

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No.156 of 2020**

1. K.S.Parvathy  
2. R.Rajesh

..... Complainants

**Vs**

M/s.Selene Estate Ltd.,  
Rep.by its M.D.  
(TN/01/Building/0027/2017)

..... Respondent

Complainants : Rep. by Mr.G.Surianarayanan, Advocate.

Respondent : Rep. by M/s. BFS Legal, Advocates.

**Heard on** : 08.10.2021  
**Delivered on** : 26.10.2021

**ORDER**

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

(a) On 08.11.2010, the complainants booked an apartment with the respondent in their project, namely, "Ozone Green" previously known as Indiabulls Greens, at Jalladianpettai Village, Kancheepuram District and paid booking advance and further amounts. The complainants paid, in total, a sum of Rs.64,23,386/-.

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(b) The respondent entered into agreements with the complainants and undertook to complete the construction and to deliver the apartment within a period of 30 months, with a grace period of 6 months, from the date of the agreements. The construction of the apartment is not completed in all respects and the common space is still occupied by the respondent and it was not safe to occupy the premises and the modular kitchen as promised under the agreement was also not done.

(c) Due to onerous conditions put by the respondent and the manner in which the project was delayed have made the complainants to come to a decision to withdraw from the project and seek return of the amount paid with interest and compensation. Hence the complainants are entitled for the reliefs.

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

(a) Except admitted, all the averments and allegations are denied. The complaint is not maintainable in law and facts. It is true that the complainants and the respondent entered into construction and sale agreements dated 30.11.2012 with respect to sale of a flat in the project.

(b) Due to some unforeseeable reasons beyond the control of the respondent such as short supply of construction materials, shortage of skilled laborers, restrictions imposed by the State Government for laborers, etc, there was delay in completing construction and handing over the apartment within the time frame specified in the agreement. The agreement contains a force majeure clause which provides extension of time to the respondent.

(c) The agreements were entered on 30.11.2012, i.e. 4 years prior to the RERA Act came into force. As per clause-7 of the construction agreement, in the event of willful delay only, the complainants are entitled for compensation or damages.

The respondent took all the best possible efforts to complete the construction in the project and obtained completion certificate from CMDA as early as in July 2020 and intimated the complainants that the unit is ready for occupation. But, the complainants did not come forward to take possession and chosen to file the complaint. Hence, the complainants are not entitled for any reliefs and 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 complainants are entitled for refund of the amounts paid to the respondent towards purchase of flat with interest, compensation and other reliefs on the grounds of failure to complete construction and hand over delivery of possession of flat in accordance with the terms of the agreement ?
- ii. What are the reliefs, the complainants are entitled to?

**7. Answer to Point No.(i):**

(a) The learned counsel for the complainants filed written notes of arguments and submitted that the complainants booked a flat in the project of the respondent and paid the sale price and entered into agreements of sale and construction and the respondent undertook to complete the construction and handover delivery of the flat within a period of 30 months, with a grace period of 6 months, from the date of agreements and the respondent was not able to construct and handover

the flat within the agreed time and the complainants are entitled for all the reliefs prayed for. The learned counsel also relied on the decision of the Hon'ble Supreme Court in DLF Southern Homes Private Limited reported in Manu/SC/0607/2020 equivalent to 2020 (3) CCC 244 in support of his contention.

(b) However, the learned counsel for the respondent contended that due to some unforeseeable reasons beyond the control of the respondent, namely, short supply of construction materials, shortage of skilled laborers, restrictions imposed by the State Government for laborers. etc, the delay in completing the construction was caused and the agreement provides for extension of time and the agreements were entered with the complainants ,four years prior to the RERA Act came into force and the completion certificate from CMDA was obtained in July 2020 and was intimated to the complainants, as the unit was ready for occupation and the complainants did not take any efforts to take possession of the unit and the complainants are entitled for compensation only as per clause-7 of the construction agreement and the complaint is liable to be dismissed with cost.

(c) Section 18 of the RERA Act gives right to 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.A3, construction agreement dated 30.11.2012, the respondent undertook to complete the construction and deliver the apartment within 30 months from the date of the agreement with a further period of 6 months as a grace period. The due date for delivery of the apartment as per the agreement expired by November 2015. As per Ex.B1, the letter of the respondent

dated 27.07.2020 to the complainants, they intimated as they have obtained completion certificate from CMDA for tower-E2 in the project. The completion certificate enclosed with the letter is a partial completion certificate dated 23.07.2020. It is the specific case of the complainants that the building is not completed in all respects and the common space is still occupied by the builder and it is not safe to occupy the premises and the lift and electricity connection are yet to be completely provided by the respondent. There is no evidence produced by the respondent to prove that the flat is fully constructed and fit for occupancy.

(d) 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.

(e) In the above circumstances, it is held that the complainants are entitled for refund of the amount paid to the respondent with interest, including compensation on the ground of failure on the part of the respondent to complete the construction of the flat as per the terms and conditions of the construction agreement. Thus, the point is answered accordingly.

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

(a) There is no dispute that the complainants paid Rs.64,23,386/- to the respondent towards sale consideration of the flat. In view of the answer for point No.(i), the complainants are entitled for refund of the amount of Rs.64,23,386/- with interest and compensation from the respondent.

(b) The complainants sought direction to the respondent to pay Rs.31,600/- per month towards rent, i.e. rent paid by the claimant from February 2019, till the date of realization of all the amounts. Only when the complainants are willing to take the flat and claiming delay compensation, the claim of rent as compensation can be considered and granted. In the case of claim of refund of the entire amount with interest and compensation, the claim of rental compensation is not sustainable. Therefore the claim of the complainants for rent is rejected.

(c) 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 complainants are entitled for the interest at the rate of 8.05% 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%, i.e., 10.05% per annum for the amounts paid from the dates of respective payments till repayment by the respondent.

(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.2,00,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by them. The complainants are 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 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 this order to the Sub-Registrar concerned.
- (3) The complainants shall execute cancellation of the agreements, as the case may be, on satisfaction of his claim as per the order at the respondent's cost.

Sd/- 26.10.2021  
G. SARAVANAN  
ADJUDICATING OFFICER

**LIST OF WITNESSES**

CW-1--- R. Rajesh  
RW-1--- K. Krishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	08.11.2010	Application form
Ex.A2	30.11.2012	Agreement for sale
Ex.A3	30.11.2012	Construction agreement
Ex.A4	30.01.2019	Leave and license agreement
EX.A5	...	Hospital slips and receipts
Ex.A6	13.07.2019	Letter from respondent

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Ex.A7	...	Attachment of the letter
Ex.A8	...	Details of common facilities
Ex.A9	20.08.2020	General power of attorney

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	27.07.2020	Intimation mail and complete certificate

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*2020-9-26-15-2021*  
LAW OFFICER

TN REAL ESTATE REGULATORY AUTHORITY

Sd/- 26.10.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.