

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 20 of 2020

M. Palaniappan

.... COMPLAINANT

Vs.

M/s. G.K.S. Properties Pvt Ltd.,
Rep. by its Managing Director,
K.V. Ramana Shetty
(Regn. No.TN/01/Building/0140/2017)

.... RESPONDENT

Complainant : In Person

Respondent : Rep. by Mr. S.Ramesh, Advocate.

Heard on : 29.01.2021

Delivered on : 23.02.2021

ORDER

The above complaint by the complainant claiming compensation for delay in handing over the possession of the constructed flat and other reliefs 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 entered into a construction agreement with the respondent in their project namely "DAKSHIN" at Ayyapanthangal Village, Sriperumbudur Taluk, Kancheepuram District for a total sale consideration of Rs. 92,28,441/-.

(b) As per the agreement, the respondent undertook to complete construction of the apartment within March 2019 with a grace period of 3 months. The respondent handed over possession of the flat only on

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18.10.2019 after much delay. Apart from the delay, the respondent failed to fulfill other obligations as agreed under the agreement.

(c) As per the unit plan, the third floor where the complainant's flat is situated was provided with "5'3" wide corridor". But on actual measurement, it is found to be "5 Feet" only. Further, at the time of booking, it was stated under specifications that "Relevant centralized filtration system will be provided based on water quality". However, in about a month's time of usage, the water taps have gone so bad with calcification and floor tiles have become stained despite daily cleaning.

(d) In spite of the complaints by the residents, the respondent has not taken any concrete action. The complainant has already spent huge amount in putting in place few additional equipment and tools like "Enhanced RO Purifier". The respondent is liable to compensate the complainant. Apart from the above, the complainant is also entitled for compensation for mental agony and cost of litigation. Hence, the complaint.

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

(a) Except admitted, all the averments of the complainant are denied as false and baseless. The construction agreement was executed on 20.04.2018. The period of completion was fixed by March 2019 with a grace period of 3 months. The sale deed for UDS land was registered on 26.04.2018.

(b) Actually the possession of the flat was handed over to the complainant on 17.04.2019 for doing interior work. The possession certificate signed by the complainant is produced. Subsequently, the complainant wanted temporary electricity connection for house warming ceremony on

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14.06.2019. In accordance with demands of complainant, water supply and other provisions were made. On 11.07.2019, electricity connection in the name of complainant was obtained. Completion certificate was delayed due to bureaucratic aspects and power connections were not granted on account of delay in installation of EB transformer by TNEB.

(c) There is no change or deviation in the width of the corridor. The claim is on a mistaken calculation on the part of the complainant. The officials of CMDA inspected the premises and granted completion certificate. Due to plastering and paint thickness, it appears one inch has been taken on both sided.

(d) The respondent never promised for installation of RO plant. The respondent promised only installation of centralized water filtration plant. It has been installed and functioning. The claim of compensation for mental agony is not sustainable. The complaint is liable to be dismissed.

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

5. The complainant has filed his evidence on proof affidavit with documents. On the side of respondent, documents alone were filed.

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

- i. Whether the complainant is entitled for compensation for delay and other reliefs with regard to the apartment constructed and handed over by the respondent?
- ii. What are the other reliefs, the complainant is entitled for?

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7. Answer for Point No. (i)

(a) The complainant filed written notes of arguments and submitted that the respondent entered into a construction agreement on 20.04.2018 with the complainant and undertook to complete the construction and to deliver the flat within March 2019 with a grace period of 3 months and failed to handover the flat as agreed and handed over the flat only on 18.10.2019 and the complainant is entitled for compensation for the delay.

(b) The learned counsel for the respondent also filed written notes of arguments contending that as per terms of the construction agreement, the possession was to be handed over by March 2019 with a grace period of 3 months and the construction was complete in all aspects by the time, but only for want of electricity and since the complainant has been doing interior work from April 2019 and the electricity was not provided on account of delay in grant of completion certificate, the flat was handed over to the complainant on 17.04.2019 with temporary electricity connection for conducting a house warming ceremony on 14.06.2019 and the respondent completed the building without any delay on their part.

(c) It is not in dispute that as per clause 4(a) of the construction agreement, the respondent undertook to complete the construction of the apartment within March 2019 with a grace period of 3 months from the date of the agreement and assured that timely delivery of possession of the apartment is the essence of the agreement. Even as per the counter of the respondent, it is admitted that the complainant took possession of the apartment on 18.10.2019. Admittedly, the complainant performed house warming ceremony on 14.06.2019 for which temporary electricity connection was provided. If the contention of the respondent that the

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complainant has been in continuous possession for doing interior work and house warming ceremony continuously till 18.10.2019, then there was no necessity for issuing Ex.B7, the possession certificate by the respondent. From the above circumstances, it is clear that there was delay in completion and delivery of the flat to the complainant. Under proviso to section 18(1) of the RERA Act, the complainant is entitled compensation for every month of delay till the handing over possession of the apartment.

(d) The next claim of compensation by the complainant is regarding the shortage of width of the corridor in the third floor where the flat of the complainant is situated. It was contended by the complainant that the brochure of the respondent assured 5'3" wide corridor and the physical measurement of actual width is only 5 feet. However, the learned counsel for the respondent contended that there was no deviation of any sort with regard to the width of the corridor and there was no proof in support of such a contention by the complainant and since the completion certificate is issued, it signifies that the building has been constructed as per approval plan.

(e) It is not in dispute that as per Ex.A3, the unit plan provided by the respondent the width of the corridor is mentioned as 5'3". It is the evidence of the complainant that on actual measurement on third floor where his flat is situated is found to be 5' feet only and he raised the issue with the respondent who replied that the width is 5' 1" due to plaster and paint thickness taking up about an inch of the block work on both sides. There is no evidence produced on the side of the respondent denying the evidence of the complainant on actual measurement of the width of the corridor. The complainant proved through evidence the shortage of the

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width of the corridor. Therefore, the respondent is liable to compensate the complainant for the shortfall of the width of the corridor.

(f) Regarding the water plant, the complainant relied on Ex.A24, the photographs and Ex.A25, the specifications in the brochure of the respondent. In Ex.A25, it is clearly mentioned as "relevant centralized filtration system will be provided based on water quality". It is not in dispute that Ex.A24, photographs were taken in the premises of the flat allotted to the complainant. The complainant in his proof affidavit stated that the hardness of the water level is also 1000 as against a desirable level of 300 and in about a month's time of usage, the water taps have gone so bad with calcification and floor tiles have become stained despite daily cleaning and afraid of health hazards.

(g) However, the learned counsel for the respondent contended that no RO Plant was promised under the construction agreement and only a centralized water filtration plant was alone assured and the same has been installed and functioning and section 14 of the RERA Act is not attracted. Admittedly, the purifier of centralized water filtration plant was to assure quality water for the residents of the flat. Therefore, the complainant is entitled for compensation for damages for deficiency in water treatment facility.

(h) In the above circumstances, it is held that the complainant is entitled for compensation for the delay and other reliefs with regard to the apartment constructed and handed over by the respondent. Thus, the point is answered accordingly.

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

(a) In view of the answer for the point No (i), the complainant is entitled for compensation for the delay in handing over possession of the flat to the complainant. The complainant has claimed interest on the final payment of Rs.12,61,063/-, the amount received nearly 6 months in advance of the scheduled date of payment and also interest for further period from 01.07.2019 till the date of handing over of flat i.e., 18.10.2019 .

(b) In view of the proviso to the Section 18(1) of the RERA Act, the complainant is entitled for interest for every month of delay till the handing over possession of the apartment. Therefore, the complainant is entitled to Rs.3,18,523/- towards compensation for the delay in handing over possession of the apartment.

(c) So far as the width of the corridor is concerned, as pointed out by the complainant, the actual loss or damage is immeasurable. Therefore, considering the facts of the case, a sum of Rs.50,000/- is fixed for the compensation for shortfall of the width of the corridor.

(d) So far as deficiency regarding the water treatment facility is concerned, a sum of Rs.50,000/- is fixed. Towards mental agony and inconvenience caused to the complainant, a sum of Rs.50,000/- is fixed. Apart from the above, a sum of Rs.15,000/- is fixed towards litigation cost. 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 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**

LIST OF WITNESSES
CW-1--- M. Palaniappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	18.09.2017	Mail from respondent
Ex.A2	20.04.2018	Construction agreement
Ex.A3	---	Unit plan
Ex.A4	---	Payment receipts
Ex.A5	01.04.2019	Mail from respondent
Ex.A6	17.04.2019	Letter of satisfaction
Ex.A7	24.04.2019	Mail from respondent
Ex.A8	25.04.2019	Mail from respondent
Ex.A9	07.10.2019	Mail from respondent
Ex.A10	13.08.2019	Mail from complainant
Ex.A11	14.08.2019	Completion certificate
Ex.A12	16.08.2019	Mail from respondent
Ex.A13	19.08.2019	E-mail communication
Ex.A14	22.08.2019	Mail from complainant
Ex.A15	09.09.2019	Whatsapp message
Ex.A16	16.09.2019	Mail from respondent
Ex.A17	01.10.2019	E-mail communication
Ex.A18	19.10.2019	Mails exchanged on occupation of flat
Ex.A19	----	Possession certificate

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Ex.A20	10.11.2019	Mail from complainant
Ex.A21	19.11.2019	Mail from respondent
Ex.A22	20.11.2019	Mail from complainant
Ex.A23	---	SBI MCLR historical data
Ex.A24	---	Photographs
Ex.A25	---	Page 33 of brochure - specifications
Ex.A26	21.12.2019	Minutes of the meeting
Ex.A27	27.02.2020	E-mail communication to respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	20.04.2018	Construction agreement
Ex.B2	20.04.2018	Sale deed
Ex.B3	17.04.2019	Letter of satisfaction
Ex.B4	25.04.2019	E-mail communication
Ex.B5	11.07.2019	EB assessment
Ex.B6	22.08.2019	E-mail communication
Ex.B7	18.10.2019	Possession certificate
Ex.B8	20.11.2019	E-mail communication

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


 LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY

20.11.2019