

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

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

CCP Nos.162, 163 & 164 of 2020

1. Mylsamy Karuppa Goundar
 2. Karthikeyan &
Shanthi Karthikeyan
 3. S.Gokul
- Complainants

Vs.

M/s. Marg Properties Limited
Rep by its MD, G.R.K. Reddy.
(Regn. No.TN/01/Building/0055/2018)

..... Respondent

Complainants : Rep. by Mr. J. Pachiyappan, Advocate
Respondent : Rep. by Mr.A.C.Kumaragurubaran, Advocate

**Heard on : 11.11.2021
Delivered on : 19.11.2021**

ORDER

The complaints filed by the above complainants seeking refund of the entire amount paid to the respondent towards purchase and construction of booked flats with interest, compensation and costs are filed under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Since all the complaints are relating to same project of the respondent and same points arise for determination, the complaints are heard together and disposed of by a common order.

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3. **Averments of the complainants, in brief, as follows:**

(a) The complainants booked flats with the respondent in their project, namely, **"Brindavan"**, Pondur Village, Sriperumbudur Taluk, Kancheepuram District and paid advance and further amounts as agreed by them.

(b) The details of the flats allotted to the complainants, the agreed price and the amount paid by them to the respondent and the due dates for delivery of flats are as follows:-

Complainants Name	CCP Nos.	Allotted Flat Nos.	Price Agreed Rs.	Amount Paid Rs.	Due Date for delivery of the Flat
(1)	(2)	(3)	(4)	(5)	(6)
Mylsamy Karuppa Gounder	162/2020	507	23,63,930/-	9,78,189/-	December 2012
1.Karthikeyan 2.Shanthi Karthikeyan	163/2020	304	22,79,880/-	8,92,810/-	June 2013
S.Gokul	164/2020	504	21,98,853/-	14,59,521/-	December 2012

(c) The dates of delivery of the flats were fixed as above, with a grace period of four months. Till date, the flats have not been completed in construction and handed over to the complainants. The entire project lays abandoned and there is no development. The construction was not completed and the respondent has not handed over the flats to the complainants as promised by them.

(d) As per the provisions of the RERA Act, the respondent is liable to return the amounts with interest, compensation and cost to the complainants.

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Hence, the complainants filed the complaints withdrawing from the project and seeking full refund of the entire amounts paid with interest, compensation and other reliefs.

4. **Counter averments of the respondent in all the cases , in brief, as follows:**

(a) Except admitted, the respondent denies all the allegations. The complaints are not maintainable. As per the construction agreement entered with the respondent, it was agreed to refer any dispute arising between the parties to arbitration.

(b) Even though the respondent completed the construction works, they could not complete the remaining works due to unexpected hurdles. The entire amount invested by the respondent in the project is blocked due to government regulations, present economic conditions and its impact. The complaints deserve to be dismissed as devoid of merits and barred by limitation.

(c) The complainants have not paid the balance payments at stage-wise to the respondent. Since there is balance amount to be paid by the complainants to the respondent, the respondent cannot be found fault. The respondent is not liable to pay compensation or interest. There is no cause of action for filing the complaints. Therefore, all the complaints are liable to be dismissed with cost.

5. An attempt to settle the matter amicably has failed.

6. Both the parties have filed their respective evidence on affidavit with documents.

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7. On the basis of the rival contentions of the parties, the following points arise for determination:

- i. Whether the complainants are entitled to get back the amounts paid to the respondent with interest and compensation on the ground of failure on the part of the respondent to give possession of the apartment booked by them in accordance with the date and terms of agreements for sale and construction?
- ii. What are the reliefs, the complainants are entitled for?

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

(a) The learned counsel for the complainants submitted that the complainants in all the cases are the flat purchasers in the project of the respondent and paid the part of the sale consideration and the respondent undertook to complete the construction and handover possession of the apartments within the time specified under the construction agreements and the respondent kept extending the time for completion of the construction on one ground or another and there is no development or progress and therefore, the complainants decided not to continue the purchase of the flats in the project and the complainants are entitled for all the reliefs.

(b) The learned counsel for the respondent contended that the complaints are not maintainable in view of clause-25 of the construction agreements entered between the complainants and the respondent, wherein it was agreed between the parties that any dispute in relation to the construction agreements are to be referred to a sole arbitrator appointed by the respondent and the respondent had completed the construction works, but

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they could not complete the remaining works due to unexpected hurdles and the complainants are not entitled to raise their claim, as the claims are barred by limitation and also relied on the decisions of Maha RERA and TNRERA reported in the newspapers in support of his contentions.

(c) 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. Admittedly, till date, the respondent has not completed the construction and not intimated any progress in construction of flats to the complainants. Even, as per the counter averments of the respondent, the respondent could not complete the remaining works due to unexpected hurdles faced by them.

(d) The learned counsel for the respondent contended that the claim is barred by limitation. Admittedly, the respondent has not given up the project in dispute and still it is an ongoing project. Therefore, the question of limitation does not arise.

(e) Section 18 of the RERA Act makes it clear that the remedy available under the RERA Act is an additional remedy available to the flat purchaser without prejudice to any other remedy. Therefore, the arbitration clause in the agreement is not a bar to grant reliefs to the complainants.

(f) The respondent is under legal obligation to complete the construction and deliver the flats within the time specified under the agreements. If the respondent fails or is unable to handover possession of the apartments within the time specified under the agreements, he is bound to return the amount with interest and compensation. The decisions relied by the learned

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counsel are not applicable to the facts of the case. Therefore, the complainants are entitled for refund of the amount paid towards purchase of the flats with interest and compensation. Thus, the point is answered accordingly.

9. **Answer for Point No. (ii)**

(a) There is no dispute to the amounts paid by the complainants to the respondent. In view of the answer for Point No.(i), the complainants are entitled for refund of the amount of Rs.9,78,189/- in CCP No.162/2020, Rs.8,92,810/- in CCP No.163/2020 and Rs.14,59,521/- in CCP No.164/2020 respectively with interest and compensation.

(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 complainants are 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 the complaint plus 2% per annum i.e., 9.30% p.a for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) Apart from the above, each complainant is entitled for compensation of Rs.1,00,000/- towards mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by them. The complainants are entitled for reliefs as detailed below. 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 to the complainants as per the findings in answer for Point No.(ii), Para No.9 of this order within 30 days of issue of this order.
2. The charge of the aforesaid amount as encumbrance shall be on the flats 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 the order, the complainants shall execute the cancellation of the agreements for sale and construction agreements , as the case may be, at the expense of the respondent.

Sd/- 19.11.2021
G. SARAVANAN
ADJUDICATING OFFICER

CCP No.162/2020

List of Witnesses

CW1 -- Mylsamy Karuppa Gounder

RW1 -- K.S.Gajendra Babu

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	09.04.2011	Agreement for sale
Ex.A2	09.04.2011	Construction agreement
Ex.A3	...	Payment receipts (series)
Ex.A4	24.11.2018	E-mail communication

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List of documents filed by the respondent

Ex.No	Date	Documents Name
Ex.B1	...	Clause 25 of construction agreement
Ex.B2	...	News article
Ex.B3	...	Maha RERA order

CCP No.163/2020**List of Witnesses**

CW1 -- Karthikeyan

RW1 -- K.S.Gajendra Babu

List of documents filed by the complainants

Ex.Nos	Date	Documents Name
Ex.A1	25.05.2011	Welcome letter
Ex.A2	31.08.2011	Agreement for sale
Ex.A3	31.08.2011	Construction agreement
Ex.A4	11.04.2014	Payment receipts (Series)
Ex.A5	...	Payment receipts (Series)
Ex.A6	29.11.2012	Payment request letter (series)

List of documents filed by the respondent

Ex.No	Date	Documents Name
Ex.B1	...	Clause 25 of construction agreement
Ex.B2	...	News article
Ex.B3	...	Maha RERA order

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CCP No.164/2020**List of Witnesses**

CW1 -- S.Gokul

RW1 -- K.S.Gajendra Babu

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	31.05.2011	Agreement for sale
Ex.A2	31.05.2011	Construction agreement
Ex.A3	...	Payment receipts (Series)
Ex.A4	...	Payment request letter (Series)
Ex.A5	18.07.2019	Customer individual payment report

List of documents filed by the respondent

Ex.No	Date	Documents Name
Ex.B1	...	Clause 25 of construction agreement
Ex.B2	...	News article
Ex.B3	...	Maha RERA order

Sd/- 19.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
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TN REAL ESTATE REGULATORY AUTHORITY