

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 158 of 2020**

J. Suresh Kumar ... COMPLAINANT

**Vs.**

1. M/s.Provident Housing Ltd.
2. M/s. Puravankara Projects Ltd.,  
Rep. by their MD/Chairman, Ravi Puruvankara ... RESPONDENTS  
(Project not registered)

Complainant : Rep. by Mr. P.L.Narayanan, Advocate.

Respondents : Rep. by Mr.R. Sathish Kumar, Advocate.

**Heard on** : 28.10.2021

**Delivered on** : 19.11.2021

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondents 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 first respondent in their project, namely, " PROVIDENT COSMO CITY", at Pudupakkam Village, Chengalpattu Taluk, Kancheepuram District, and paid the amounts.

(b) On 28.12.2009, the complainant and the respondents entered into construction agreement towards purchase of flat. On 24.02.2012, sale deed for UDS land was also executed by the respondents. As per the agreement, the respondents undertook to handover the flat by 31.12.2011 with a grace period of 6 months. The total sale consideration of the flat is Rs.21,90,000/-. The

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complainant paid in total a sum of Rs.13,08,300/-. There was delay in the construction of the flat in the project and therefore the complainant was forced to stop the balance payments. The complainant sent a legal notice dated 09.09.2019 to the respondents for delivery of possession of the apartment.

(c) The first respondent demanded maintenance charges of Rs.2,00,000/- from 2014 which is not sustainable. Since possession of flat has not been handed over on completion within the stipulated time, the complainant is entitled for all the reliefs.

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

(a) The project was completed in its entirety in 2016. The complaint does not fall within the jurisdiction of this Forum. Under Section 3(1) of the RERA Act read with Rule 2(h)(ii) of the TNRERA Rules, it is clear that the projects which have not received completion certificate or occupancy certificate are to be registered under the Act as an ongoing project. As development and construction of the project were completed and application for the completion certificate was filed prior to the Act coming into force, the project is exempted from registration under the Act. The complaint is not maintainable in law.

(b) The complainant defaulted to make timely payments as agreed under the agreement. Due to the delay and default by the complainant, the respondents exercised their right under the agreement and cancelled the unit purchased by the complainant. The respondents acted in accordance with agreed terms of the construction agreement and have not violated any of their obligations.

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(c) The respondents submit that this Forum has no jurisdiction over the project and the complaint is not maintainable in law and is barred and the complaint is liable to be dismissed. The delay in handing over possession of the flat is due to force majeure reasons or government restrictions and other reasons beyond their control. The complainant has not cleared the payment till date though the possession of the apartment had been intimated. Hence, the respondents pray for the dismissal of the complaint.

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 respondents together with interest and compensation on the ground of failure to deliver the apartment as per the terms of the agreements?

ii. What are the reliefs, the complainant is entitled to?

7. **Answer for Point No.(i)**

(a) The learned counsel for the complainant submitted that as per the agreement, the possession of the apartment should have been handed over by 31.12.2011 with a grace period of 6 months and there was delay in completing the construction of the apartment and out of the total sale consideration of Rs.21,90,000/-, the complainant paid Rs.13,08,300/- and the respondents were periodically extending the time for completion and handing over possession of

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the flat and the complainant is entitled for refund of the amount paid to the respondents with interest and compensation.

(b) However, the learned counsel for the respondents contended that the project was completed in its entirety in 2016 and the completion certificates for the respective blocks were issued by the architect and the project is exempted from registration under RERA Act and under the provisions of the RERA Act, the projects, which do not receive completion certificate or the occupancy certificate on the commencement of the Act, are only to be registered under the Act. The learned counsel further contended that the delay in handing over possession is as a result of non-cooperation and delay due to non-payment of dues by the complainant and the complainant has not cleared the balance payment till date and the complaint is liable to be dismissed.

(c) On the side of the respondents, Ex.B1, series of completion certificates of various dates from 16.11.2011 to 02.03.2016 are produced to prove that the completion certificates for the respective blocks in the project were issued by the architect and the project itself was completed in its entirety in 2016. Under section 2(q) of the RERA Act, completion certificate means 'the completion certificate issued by the competent authority'. Under section 2(p) of the Act, competent authority means 'the local authority or any authority created or established under any law for time in force by the appropriate government which exercises authority over land under its jurisdiction and has powers to give permission for development of such immovable property'. The completion certificates in Ex.B1 were not issued by the competent authority as defined under the Act. Therefore, on the basis of Ex.B1, series of completion certificates, the respondents cannot contend the entire project was completed

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in 2016 in the absence of any other evidence to prove the same. Since the cause of action survives after coming into force of the RERA Act, the TNRERA gets jurisdiction over all the disputes pertaining to the real estate projects. Therefore, this Forum has jurisdiction to decide the complaint.

(d) It is not in dispute that on 28.12.2009, the complainant and the first respondent entered into a construction agreement for a total sale consideration of the apartment for Rs.21,90,000/- and the respondents undertook to complete the construction on or before 31.12.2011, with a grace period of six months and the complainant so far paid Rs.13,08,300/- and on 24.02.2012, the sale deed for the UDS land was executed by the second respondent in favor of the complainant.

(e) It is the case of the respondents that the apartment was completed and the complainant was kept informed of the same prior to the handing over possession and the complainant was called for fit out inspection and to make balance payment, but the complainant blatantly ignored. Ex.A8, the legal notice dated 09.09.2019 was issued by the complainant to the respondents, in which, in para-5, it is specifically admitted that the first respondent finally completed the project towards the end of 2013 and in para-9, it is admitted that the officers of the first respondent informed the complainant that the construction of the apartment was completed in the year 2013.

(f) However, on the side of the complainant, it was pointed out that when the complainant visited the apartment, he found various defects in the apartment and the same was informed to the first respondent in Ex.A7, series of mail communications between the complainant and the respondents. By e-mail dated 14.09.2013, the complainant stated that he visited the flat on 21.09.2013 and found the issues such as, anti skid tiles not fixed, broken vetrified tiles are

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fixed and there was curved door fixed at the master bed room and big gap between the wall tiles and wooden door frame at toilet area and the grills fixed at master bed room and hall with unshaped edges. From the above, it is clear that the construction of the apartment was completed by the respondents by the time the complainant visited the apartment in September 2019.

(g) It is also relevant to note that by the time the complainant visited the flat on 21.09 2013, only Rs.13,08,300/- out of the total sale consideration of Rs.21,90,000/- was paid by the complainant to the respondents . It is clearly established that there was delay on the part of the complainant in paying sale consideration to the respondents. Therefore the complainant cannot take advantage of about one year and three months of delay in completing the construction of his apartment to seek refund of the amount paid with compensation.

(h) Even after the mail dated 24.09.2013, the complainant conveyed the respondents only on 08.05.2017 stating that the handover of the flat is pending till and without any mention about his payment dues of the balance sale consideration. Only on payment of the entire sale consideration and taking possession of the flat, the complainant shall have the right to sue for delay compensation. Even by their letter dated 07.05.2014, the respondents informed the complainant that due to non-payment of the balance sale consideration, they are cancelling the booking and terminating the agreements for sale executed in this regard. In spite of the same, the complainant was not taking any steps for several years till the filing of this complaint.

(i) In the above facts and circumstances of the case, it is held that the complainant is entitled for return of the amount after deduction of the cancellation charges of 15% of the amount paid by the complainant even

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though the respondents claim deduction of 15% of the sale value in the agreement which is not found reasonable. 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 amount of Rs.11,12,055/-, which is arrived after deduction of 15% of the amount which is Rs.1,96,245/- from Rs.13,08 300/-. So far as the interest is concerned, even though the respondents informed to settle the balance amount after deducting the cancellation charges on 07.05.2014 itself, they have not returned any amount to the complainant till date. Therefore, the complainant is entitled for interest on the amount arrived above.

(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 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 07 .05.2014 till repayment by the respondents.

(c) Since the complainant cannot take advantage of his own lapses and put the entire blame on the respondents, the complainant is not entitled for refund of documentation charges, compensation and litigation expenses. 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 respondents, jointly or severally, shall pay the amounts at the interest rate, 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 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. On repayment of the claim as per the order, the complainant shall execute the cancellation of the sale deed and construction agreement, as the case may be, at the expense of the respondents.

**Sd/- 19.11.2021**  
**G. SARAVANAN**  
**ADJUDICATING OFFICER**

**LIST OF WITNESS**

CW-1--- J.Suresh Kumar  
 RW-1 --- M.D. Sudhakar

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	...	Brochure of the project
Ex.A2	28.12.2009	Construction agreement
Ex.A3	...	Payment request (series)
Ex.A4	24.02.2012	Sale deed
Ex.A5	20.12.2012	Statement of accounts

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Ex.A6	02.09.2013	Flat rectification mail
Ex.A7	---	E-mail communications (series)
Ex.A8	09.09.2019	Legal notice
Ex.A9	..	Reply notice

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	...	Partial completion certificate (series)
Ex.B2	04.07.2017	Letter to MLPA
Ex.B3	...	E-mail communications (series)
Ex.B4	...	Notice to complainant (series)

**Sd/- 19.11.2021**  
**G. SARAVANAN**  
**ADJUDICATING OFFICER**  
**TNRERA, CHENNAI**

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**TN REAL ESTATE REGULATORY AUTHORITY**