

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 34 of 2020**

A. Sabari Vinayagam

...COMPLAINANT

Vs.

M/s. Amar Prakaash Developers Pvt Ltd.,
Rep. by its director, Aadarsh Surana
(Project not registered)

....RESPONDENT

Complainant : Rep. by Mr. Abubacker Sidhic, Advocate.

Respondent : Rep. by Mr. P. Dinesh Kumar, Advocate.

Heard on : 11.03.2021
Delivered on : 30.03.2021

ORDER

The complaint by the above complainant 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 complainant, in brief, as follows:

(a) On 02.05.2017, the complainant booked an apartment with the respondent in their project, namely, "TEMPLE WAVES", at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District. The total sale consideration of the apartment is Rs.40,86,499/-.

(b) On 28.12.2017, the complainant and the respondent entered into a registered agreement for project promotion and construction and the respondent undertook to complete the construction and deliver the flat on or before 30.04.2018. On various dates, the complainant, in total, paid a sum of Rs.38,89,950/- to the respondent.

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(c) The respondent caused inordinate delay in completing the construction of the flat and was not able to give possession of the apartment by the agreed due date for delivery. Because of the delay, the complainant was put to hardship and mental agony. Hence, the complainant seeks refund of the amount paid to the respondent with interest, compensation and cost.

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

4. The complainant has filed his evidence on affidavit with documents. No counter was filed and no evidence was produced on the side of the respondent.

5. On the basis of the contentions of the complainant, the following points arise for determination:-

i. Whether the complainant is entitled for refund of the amount paid to the respondent towards purchase of flat with interest, compensation and cost on the ground of failure on the part of the respondent to give possession of the apartment booked by him in accordance with the date and terms of agreement of project promotion and construction?

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

6. **Answer for Point Nos (i):**

(a) The learned counsel for the complainant submitted that the complainant booked a flat in the project of the respondent for a total sale consideration of Rs.40,86,499/- and entered into a registered agreement for project promotion and construction on 28.12.2017 and the respondent undertook to complete the construction and handover the flat on or before 30.04.2018 and executed a sale deed for UDS on the same day and the complainant paid in total a sum of Rs.38,89,950/- and till date, the project

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is not completed and possession of the flat was not offered to the complainant and the complainant is entitled for refund of the amount and other reliefs.

(b) Section 18 of the RERA Act gives right to allottee to withdraw from the project and demand amount paid by him with interest including compensation, if a promoter fails or is unable to give possession of the flat on the dates specified in the agreement. As per Ex.A4, the agreement for project promotion and construction dated 28.12.2017, the respondent undertook to complete construction and deliver the apartment on or before April, 2018. In Ex.A9, series of e-mail communications, by e-mail dated 09.06.2019, the respondent intimated that they received completion certificate. But, the request of the complainant for construction photographs was not entertained by respondent. By Ex.A10, the legal notice dated 04.12.2019, the complainant has withdrawn from the project and asked for refund of the amount paid to the respondent. The respondent has not returned the amount to the complainant.

(c) In the above facts and circumstances, it is held that the complainant is entitled for the refund of the entire amount paid to the respondent with interest, compensation and cost. Thus, the point is answered accordingly.

7. Answer for Point No. (ii)

(a) In view of the answer for the point No (i), the complainant is entitled for refund of the amount with interest, compensation and cost from the respondent. It is not in dispute that the complainant has paid Rs.38,89,950/- towards the purchase of the flat. The complainant is entitled for refund of Rs. 38,89,950/- from the respondent with interest.

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

(c) Considering the facts and circumstances of the case, a sum of Rs.2,00,000/- towards compensation for mental agony, loss and hardship caused to the complainant and Rs.20,000/- towards litigation expenses is fixed. 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 respondent shall pay the amounts at the interest rate, compensation and cost as per the findings in answer for Point No.(ii), Para No.7 of this order within 30 days of issue of this order.
2. The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
3. On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

G. SARAVANAN
ADJUDICATING OFFICER

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LIST OF WITNESSES

CW-1--- A. Sabari Vinayagam

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	13.01.2020	Brief synopsis
Ex.A2	-----	List of dates and events
Ex.A3	-----	Quotation of the apartment
Ex.A4	28.12.2017	Agreement of project promotion and construction
Ex.A5	28.12.2017	Sale deed
Ex.A6	-----	Payment receipts
Ex.A7	05.05.2017	Statement of account HDFC Bank
Ex.A8	21.12.2019	Statement of account SBI Bank
Ex.A9	09.05.2017	E-mail communication
Ex.A10	04.12.2019	Legal notice

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[Handwritten Signature]
 25.12.2021
 LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.