

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 17 of 2020**

Mithun Perumal.B

..... COMPLAINANT

Vs.

M/s. Real Value Promoters Private Limited
Rep. by its MD, Jayasathya Suresh
(TN/01/Building/0149/2018)

..... RESPONDENT

Complainant : Rep. by M/s. Law Square, Advocates.
Respondent : Rep. by Mr.P.Vinod Kumar, Advocate.

Heard on : 17.09.2021
Delivered on : 30.09.2021

ORDER

The complaint by the above complainant claiming refund of amount paid to the respondent towards the purchase and construction of flat booked with the respondent 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 a flat with the respondent in their project, namely, "PADMASRI (PADMALAYA)", at Pudupakkam Village, Thiruporur Taluk, Kancheepuram District.

(b) The respondent allotted flat no.4C on the fourth floor of 'C' Block to an extent of 931 sq.ft, for sale consideration of Rs.31,72,190/-. The complainant entered into sale and construction agreements on 16.02.2015 and made further payments. The complainant made a total sum of Rs.24,52,169/- to the respondent.

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(c) As per the construction agreement, the due date for completion of construction is 30 months, plus grace period of 6 months, from the date of agreement. The respondent agreed to handover the flat booked by the complainant in December 2018. There was no progress of construction.

(d) Due to inordinate delay and irresponsible behavior of the respondent, the complainant decided to cancel the booking and sent a mail on 22.04.2019 to cancel the booking and refund the entire amount. The respondent promised to refund the entire amount. But till date the respondent has not refunded the money. Hence, the complainant is entitled for refund of the amounts paid to the respondent together with interest, compensation and cost.

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

(a) Except admitted, the respondent denies the entire allegations as false. The complainant opted for purchase of a flat from the respondent in their project.

(b) Subsequent to the execution of sale and construction agreement, the complainant defaulted in making stage-wise payment within the stipulated time and the complainant is not eligible for any compensation as per clause 5A of construction agreement. The complainant made imaginary allegations. The respondent is not liable to pay any compensation.

(c) Due to unavoidable circumstances, such as, act of god, demonetization, shortage of laborers, Vardha cyclone and 2015 floods, the respondent could not complete the construction on time. The complainant had filed the complaint with intent to grab more money and the allegations of the complainant are false and highly imaginary. Hence, the respondent prays for the dismissal of the complaint.

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

5. On the side of the complainant, his evidence on affidavit with documents is filed. On the side of the respondent, evidence on affidavit without any documents filed.

6. On the basis of rival contentions of the parties, the following point arises for determination:

i. Whether the complainant is entitled for refund of the amount paid to the respondent towards purchase of the flat with interest, compensation and cost?

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

7. Answer for Point No: (i)

(a) Section 18 of the RERA Act gives an option to the allottees 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 completed flat on the dates specified in the agreement.

(b) As per the Ex.A2, construction agreement dated 16.02.2015, the respondent undertook to complete the construction of the flat within 36 months including the grace period from the date of obtaining all statutory approvals. In the counter filed by the respondent, the respondent has not disputed the amount paid by the complainant.

(c) In the counter, the respondent stated as there was no delay in construction. The due date for delivery expired in February 2018. Even though the construction agreement was entered on 16.02.2015, till the date of the filing of the counter i.e., 13.08.2021, the construction of the flat is not completed. Therefore the contentions of the respondent that there is no delay in construction are not sustainable.

(d) In the above circumstances, it is held that the complainant is entitled to get back the amount paid to the respondent with interest, compensation and cost. Thus the point is answered accordingly.

8. Answer for Point No.(ii)

(a) There is no dispute on the amount paid by the complainant to the respondent. Therefore, the complainant is entitled for refund of the amount of Rs.24,52,169/- from the respondent with interest, compensation and cost.

(b) 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 8.20% 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% per annum i.e., 10.20% per annum for the amounts paid from the dates of respective payments till repayment by the respondent.

(c) The amount received from the complainant was utilized by the respondent for construction activities of the project. Considering the circumstances of the case, a sum of Rs.2,00,000/- is fixed as compensation towards mental agony undergone by the complainant and a sum of Rs.25,000/- is fixed towards litigation expenses.

The complainant is entitled for the relief as detailed above. Thus the point is answered accordingly.

In the result, the respondent is directed as follows:-

1. The respondent shall refund the amount with interest compensation for mental agony and cost as per the findings in the answer for Point No.(ii), Para 8 of this order within 60 days from the date of issue of this order.

2. The charge of the aforesaid amount shall be on the flat booked by the complainant till the repayment.

3. The complainant shall execute the cancellation of agreements and other documents, if any, as the case may be, on satisfaction of his claim at the respondent's cost.

Sd/- 30.09.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESS

CW-1 --- B. Mithun Perumal

RW-1 --- T.Kolappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Document
Ex.A1	16.02.2015	Agreement for sale
Ex.A2	16.02.2015	Construction agreement
Ex.A3	-----	Payment receipts (series)
Ex.A4	12.06.2019	E-mails to respondent
Ex.A5	12.12.2019	Letter to respondent
Ex.A6	---	Statement of accounts

LIST OF DOCUMENTS FILED BY THE RESPONDENT

- NIL -

Sd/- 30.09.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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30.9.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY