

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

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

CCP No.157 of 2020

Mohanasundaram COMPLAINANT

Vs.

M/s.Amar Prakaash Developers Private Ltd,
Rep. by its Director, S.V.Chidambaram RESPONDENT
(TN/01/Building/0118/2018)

Complainant : Rep. by M/s. Ram & Ram, Advocates.

Respondent : Remained absent

Heard on : 24.08.2021

Delivered on : 14.09.2021

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) The complainant booked an apartment in the project of the respondent, namely, "TEMPLE WAVES" at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District. On 30.06.2017, the respondent and the complainant entered into a project promotion and construction agreement. The respondent undertook to complete construction and handover flat by April 2018. The total sale

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consideration of the apartment is Rs.25,02,170/-.The complainant paid in total Rs.26,69,789/-.

(b) On 04.12.2017, the respondent executed the sale deed for the UDS in favor of the complainant and also registered the project promotion and construction agreement. The complainant paid more than the sale consideration. There was inordinate delay in completion of the project. The complainant who had undergone open heart surgery was put to hardship and mental agony. The complainant cancelled the booking of the flat and sought for return of the amount with interest and compensation.

3. In spite of service and receipt of the notice of hearing, the respondent remained absent.

4. On his side, the complainant filed his evidence on affidavit with documents.

5. On the basis of the contentions of the complainant, the following points arise for determination:

- i. Whether the complainant is entitled for refund of the amount paid to the respondent towards purchase of apartment with interest and compensation on the ground of failure on the part of the respondent to give possession of completed apartment in accordance with the date and terms of the construction agreement?
- ii. What are the reliefs, the complainant is entitled to?

6. **Answer for Point No: (i):-**

(a) The learned counsel for the complainant submitted that the respondent launched the project, namely, "TEMPLE WAVES" at Kundrathur, Chennai and the complainant booked an apartment with the respondent and also entered into a

project promotion and construction agreement with the respondent on 30.06.2017 and the respondent undertook to complete construction and handover possession of apartment by April 2018 and the complainant paid Rs.26,69,789/- which is more than the agreed sale price of Rs.25,02,170/- and after execution of the sale deed for the UDS land and registration of the agreement by the respondent, there was no progress in construction of the apartment in the project and the complainant was put to hardship and great mental agony as he has undergoing open heart surgery and therefore sought cancelation of the agreement and return the money paid with interest and compensation.

(b) The complainant, who was examined as CW1, stated that he booked a flat in the project of the respondent for a total sale consideration of Rs.25,02,170/- and paid booking advance and further amounts and in total, paid a sum of Rs.26,69,789/- and after executing the sale deed for the UDS and registering the agreement, there was no progress in construction of the apartment in the project and therefore the complainant sought for cancellation of the agreement and return of all the money paid with interest and compensation but the respondent has not taken any steps to refund the amount to the complainant and he is entitled for all the reliefs.

(c) As per Ex.A5, the project promotion and construction agreement, the respondent undertook to complete the construction of the apartment and deliver the possession of the apartment on or before April 2018. Ex.A6 is the sale deed for the UDS land executed by the respondent in favour of the complainant on 04.12.2017. Ex.A11 is the payment ledger statement of the respondent for payment of the sale consideration of Rs.25,02,170/-.

(d) The evidence on the side of the complainant proved that the complainant paid the sale consideration and additional amount towards purchase of flat and the respondent undertook to complete the construction of flat by April 2018 and only executed sale deed for the UDS land and failed to complete the construction within the stipulated time.

(e) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid by him to the respondent towards purchase of flat with interest, compensation and cost. Thus, the point is answered accordingly.

7. Answer for Point No.(ii)

(a) In view of the answer for point No.(i), the complainant is entitled for refund of the amount paid to the respondent with interest and compensation. The complainant paid in total Rs.26,69,789/- to the respondent for purchase of flat. Therefore, the complainant is entitled for refund of the amount of Rs.26,69,789/- with interest and compensation from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest payable 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 was the highest marginal cost of lending rate of interest of SBI at the time of the complaint plus 2% per annum, i.e., 9.30% per annum for the amount paid from the dates of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed as compensation towards mental agony, hardship and inconvenience caused to the complainant. Towards litigation expenses a sum of Rs.25,000/- 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 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. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
3. The complainant shall execute cancellation of the construction agreement and the sale deed for UDS land, as the case may be, on satisfaction of his claims at the cost of the respondent.

**Sd/- 14.09.2021
G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESS

CW-1 --- Mohana Sundaram

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	...	Project Advertisement
Ex.A2	...	Aadhar card of the complainant
Ex.A3	22.03.2015	Quotation

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Ex.A4	06.03.2016	Estimation
Ex.A5	30.06.2017	Project promotion and construction agreement
Ex.A6	04.12.2017	Sale deed
Ex.A7	05.12.2017	Receipt of registration charges
Ex.A8	...	Debit notice
Ex.A9	28.05.2019	Communication from respondent
Ex.A10	07.01.2020	E-mail from respondent
Ex.A11	10.03.2020	Payment - ledger statement

Sd/- 14.09.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY