

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

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

CCP No. 29 of 2020

E. Venkatasubramanian Complainant

Vs.

M/s. Marg Properties Limited
Rep by its Director, G.R.K. Reddy Respondent
(Project not registered)

Complainant : Rep. by Mr.T.G. Jeevarathanam, Advocate.

Respondent : Rep. by Dr. S. Padma, Advocate.

Heard on : 09.04.2021

Delivered on : 07.05.2021

ORDER

The complaint filed by the above complainant seeking refund of amount paid to the respondent towards purchase and construction 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 complainant, in brief, as follows:

(a) On 30.04.2014, the complainant booked an apartment with the respondent in their project, namely, "**Pushkara Lake View Homes**", at Kazhipattur village, Chengalpet Taluk, Kanchipuram District, and paid booking advance and further amounts as agreed by him.

(b) The respondent allotted flat No.305, comprising saleable area of 1700 sq.ft and UDS 1020 sq.ft, to the complainant. The total cost of the flat is Rs.66,25,000/-. As per the booking form, the sale agreement has to be entered within 30 days from booking by paying 20% of the total cost of the apartment. The respondent sent a draft construction

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agreement on 05.05.2015 and intimated that the registration would be fixed on 06.05.2015 but the same did not happen. There was no further progress.

(c) The complainant paid in total a sum of Rs.13,23,000/-. On 15.05.2017, the complainant informed the respondent that he was withdrawing from the project and requested for refund of the amount with interest. The respondent failed to make any refund. The complainant is entitled for refund of the amount with interest, compensation and cost.

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

Except admitted, all the averments and allegations are denied. The complainant has not paid the due as per the terms of the agreement and is not entitled for claiming interest or compensation. The complainant still has to pay a sum of Rs.10,17,865/-. The complainant has to pay the 40% of sale consideration to go for UDS registration as per the agreement. Since only 7 customers booked in the project, the booking were stopped during 2013 itself. The project was not registered under RERA. When the project will be open for sale, it will be registered with RERA. Due to various reasons, the respondent is not able to proceed with the project. The respondent will be ready to provide alternate option to swap over to other project which is nearing completion. The complaint has no merits and is liable to be dismissed.

4. An attempt to settle the matter amicably has failed.
5. Both the parties have filed their respective evidence on affidavit with documents.

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

i. Whether the complainant is entitled for refund of the amounts paid to the respondent together with interest and compensation on the ground of no progress of the project after booking of apartment?

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

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

(a) The learned counsel for the complainant submitted that the complainant booked an apartment in the project of the respondent on payment of booking advance of Rs.10,00,000/- on 30.04.2014 and subsequently further sum of Rs.3,23,000/- on 16.04.2015 and the respondent received 20% of the total cost of the apartment and sent draft construction agreement on 05.05.2015 and intimated that the registration would take place on 06.05.2015 and the complainant, who was from New Delhi, came to Chennai on 07.07.2015 and the respondent made no arrangement to register the agreement and hence the complainant withdrew from the project and he is entitled for refund of the amount paid with interest, compensation and cost.

(b) The learned counsel for the respondent contended that the complainant has not paid the stage dues as per the terms of the agreement and the complainant has to pay 40% of the sale consideration to go for UDS registration and the work in the project is on halt since only 7 customers booked apartments and the booking were stopped during 2013 itself and the project was not registered with TNRERA and the respondent is ready to provide alternate option in

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other projects which are nearing the completion and the real estate industry was not doing better in the past years due to various reasons and the complainant has no merits and is liable to be dismissed.

(c) Admittedly, the work in the project was halted since only 7 customers booked apartments in the project. However, the learned counsel for the respondent relied on Ex.B2, which is only a part of the draft construction agreement to contend that the purchaser is liable to pay consideration and other charges in the manner stipulated in the payment schedule. In the absence of any progress in the development of the project, the respondent is liable to refund the amount received towards sale consideration of the apartment from the complainant. The respondent cannot insist the complainant to opt for purchase of apartment from any other project of the respondent.

(d) In the above facts and circumstances, it is held that the complainant is entitled for the refund of the amount paid to the respondent with interest, compensation and cost. 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 refund of the amount of Rs.13,23,000/- with interest and compensation.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 8.20% per annum which was 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% p.a for the

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amount paid from the date of respective payment till repayment by the respondent.

(c) Apart from the above, the complainant is entitled to Rs.50,000/- towards compensation for mental agony, hardship and inconvenience and Rs.25,000/- towards legal expenses incurred by him. The complainant is entitled for reliefs as detailed below. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows:

- (1) The respondent shall pay the complainant the amounts at the interest rate, compensation and legal expenses 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.

**G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI**

LIST OF WITNESSES

CW-1--- E. Venkatasubramanian
RW-1--- K.S. Gajendra Babu

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	----	Booking form
Ex.A2	---	Payment receipts

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Ex.A3	04.02.2020	Total cost and payment schedule
Ex.A4	28.08.2014	Payment request letter
Ex.A5	24.04.2015	Draft construction agreement
Ex.A6	----	E-mail communications

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	----	News article of order
Ex.B2	March 2015	Part of construction agreement

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Sd: 07.05.2021

G. SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI


7.5.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY