

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

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

CCP No. 49 of 2020

1. Suchita Eknath Fulari
2. Eknath Ramkisan Fulari

.... COMPLAINANTS

Vs.

M/s. VGN Property Developers Pvt Ltd.,
Rep by its MD, Pratish Vedhappudi
(Regn. No.TN/02/Building/0012/2018)

.... RESPONDENT

Complainants : In-Person
Respondent : Rep. by Mr. K. Harishankar, Advocate.

Heard on : 29.06.2021
Delivered on : 15.07.2021

ORDER

The above complaint by the complainants claiming compensation for delay in handing over possession of 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 complainants, in brief, as follows:

- (a) On 05.12.2017, the complainants booked an apartment with the respondent in their project, namely, "VGN TEMPLE TOWN", at Thiruverkadu on payment of booking advance. The total cost of the flat is Rs.43,54,558.00/-the complainants in total paid a sum of Rs.39,19,102.20/-.
- (b) On 12.06.2018, the complainants and the respondent entered into an agreement for construction. The respondent undertook to complete the construction and to handover the flat in December 2018 with a grace period of 3 months. Since there was no progress in construction of the flat, the complainants preferred complaint in C.No.310 of 2019 before the

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TNRERA. The respondent filed affidavit to handover the flat by December 2019. Again the progress in construction was slow, the complainants preferred second complaint in C.No.475 of 2019 before the TNRERA.

(c) In spite of the payment of 90% of the sale amount by the complainants, the respondent delayed the handing over of the flat to the complainants. The complainants were put to mental agony and hardship. Hence, the complainants are entitled for compensation and other reliefs as prayed for.

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

(a) All the allegations except admitted are denied. The complainants booked an apartment in the project of the respondent and on 12.06.2018, entered into an agreement for construction with the respondent and the respondent undertook to complete the construction and handover the flat in December 2018 with an additional grace period of 3 months.

(b) Clauses 11(a) and 11(c) of the agreement provides for extension of time for completion of project in case of unforeseen circumstances and force majeure conditions. In the year 2014, the Environment Committee passed an order to stop the construction work and the respondent had lost 4 years of construction. Subsequently, clearance was obtained and the work has been sped up to complete the project at the earliest.

(c) However, there were cyclones which affected the work in December 2017. In the year 2018, there was steep rise in the demand for construction material and there was heavy demand for sand. Subsequently, in the year 2018, cyclone Gaja hit the coast of Tamil Nadu and caused more damage and delayed construction works. Therefore, the respondent is entitled for extension of time for completion of the project.

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(d) As per the TNRERA Registration Certificate dated 05.01.2018, the date for completion of the project is June 2019 and not December 2018. The complainants were not prompt in paying the dues as and when called for. There was delay in making payments by the complainants.

(e) The complainants filed complaints before the TNRERA. The respondent filed an affidavit of undertaking requesting the Authority to grant time to handover the flat by September 2020. The TNRERA directed the respondent to handover the flat to the complainants and file compliance report. On 21.08.2020, the flat was handed over to the complainants.

(f) As per the terms of the agreement, the complainants are entitled only for a monthly compensation @Rs.5 per sq.ft. For the delay in payment of sale consideration, the complainants are liable to pay Rs.82,867/- towards interest alone. Apart from the same, a sum of Rs.89,730/- was due which was paid by the complainants at the time of handing over the apartment. Hence, the respondent prays for the dismissal of the complaint.

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

5. Both the parties have filed their respective evidence on proof affidavit with documents.

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

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

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7. Answer for Point No. (i):

(a) The complainants submitted that they booked an apartment and entered into an agreement for construction with the respondent on 12.06.2018 and the respondent undertook to complete the construction and handover the flat in December 2018 with a grace period of 3 months and there was delay in construction and the flat was handed over only on 21.08.2020 i.e., after a period of 16 months delay and there was no delay in payment of sale consideration by the complainants and the complainants availed bank loan to pay the sale consideration and the respondent is liable to pay delay compensation and other reliefs.

(b) The learned counsel for the respondent filed written notes of argument contending that by the agreement for construction on 12.06.2018, the respondent undertook to complete the construction and to handover possession of the flat by December 2018 with a grace period of 3 months i.e., March 2019 but subject to compliance of all terms and conditions of the agreement and the construction of the project was delayed due to unforeseen conditions and the agreement provides for extension of time and the delay was inevitable and beyond the control of the respondent and the complainants themselves were not prompt in paying the dues as and when called for and most of the payments were made with a delay of 2 months and the possession was handed over on 21.08.2020 and the complainants can claim compensation only under Clause 11(e) of the agreement at Rs.5/- per sq.ft and the complaint is liable to be dismissed.

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(c) The learned counsel for the respondent also relied on the following decisions in support of his contentions:

1. *Pioneer Urban Land and Infrastructure Limited v. Union of India*, [2019 SCC Online SC 1005].
2. *Prashant Kumar Shahi vs. Ghaziabad Development Authority* [(2000) 4 SCC 120].
3. *Navin Raheja Vs. Shilpa Jain and Ors* [2020 SCC Online NCLAT 46].

(d) Section 18 of RERA Act gives an option to allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the flat on the date specified in the agreement. As per the proviso to Section 18, where the allottee does not intend to withdraw from the project, he is entitled for interest for every month of delay to be paid by the promoter till the handing over possession of the apartment. It is not in dispute that the respondent undertook to complete construction and to hand over the apartment by December 2018 with an additional grace period of 3 months i.e., March 2019 from the date of the agreement. Admittedly, the flat was handed over only on 21.08.2020.

(e) The construction agreement was entered on 12.06.2018, i.e., after the RERA Act and TNRERA Rules came into force. Rule 9 of the TNRERA Rules require the agreements for sale and construction to be in the forms appended under the Rules. The project is registered with TNRERA. The registration certificate of the project was issued by TNRERA on conditions that the respondent as promoter should enter into agreements as provided under the rules and should comply with the provisions of the Act and the rules. Clauses such as 11(a), 11(c), 11(d) and 11(e) of Ex.A3, the

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construction agreement are not in conformity, but in violation to the provisions of the Act and the rule.

(f) The cyclone that hit the coastal Tamil Nadu in December 2017 and the order of the Environment Committee in 2014 and the commencement of construction with delay are not acceptable as the reasons for the delay, when agreement was entered subsequently on 12.06.2018. The other reasons, such as rise in the price of construction materials and the cyclone in 2018 put forth by the respondent are vague, general and not sustainable. It was the responsibility of the respondent to plan taking into consideration all the impediments for completion of the project. The respondent also relied on the registration certificate issued by the TNRERA stating that the registration was valid till 30.06.2019. It is 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 held that the date till which registration of project might be valid, is irrelevant to invocation of remedies under Section 18 or Section 18 Proviso. Therefore, the respondent cannot take shelter under the time limit given in the RERA certificate for delay in the construction and completion of the project.

(g) The next bone of contention of the respondent is that the complainants themselves are not prompt in payment of dues as and when called for and payments were made with a delay of 2 months. The respondent has not produced any documents to prove delay in payment by the complainants. Annexure II of the Ex.A3, the construction agreement contains payment schedule for payment of dues by the complainants. A perusal of the payment schedule reveals that the stages of construction with payment schedule is not linked with specific dates for payment. Even though, the

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agreement provides for completion of construction and handing over of the apartment by December 2018, the agreement lacks stage wise time schedule of completion of the project and handing over of the apartment to the complainants. Therefore, the respondent cannot rely upon the decision in Pioneer Urban Land and Infrastructure Limited Vs. Union of India, [Supra] wherein it was held that all allottees are to be responsible for making necessary payments in installments within the time specified in the agreement for sale.

(h) In the decision in Prashant Kumar Shahi Vs. Ghaziabad Development Authority (Supra), the Hon'ble Supreme Court held that where the complainant had not tendered the scheduled installment amounts for purchase of a plot or land, the respondent was within its right not to deliver possession. In Navin Raheja Vs. Shilpa Jain and others (Supra), questions which arose for consideration before the Hon'ble NCLAT were under the provisions of the Insolvency and Bankruptcy Code. The facts of above decisions were entirely different and the decisions are not applicable to the present case before this Forum.

(i) It is relevant to note that in Union of India Vs. Amrit Lal Manchanda 2004(3) SCC 75 and other cases in 2004(4) SCC 205, 2002(3) SCC496 and 533, the Hon'ble Supreme Court clearly laid down that precedents and observations made therein are to be read in the context in which they appear and circumstantial flexibility, one additional or different fact may make a world of difference. It is often reiterated that judgments cannot be read as Euclid's theorem. The words of Lord Denning in the matter of applying precedents which had been oft quoted with approval in more than one judgment of the Supreme Court is that while applying precedents

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“each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect”.

(j) The learned counsel for the respondent further relied on sections 51 and 58 of the Indian Contract Act, to contend that the complainants are not entitled for compensation. No doubt, where the promises are reciprocal, each party has the option to perform his part of the contract but cannot insist on the other party performing his part without himself performing what he was agreed to do. The complainants cannot be blamed for not adhering to the payment schedule without specific dates for completion of every stage of construction and when the project itself was delayed due to various reasons and not for any lapses on the part of the complainants. Therefore the above contentions are not sustainable.

(k) Admittedly, the flat was handed over to the complainants on 21.08.2020. The respondent contended that as per clause 11(e) of the construction agreement, the complainants can claim compensation only at the rate of Rs.5/- per sq.ft monthly for the period of delay. If calculated on the basis of Ex.B1, the calculation sheet, it comes to 1.8% p.a rate of interest. The respondent has incorporated such a clause in the construction agreement to pay a meager sum as compensation. Such a clause is one-sided and unfair. It is relevant to note that Hon'ble Supreme court in Pioneer Urban Land & Infrastructure Ltd., Vs Govindan Raghavan and Others reported in Manu/SC/0463/2019 held that the builder could not seek to bind the buyer with one-sided contractual terms. So far as the interest claimed by the respondent is concerned, as already pointed out the respondent has not proved by any documents on the intimation of

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completion of particular stage of construction and the demand made by notices and subsequent failure on the part of the complainants. Therefore, the respondent is not entitled for any interest on the ground of delayed payment.

(l) In the above circumstances, it is held that the complainants are 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.

8. Answer for Point No. (ii):

(a) In view of the answer for the point No (i), the complainants are entitled for interest by way of compensation as detailed hereunder provided under proviso to section 18 of the RERA Act.

(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 complainants are entitled for the interest at the rate of 7.85% 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% per annum i.e., 9.85% p.a for the amounts paid towards sale consideration from 01.04.2019 till payment by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, the complainants are entitled for Rs.1,00,000/- towards compensation for mental agony, hardship and inconvenience caused to them. In view of the compensation awarded above, the claim of the complainants towards compensation for rental amount paid is rejected. Apart from the above, the complainants are also entitled for litigation

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expenses of Rs.25,000/-. 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:-

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--- Suchita Fulari
RW-1--- A. Rangappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	20.12.2017	Allotment letter
Ex.A2	---	Bank loan approval communications
Ex.A3	12.06.2018	Construction agreement
Ex.A4	08.03.2019	Sale deed
Ex.A5	---	Respondent communications with bank
Ex.A6	---	E-mail communications
Ex.A7	---	E-mail communications
Ex.A8	12.03.2019	E-mail intimation to respondent
Ex.A9	11.12.2019	Communication from TNRERA
Ex.A10	20.08.2020	Order passed in C.No.475/2019
Ex.A11	21.08.2020	Possession letter
Ex.A12	20.08.2020	Cost sheet shared by respondent
Ex.A13	2018 to 2021	SBI loan statement

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	30.07.2020	Compensation calculation sheet
Ex.B2	21.08.2020	Possession letter
Ex.B3	04.09.2020	Compliance report filed before TNRERA

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sd: 15.07.2021

**G. SARAVANAN,
ADJUDICATING OFFICER,
TNRERA, CHENNAI.**
15.7.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY