

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.178 of 2020

S.Naveen Chandran

.... COMPLAINANT

Vs.

1. Sylvanus Builders and Developers Ltd.
Rep by its Director Sansil Ramesh Chandhani
2. M/s.Pacifica (Chennai Project) Infrastructure Pvt. Ltd
Rep by its MD, Rocky Israni
(Project not registered)

.... RESPONDENTS

Complainant : Rep. by Mr.S.Karthikeibalan, Advocate

Respondents : Rep. by Mr.Stephen C.Kumar, Advocate

Heard on : 25.01.2022

Delivered on: 17.02.2022

ORDER

The complaint by the above complainant claiming compensation for the delay in handing over of the villa and also for mental agony and hardship with cost of litigation 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) On 09.10.2012, on payment of Rs.2,00,000/- as advance, the complainant booked a villa with the respondents in a scheme of residential complex of villas known as "PACIFICA AURUM" at Pudupakkam Village, Chengalpattu Taluk, Kancheepuram District. On 26.06.2013, the complainant and the respondents entered into an agreement of sale and construction agreement for the villa. The total sale consideration of the villa is Rs.90,76,447.90.

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(b) The respondents undertook to complete the construction and to deliver the villa by 30.06.2015, with a grace period of 6 months. The complainant has made a total payment of Rs.92,67,064.15. The respondents executed sale deed for the UDS land on 09.04.2015. But, the respondents failed to complete the construction and handover possession of the villa as agreed by them under the agreement.

(c) The respondents finally handed over possession of the villa on 05.01.2018. After taking possession of the villa, the complainant found several damages and leakages in the building on account of poor construction and also approached the respondents to solve the problem. The respondents have not chosen to rectify the defects and to structurally complete either the club house or the EWS blocks which is part of the approved plan. The complainant is entitled for the compensation for the delay in construction and delivery of the villa and other reliefs.

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

(a) The complaint is not maintainable. All the allegations are denied as false and incorrect. The complainant booked the villa and entered into a construction agreement with the respondents. The respondents executed sale deed on 09.04.2015. The construction of the villa was completed as per the plan and specification as approved by the complainant.

(b) The respondent used material as referred in the agreement. The constructed villa was handed over to the complainant on 05.01.2018 to his satisfaction. At that time, the complainant has not raised any objection on delay in delivery of possession and any defects in the construction. The complainant is estopped from questioning the same. The planning

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permission of the project does not cover the club house and other amenities. There was no deficiency of service by the respondents. This Forum has no jurisdiction to decide on the issue involved in the complaint. There is no cause of action. The complaint is liable to be dismissed with cost.

4. An attempt to settle the matter amicably has failed.
5. On both sides, 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 the compensation for delay and for mental agony and litigation cost from the respondents on the ground of failure on the part of the respondents to complete construction and deliver the villa as per the terms of the agreement?
 - ii. What are the reliefs, the complainant is entitled to?

7. Answer for Point No.(i)

(a) The learned counsel for the complainant filed written notes of argument submitting that the complainant booked the villa on 09.10.2012 and the total cost of the villa is Rs.92,67,064.15 and entered into an agreement of sale and construction agreement on 26.06.2013 and the complainant also availed loan from bank and the respondents executed sale deed on 09.04.2015 and undertook to complete the construction and handover delivery of the villa by 30.06.2015 and time was essence of the contract and the respondents have not ensured timely delivery of the villa,

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which caused huge loss and the complainant was forced to pay house rentals during the delay period and also suffered interest on loan and is entitled for all the reliefs. The learned counsel also relied on various decisions in support of his contentions.

(b) However, the learned counsel for the respondents contended that the complaint is not maintainable and the complainant entered into an agreement of sale and also construction agreement with the respondents for purchase of the villa in their project and the villa was constructed and completed as per the plan and specifications approved by the complainant and the respondents used material as referred in the specification in the agreement and handed over the villa to the complainant to his satisfaction and the complainant has not raised any objection with regard to delay in delivery of possession and any defects in the construction and he is estopped from questioning the same and there are alternative remedy available to the complainant and this Forum has no jurisdiction to decide the issue and there is no cause of action and the complaint is liable to be dismissed with cost.

(c) Under the construction agreement dated 26.06.2013, the respondents undertook to complete the construction and to handover the villa by 30.06.2015, with a grace period of 6 months. It is not in dispute that the constructed villa was handed over possession to the complainant only on 05.01.2018. As on date of commencement of the RERA Act, i.e. 26.03.2016 or as on 01.03.2017, when section 3 came into force, the construction of the villa was not completed and the project was an ongoing project and therefore this Forum has jurisdiction to try the complaint.

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(d) Section-18 of the RERA Act gives right to the allottee to claim compensation on failure of the promoter to complete and give possession of villa or apartment within the time limit specified under the agreement. Therefore, the complainant is entitled for compensation for the delay in handing over delivery of the villa by the respondents. Thus, the point is answered accordingly.

8. Answer for Point No.(ii):

(a) In view of the answer for Point No.(i), the complainant is entitled for compensation for the delay in construction and handing over delivery of the villa by the respondents. As per the Proviso to Section 18 of the RERA Act, an allottee is entitled to interest for the delay till the handing over of the possession at the rate prescribed in the rules.

(b) As per Rule 18 of TNRERA Rules, the 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 was 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 till payment of compensation by the respondents.

c) The complainant has paid Rs.92,67,064/- as on 30.06.2015. The due date for delivery of the villa under the agreement expired on 31.12.2015. Hence, the complainant is entitled for the interest at the rate of 10.20% per annum on the amounts paid, i.e., Rs.92,67,064/- from January 2016 till the handing over possession of the villa i.e. on 05.01.2018. For the amount of compensation arrived at, as above, the complainant is entitled interest at

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the rate of 10.20% from the date of filing of the complaint, i.e.,30.01.2020 till the payment of compensation.

(d) Apart from the above, the complainant is entitled for the a sum of Rs.2,00,000/- towards mental agony and a sum of Rs.25,000/- towards litigation expenses.

In the result, the respondents are directed as follows:-

The respondents shall pay, either jointly or severally, the compensation for delay, mental agony and hardship and litigation cost as per the findings in answer for Point No.(ii), Para No.8 of this order to the complainant, within 30 days of issue of this order.

**Sd/- 17.02.2022
G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1 --- S.Naveen Chandran

RW-1 --- S.Vijayaraghavan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	...	Cost sheet
Ex.A2	...	Statement of Accounts
Ex.A3	26.06.2013	Agreement for sale and construction agreement
Ex.A4	20.03.2014	Tripartite agreement and interest certificate and receipt
Ex.A5	09.04.2015	Sale deed
Ex.A6(series)	...	E-mail communications

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Ex.A7	02.02.2018	No due certificate and possession letter
Ex.A8	03.08.2018	Legal notice by complainant
Ex.A9	...	Order copies in C.No.141/2018 and C.C.P.No.125 of 2019

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2020	Board resolution copy

Sd/- 17.02.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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 17.2.2022
LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY