and gross breach of terms of contract by the respondent. Hence, the complainant seeks refund of the amount with interest, compensation and cost.

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

(a) Except admitted, all the averments and allegations are denied as false and baseless. The project of the respondent does not fall within the purview of RERA Act since it was completed in the year 2015 prior to the enactment of RERA Act. Hence the complaint is not maintainable before this Authority for adjudication. As

per the status report of TNRERA, the project is exempted from registration. The complaint should be dismissed in limini.

(b) The complainant approached the respondent and booked the flat on 22.12.2012 and subsequently entered into agreements for sale and construction on 04.02.2013. The complainant has not made stage-wise payments for construction. The construction of the project has been carried out as per the schedule and the complainant has not made payments after 20.12.2013 and has not paid the final payment of Rs.8,98,480/-. The complainant failed to take possession of the flat and approached RERA with false and baseless allegations.

(c) The respondent issued several emails to take possession of the flat. Having waited for 4 years, the respondent issued an email on 28.09.2019 that the flat will be cancelled due to nonpayment of balance amount and to take possession of his flat. Since the complainant has not made stage-wise payment, the complainant is not entitled for any compensation as per clause-5 of the construction agreement. Hence the respondent is not liable to pay any compensation to the complainant.

(d) The respondent duly acquired the property for construction and in accordance to law. All the procedures were followed and government sanctions were received and the complainant suppressed all the material facts and he has approached the Hon'ble Authority with unclean hands only to grab money from the respondent. Hence the complaint is liable to be dismissed with cost.

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 and compensation on the ground of failure to deliver the flat as per the terms of the agreements?
- ii. What are the reliefs, the complainant is entitled to?

7. Answer to Point Nos.(i) & (ii)

(a) The learned counsel for the respondent filed written notes of arguments contending that the project is exempted from registration with TNRERA as per the status report of the projects and the complaint itself is not maintainable and the complainant booked a flat in the project and entered into an agreement of sale and construction agreement with the respondent on 04.02.2013 and has not made the stage-wise payments in prompt manner as stipulated under the construction agreement and is in due of final payment of Rs.8,98,480/- and the complainant was asked to take possession of the flat after paying the final payment due to the respondent and the project has been completed in the year 2015 itself and all the allottees have taken possession of their respective flats and therefore the respondent is not liable to repay the amount paid by the complainant with interest and compensation.

(b) However, the learned counsel for the complainant also filed written notes of arguments submitting that the complainant made stage-wise payments as per the payment schedule of the construction agreement and the respondent undertook to deliver the completed flat in September 2013 itself, but, unilaterally postponed the date of delivery of the flat by 15.08.2015 and even after the expiry of 4 years from the revised date of delivery, the respondent was not able to handover the flat in spite of payment of almost 95% of the total sale consideration claimed by the respondent and therefore the complainant is entitled for all the reliefs.

(c) Section 3 of the RERA Act, specifies real estate projects, which require registration. The RERA Authorities get jurisdiction over all the real estate projects, which are eligible for registration irrespective of the fact as to whether they are registered or not. From 01.05.2017 when the RERA Act came into force, TNRERA gets the jurisdiction over all the real estate project which are eligible for registration under Section 3 of the RERA Act. If the cause of survives after coming into force of the RERA Act, TNRERA gets jurisdiction over all the disputes pertaining to the eligible real estate projects. The on-going projects bring with them the legacy of rights and liabilities created under the statutes of the land in general and the Indian Contract Act in particular.

(d) The respondent claims that the project is exempted from registration under TNRERA as per the status report of the projects marked in Ex-B1. Under Section 3 of the RERA Act, the projects that are ongoing on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter is required to make an application for registration of the project under the Act. Ex-B1 is the status of the project received from CTCP seeking exemption from TNRERA. Nowhere in the document, it is mentioned as the project has been completed or as the completion certificate has been issued for the project. Under the column "status of the project", in sl.no.82 of Ex.B1 document, it is mentioned only as "Towers 2,3,4 and 5 and club house work completed out of the 6 towers". No reliance can be placed on Ex.B1 to contend that the project as a completed project. Therefore, the above contention of the learned counsel for the respondent is liable to be rejected and the project was an ongoing project as on the date of commencement of the RERA Act required to be registered with TNRERA under the Act. Even though the respondent contended that the allottees have

taken possession of their respective flats in 2015, no document is produced to substantiate the contention.

(e) Section 18 of the RERA Act gives a right to the allottee to withdraw from the project and demand the amount paid by him with interest including the compensation, if a promoter fails or is unable to give possession of the flat on the dates specified in the agreement. As per Ex-A6, construction agreement dated 04.02.2013, the respondent undertook to complete construction and deliver the apartment within one month from the date of executing the agreement with a grace period of 6 months. It is not in dispute that by Ex.A9, the letter to the allottees, the respondent has postponed the date of delivery of the particular tower for floor nos. 1 to 25 by 15.08.2015. By Ex.B3, the letter, the respondent informed the complainant that possession of the apartment would be ready very soon and the intimation of possession letter will be sent to the complainant in 10 days. The respondent has not produced any such letter sent by them to the complainant till date of filing of the complaint.

(f) In this regard, it is relevant to note that Hon'ble Supreme court in Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors., reported in Manu/SC/0463/2019 held that the builder could not seek to bind the buyer with one sided contractual terms and once the 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, the respondent flat purchaser could not be compelled to take possession of the flat even though it was offered almost two years after the grace period under the Agreement expired.

(g) Perusal of the schedule of payments in Annexure-II of the construction agreement reveals that the stage-wise payments are not at all linked with any time schedule with specific dates. It is not in dispute that out of the total sale consideration of Rs.49,49,590/-, the complainant paid 95% of the amount with only a balance of Rs.8,98,480/-. Therefore, the respondent cannot blame the complainant for the delay in completion of the apartment as undertaken by them.

(h) Considering all the above circumstances, it is held that there was delay in delivery of the constructed apartment to the complainant for more than 4 years from August 2015, and 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) In view of the answer for the point No. (i), the complainant is entitled for refund of the amount paid to the respondent with interest and compensation. The complainants paid in total Rs.47,00,000/- to the respondent for purchase of flat. Therefore, the complainant is entitled for refund of the amount of Rs.47,00,000/- with interest, compensation and cost.

(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 was 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 respondents.

(c) Apart from the above, considering the facts and circumstances of the case, it is held that the complainant is entitled for a sum of Rs.2,00,000/- towards

compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by him. 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 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 complainants 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 at the expense of the respondent.

Sd/- 18.11.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- P.Jai Narayanan Raj
RW-1--- M. Priyanka

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	15.12.2012	Application form
Ex.A2	22.12.2012	Welcome letter
Ex.A3	22.12.2012	Allotment letter
Ex.A4	...	Payment receipt (series)
EX.A5	22.12.2012	Statement of accounts
Ex.A6	04.02.2013	Construction agreement

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Ex.A7	09.03.2013	Letter from respondent
Ex.A8	18.06.2013	Statement of accounts
Ex.A9	14.03.2015	Schedule of handing over
Ex.A10	03.09.2018	E-mail communication
Ex.A11	19.03.2020	Legal notice

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	...	Status report of project
Ex.B2	...	Statement of accounts
Ex.B3	16.10.2015	Letter to complainant
Ex.B4	...	Email communications

Sd/- 18.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

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