

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 19 of 2020**

1. R. Sivakumar  
2. Usharani Sivakumar

....COMPLAINANTS

**Vs.**

M/s. SARE Shelters Projects Pvt Ltd.,  
Rep. by its director, Michael Henry O Sullivan,  
(TN/01/Building/0242/2018)

.... RESPONDENT

Complainants : Rep. by Ms. R.S. Pornima, Advocate.

Respondent : Rep. by Mr. G.Sriram ,Company Secretary.

**Heard on** : 12.02.2021  
**Delivered on** : 05.03.2021

**ORDER**

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of flat 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 complainants, in brief, as follows:**

(a) On 15.01.2013, the complainants booked an expandable villa with the respondent in their project namely "Crescent ParC Dewy Terraces" at OMR, Chennai and paid advance amount and further amounts. The total sale consideration is Rs.57,25,000/-.

(b) The respondent assured that construction of the villa would be completed within 18 months with a grace period of 6 months from the date of approval, i.e., within 28.02.2014 .The building plan was obtained on

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31.08.2012. The complainants availed housing loan. The complainants in total paid a sum of Rs.46,35,202/-.

(c) On 20.05.2013, the respondent sent an e-mail communication to the complainants with the draft agreement for sale and construction, calling the complainants to discuss the draft agreement. Subsequently, the respondent has made no progress on the villa. On enquiry, the respondent promised that the villa would be completed and handed over within the month of December 2017.

(d) The project was registered with TNRERA with a completion date as August 2018. The respondent failed to handover the villa. The complainants were put to mental agony and hardship as they were paying the EMI towards the loan availed for purchase of the villa. Therefore, the complainants are entitled for refund of the sale consideration with interest and compensation.

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

(a) All the money collected from the respondent were invested in the construction of the villa and was not misused nor diverted to any other project of the respondent. The complainants paid only Rs.11,75,000/- from their own sources and Rs.33,18,842/- through bank loan. A sum of Rs.1,33,197/- was credit note adjustment and not the amount paid by the complainants. The loan amount was paid by the bank to the respondent under Pre-EMI Subvention arrangement.

(b) The respondent expressed their readiness to calculate the delay compensation as per the agreement executed between the parties and adjust the same in the cost of the villa. The delay was due to various unforeseen and unexpected circumstances and force majeure reasons only. The respondent also undertook to pay the Pre-EMI interest to the bank loan

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amount disbursed on the villa. The respondent also offered alternate property. Hence, the respondent prays for dismissal of the complaint with cost.

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

5. The complainants have filed their evidence on affidavit with documents. No evidence produced on the side of the respondent.

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

(i) Whether the complainants are entitled for refund of the amounts paid to the respondent together with interest, compensation and cost on the ground of failure to deliver the constructed villa as per the assurance?

(ii) What are the reliefs, the complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that on 15.01.2013, the complainants booked an expandable villa with the respondent in their project for sale consideration of Rs.57,25,000/- and the respondent undertook to complete the construction and hand over the villa within 18 months with 6 months grace period from the date of approval of the building plan and the building plan was approved on 31.08.2012 and the time limit expired by 28.02.2014 and the construction of the villa is not completed till date and the complainants are entitled for refund of the amount paid to the respondent with interest, compensation and cost.

(b) The learned company secretary representing the respondent submitted that the construction of the villa is in roof-completed stage and

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subsequently the construction got struck due to various force majeure reasons and the respondent offered to pay delay compensation and also alternative property and the complainants refused to accept the offer and under Section 71 of the RERA Act, the relief of refund could be sought only from the authority and not from the Adjudicating Officer who is empowered to adjudicate the matters of compensation alone and therefore, the complaint is liable to be dismissed with cost.

(c) It is not in dispute that the respondent assured completion of the project within 18 months from the date of approval of the building plan with 6 months grace period. Ex.A5, the draft agreement for sale and construction was prepared by the respondent for purchase of the villa at the total sale consideration of Rs.57,25,000/- by the complainants with a clause for completion of the construction of villa within 18 months from the date of approval of building plan with 6 months grace period. As per Ex.A2, the proceedings, on 31.08.2012, the Town Panchayat of Thiruporur passed the order of approval of building plan of the project. It is admitted by the respondent that the villa of the complainants could not be completed till date for various reasons.

(d) However, the respondent contended that under Section 71 of the RERA Act, the relief of refund could be sought only from the Authority and not from the Adjudicating Officer who is empowered to adjudicate the matters of compensation alone under the RERA Act. A reading of the Section 71 makes it clear that the Adjudicating Officer has to deal the claim of compensation under Sections 12, 14, 18, and Section 19. Compensation is given to make things equal in value. Compensation or damages can be computed under the heads of pecuniary loss and also non-pecuniary loss. So far pecuniary loss is

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concerned, the amount given towards purchase of the villa, which was not at all handed over by the due date is actual monetary loss. Hence, the legislators thought it fit to include return of amount with interest payable for such amount and compensation under Section 18 of the RERA Act to be decided by the Adjudicating Officer. Therefore, the contention of the respondent is not at all sustainable.

(e) In the above circumstances, it is held that the complainants are entitled for return of the amount paid to the respondent towards the purchase of the villa with interest, compensation and cost. Thus, the point is answered accordingly.

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

(a) In view of the answer for the point No (i), the complainants are entitled for refund of the amount paid to the respondent towards the purchase of the villa with interest, compensation and cost. The respondent disputed the claim of Rs.1,33,197/- which is included in the refund amount being the credit-note adjustment amount for which the claim of refund will not lie.

(b) In the complaint, the complainants claimed refund of Rs.46,35,202/- with details of payment including the credit-note amount of Rs.1,33,197/- . The said amount of Rs.1,33,197/- being the credit-note adjustment was not actually paid by the complainants to the respondent. The complainants are not entitled to claim the said amount under credit-note.

(c) Under this order, the amounts disbursed by bank under the housing loan with interest are to be settled first by the respondent and the balance amount is payable to the complainants. Therefore, the complainants are entitled for refund of the amount of Rs.45,02,005/- with interest, compensation and cost.

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(d) 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 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% per annum for the amounts paid from the dates of respective payments till repayment by the respondent.

(e) Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- towards compensation for mental agony, loss and hardship caused to the complainants and Rs.25,000/- towards litigation expenses is fixed. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

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.8 of this order within 30 days of issue of this order.

G. SARAVANAN  
ADJUDICATING OFFICER

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**LIST OF WITNESSES**  
CW-1--- R. Sivakumar

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	03.07.2013	Booking receipt
Ex.A2	31.08.2012	Building plan approval
Ex.A3	23.03.2013	Bank loan sanction letter
Ex.A4	-----	Bank statement
Ex.A5	-----	Draft agreement for sale and construction
Ex.A6	20.05.2013	E-mail communication
Ex.A7	29.12.2016	Account statement by respondent
Ex.A8	----	Statement of completion by respondent
Ex.A9	-----	Photographs
Ex.A10	23.08.2019	Legal notice by complainants

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**

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G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

*5.3.2021*  
**LAW OFFICER**  
TN REAL ESTATE REGULATORY AUTHORITY