

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No.27 of 2020**

Dr.Neela Kannan

..... Complainant

**Vs.**

1. M/s.Selene Estate Ltd.,  
Rep.by D.Murugesh, Authorised Signatory
2. M/s.India Bulls Housing Finance Ltd  
Rep. by its Director  
(TN/01/Building/0021/2017)

..... Respondents

Complainant : Rep. by Mr.O.R.Santhanakrishnan, Advocate.

1<sup>st</sup> Respondent : Rep. by M/s. BFS Legal, Advocates.

2<sup>nd</sup> Respondent : Rep. by Mr. T. Saikrishnan, Advocate

**Heard on** : 26.08.2021

**Delivered on** : 17.09.2021

**ORDER**

The complaint by the above complainant seeking refund of amount paid to the respondents towards purchase of an apartment 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 complainant, in brief, as follows:**

(a) On 10.07.2013, the complainant booked an apartment with the first respondent in their project, namely, "Indiabulls Green" at Jalladianpettai Village, Kancheepuram District. The respondents who are subsidiary of M/s.Indiabulls Real Estate Limited assured that the 2<sup>nd</sup> respondent would fund 80% of the sale

**TRUE COPY**

*leg*  
17/09/2021

consideration of the apartment in terms of construction agreement, if loan is availed by customers and the EMI would commence only after possession is delivered to the customer and also assured to complete the construction and handover the apartment by the end of April 2015. The complainant made a booking advance of Rs.2,00,000/-.

(b) Subsequently, the first respondent insisted on further payment. On 02.08.2013, the complainant made further payment of Rs.9,56,000/- and on 23.08.2013 paid further sum of Rs.1,51,639/-. Thus in total, the complainant paid Rs.13,07,639/- to the respondents. On 11.09.2013, the complainant and the first respondent entered into agreement for sale and also a construction agreement. The first respondent undertook to complete construction and deliver the flat by April 2015. On 10.11.2013, a tripartite agreement was entered between the complainant and the respondents for a loan of Rs.61,58,114/-.

(c) On 17.07.2015, the complainant received intimation that a revised planning permission from 7 floors to 19 floors has been obtained from CMDA. The complainant came to know that the first respondent had already applied for a revised planning permission from 7 floors to 19 floors as early as on 13.07.2012, i.e., prior to the date of agreements with the complainant. The respondents caused hardship and mental agony by their unfair trade practice. Hence, the complainant cancelled her booking and sought for refund of the amounts paid by her. The respondents failed to refund the amounts.

(d) The complainant filed C.C.No.140/2017, before the Hon'ble State Consumer Disputes Redressal Commission, Chennai. Pending complaint, the second respondent issued legal notice to the complainant to settle an outstanding sum of Rs.98,714.67. The complainant sent a suitable reply notice. Since the remedies

*leg*  
17/09/2021



under the RERA Act and Consumer Protection Act are concurrent in nature, the complainant prefers the present complaint before this Forum. The complainant undertakes to withdraw the complaint before the Hon'ble State Consumer Disputes Redressal Commission. Hence the complainant is entitled for the reliefs.

3. The first respondent has not filed any counter.

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

(a) Except admitted, all the averments and allegations are denied. The second respondent is only a lending institution and has nothing to do with the construction of the project. The complaint as against the second respondent, against whom no reliefs can be sought under the RERA Act is not at all maintainable. The complainant approached the second respondent for a loan of Rs.61,58,114/-, which is being 80% of the sale consideration for purchase of flat by the complainant from the first respondent.

(b) Tripartite agreement between the complainant and the respondents were entered. The complainant suppressed the same and approached this Forum with unclean hands. As per the tripartite agreement, the obligation of the complainant is independent of any issues between the complainant and the first respondent. The first respondent undertook to pay the EMI to the second respondent till the handing over possession of the flat to the complainant.

(c) As a borrower, the complainant cannot escape from the liability of paying the loan amount availed by her. The complainant preferred complaint before the Consumer Forum and also before this Forum which is an abuse of law to gain unjust enrichment. The complaint as against the second respondent is not at all maintainable and is 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.

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

- i. Whether the complaint is maintainable?
- ii. Whether the complainant is entitled for refund of the amounts paid to the 1<sup>st</sup> respondent towards purchase of flat with interest, compensation and cost on the grounds of unfair trade practice adopted by the respondents?
- iii. What are the reliefs, the complainant is entitled to?

**8. Answer to Point No.(i):**

(a) The learned counsel for the complainant submitted that the complainant, before approaching this Forum, filed a complaint in CC No.140/2017 before the Hon'ble State Consumer Disputes Redressal Commission (SCDRC), Chennai seeking refund of the amount paid to the 1<sup>st</sup> respondent with compensation and the complaint was not disposed of and the present complaint, before this Forum, was preferred by the complainant for appropriate reliefs under the RERA Act and the Hon'ble Supreme Court, in *Pioneer Urban Land and Infrastructure Limited and Others Vs Union of India (UOI) and Others, reported in MANU/SC/1071/2019*, held that RERA Act and Consumer Protect Act are concurrent in nature and therefore there is no bar to pursue the present complaint before this Forum and in the event of claim petition being allowed by this Forum, the complainant undertakes to withdraw the complaint before the Hon'ble SCDRC and therefore, the complaint before this Forum is maintainable.



(b) However, the learned counsel for the respondents contended that since the complainant already approached the Hon'ble SCDC in CC No.140/2017, the present petition before this Forum is not at all maintainable and is liable to be dismissed.

(c) It is not in dispute that in ***Pioneer Urban Land and Infrastructure Limited and Others Vs Union of India (UOI) and Others(supra)***, the Hon'ble Supreme Court held that the remedies available under the Consumer Protection Act and RERA Act are concurrent in nature. It is also relevant to note that in ***Imperia Structures Limited Vs Anil Patni and another reported in (2020) 10 Supreme Court Cases 783***, the Hon'ble Supreme Court observed as follows:

***31. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the Adjudicating Officer under the RERA Act. The proviso thus gives a right or an option to the complainant concerned but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that the mandate in Section 12(4) of the CP Act to the contrary is quite significant.***

***32. Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a civil court and express saving under Section 88 of the RERA Act, make the position quite***

*clear. Further, Section 18 itself specifies that the remedy under the said section is “without prejudice to any other remedy available”. Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act.*

*33. It was, however, urged that going by the objective or the purpose for which the RERA Act was enacted and considering the special expertise and the qualifications of the Chairpersons and Members of the Authority (Section 22) and the Appellate Tribunal (Section 46), such authorities alone must be held entitled to decide all issues concerning the Project registered under the RERA Act. It was submitted that if the allottees were to be permitted to initiate parallel proceedings before the fora under the CP Act, the financial drain on the promoter would render completion of construction an impossibility and, therefore, the RERA Act in general and Section 89 in particular be construed in such a way that all the issues pertaining to the project concerned be decided only by the authorities under the RERA Act. Even with acceptance of such interpretation, the allottees would still be entitled to approach the authorities under Section 18 of the RERA Act.*

*34. It is true that some special authorities are created under the RERA Act for the regulation and promotion of the real estate sector and the issues concerning a registered project are specifically entrusted to functionaries under the RERA Act. But for the present purposes, we must go by the purport of Section 18 of the RERA Act. Since it gives a right “without prejudice to any other remedy available”, in effect, such other remedy is acknowledged and saved subject always to the applicability of Section 79.*



Therefore, there is no legal impediment to proceed with the present complaint by this Forum. In addition to the above, admittedly, the Hon'ble SCDRC has not disposed of the case and the complainant undertook to withdraw the complaint pending before the SCDRC in the event of this Forum passing final orders in this complaint. Considering all the above circumstances, it is held that, the complaint is well maintainable before this Forum.

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

(a) The learned counsel for the complainant submitted that the respondents are subsidiaries of M/s.Indiabulls Real Estate Limited and the first respondent is the promoter of the project and the second respondent is the financier providing loan for the purchase of flat by the complainant from the second respondent and the tripartite agreement was entered between the complainant and the respondents for purchase of the flat on the loan was provided by the second respondent and the complainant booked the apartment and paid a sum of Rs.13,07,639/- to the first respondent and as per the construction agreement dated 11.09.2013, the first respondent assured to complete the construction and handover possession by April 2015 and the total price for the apartment was Rs.61,58,114/- and the respondents got revised planning permission from 7 floors to 19 floors, contrary to their assurances, and therefore, the complainant cancelled the booking and sought for the refund of the amount paid to the first respondent, and therefore, the complainant is entitled for all the reliefs.

(b) The learned counsel for the second respondent contended that the second respondent is only a lending institution and has nothing to do with the construction part of the project and as against the second respondent, no reliefs

are sought under the provisions of the RERA Act and therefore, the second respondent is not at all an answering party and the complaint as against the second respondent is liable to be dismissed.

(c) While the complaint was pending before this Forum, the first respondent filed a memo dated 09.11.2020, stating that, they have identified a prospective purchaser for the disputed flat and undertook to refund the amount paid by the complainant within 30 days from the date of the memo and also to pay the principle loan outstanding availed by the complainant from the second respondent within 45 days on full and final settlement and also to file a detailed counter, if no settlement was arrived with the complainant. The first respondent has not filed any counter disputing the averments of the complainant.

(d) Considering all the above circumstances, it is held that the complainant is entitled for refund of the amount paid to the first respondent and the complaint as such against the second respondent is liable to be dismissed. Thus the point is answered accordingly.

**10. Answer for Point No.(iii):**

(a) In view of the answer for the point No (ii), the complainant is entitled for refund of the amount of Rs.13,07,639/- from the first 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 complainant is entitled for the interest at the rate of 8.25% 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%, i.e., 10.25% per annum for the amounts paid from the dates of respective payments till repayment by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, it is held that the complainant is entitled for a sum of Rs.50,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by her. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (1) The first respondent shall pay the complainant the amounts at the interest rate, compensation and other charges as per the findings in the answer for Point No.(iii), Para 10 of this order, within 30 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.

Sd/- 17.09.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

TRUE COPY

leg  
12/09/2021

**LIST OF WITNESSES**

CW-1--- Dr.Neela Kannan

RW-1--- H.Prathik

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	05.07.2012	Planning Permit
Ex.A2	10.07.2013	Application form
Ex.A3	...	Payment details
Ex.A4	12.09.2013	Welcome letter
EX.A5	17.09.2013	Assurance letter by 1 <sup>st</sup> respondent
Ex.A6	11.09.2013	Agreement of sale
Ex.A7	11.09.2013	Construction agreement
Ex.A8	10.11.2013	Tripartite agreement
Ex.A9	17.07.2015	E-mail from 1 <sup>st</sup> respondent
Ex.A10	15.02.2017	Letter from complainant
Ex.A11	23.03.2017	Legal notice
Ex.A12	13.04.2017	Reply notice by 1 <sup>st</sup> respondent
Ex.A13	26.08.2019	Notice from 2 <sup>nd</sup> respondent
Ex.A14	04.09.2019	Reply notice by complainant
Ex.A15	24.09.2019	E-mail from 2 <sup>nd</sup> respondent

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.B1	...	Board Resolution
Ex.B2	30.09.2013	Loan agreement with 2 <sup>nd</sup> respondent
Ex.B3	25.05.2017	Complaint copy
Ex.B4	24.08.2018	Proof affidavit by 1 <sup>st</sup> respondent

TRUE COPY  
17/09/2019



Ex.B5	June 2018	Proof affidavit by 2 <sup>nd</sup> respondent
Ex.B6	28.06.2018	Statement of accounts

Sd/- 17.09.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.

CERTIFIED TO BE TRUE COPY

  
17.9.2021  
LAW OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY