

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 52 of 2020**

1. Balaji Ramachandran
 2. Popjee Minnie Balaji
- Both rep by their PoA, Sundaraman
- ...COMPLAINANTS

Vs

- (1) M/s. Oragadam City Developers Pvt Ltd.,
Rep. by its Director, Rajmannar Ramasamy
 - (2) M/s. New Town Housing.
 - (3) M/s. Value Build Homes.
 - (4) M/s. Vilagam Housing.
 - (5) M/s. Frontier Housing Pvt Ltd.
- ... RESPONDENTS
- (PROJECT NOT REGISTERED)**

Complainants : Rep by Mr.A.Karthikeyan, Advocate
Respondents R1 to R5 : Rep by Mr.A.V.Arumugam, Advocate

**Heard on : 26.10.2021
Delivered on : 19.11.2021**

ORDER

The complaint by the above complainants seeking refund of the entire amount paid by them to the respondents towards purchase and construction of flat with interest, compensation and costs 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) In the year 2011, the complainants booked a flat with the respondents in the project of the respondents, namely, "**INNO-GEO CITY**", Vilagam Village, Kancheepuram District and paid advance and further amounts. The total sale

TRUE COPY

Leg
19/11/2021

consideration of the apartment is Rs.25,57,125/-. The complainants so far paid Rs.25,16,957/-.

(b) On 09.11.2011 the respondents executed sale deed for the UDS land in favor of the complainants. The first respondent is the promoter and respondents 2 to 5 represented by the first respondent are the land owners. The first respondent undertook to complete and handover the delivery of the flat within a period of 25 months including 3 months grace period.

(c) There was no progress of construction of the project and there was no communication from the respondents. Hence the complainants seek withdrawal from the project and refund of the amount paid with interest, compensation and expenses.

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

(a) Except admitted, all the averments and allegations are denied. All the allegations in para-1,2,3 and 4 are denied. The complainants are represented by their power of attorney by virtue of a specific power of attorney deed dated 12.09.2018 in respect of the property. There is discrepancy between the sale-cum-construction agreement entered between the complainants and the respondents and the power of attorney deed with respect to the description of the property. Therefore, the present application filed by the power agent on behalf of the complainants is without authority of law. Hence, the complaint is liable to be dismissed.

(b) In the complaint, it was alleged that the complainants would never get possession of the above flat. However, in the deed of power of attorney it is stated as the complainants are the owners of the property described in the

TRUE COPY
10/11/2021

schedule and came into possession and enjoyment of the property through self acquirement. The complaint is based on false and self contradictory pleas relating to possession.

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

5. Both the parties have filed their respective evidence on 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 refund of the amounts paid to the respondents together with interest, compensation and cost on the ground of failure to deliver the flat as per the terms of the agreement?
- ii. What are the reliefs, the complainants are entitled to?

7. Answer to point No.(i):

(a) The learned counsel for the complainants submitted that the complainants booked a flat in the project of the respondent in the year 2011 at the total cost of Rs.25,57,125/- and so far paid Rs.25,16,957/-, i.e., 96% of the flat cost and the sale deed for the UDS land was executed by the respondents on 09.11.2011 and the respondents undertook to complete and handover the delivery of the flat within a period of 25 months, with a grace period of 3 months and also to pay a compensation and there was no progress of construction and there was no communication from the respondents and the complainants visited the office of the respondents and there was no response and the complainants withdrew from the project and seek refund of the money with interest and other reliefs.

(b) However, the learned counsel for the respondents contended that all the allegations of the complainants are false and the description of the property in the deed of power of attorney given in favor of the power agent and the agreement for sale and construction dated 08.11.2011 is different and the complainants also submitted that they would never get possession of the above flat and also made statement that they are the owners of the property and the complaint is based on false and self contradictory pleas relating to possession and is liable to be dismissed.

(c) It is not in dispute that the complainants and the respondents entered into Ex-A2, agreement of sale-cum-construction of flat in the project of the respondents and also received the sale consideration towards the purchase of flat in the project. Under clause 5(b) of the agreement, the first respondent undertook to complete the construction within 22 months. Admittedly, till date, the construction is not complete. Section 18 of the RERA Act gives right 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 flat on the date specified in the agreement.

(d) As per Ex-A2, agreement, the description of the project under schedule 'B' is given as plot No.216 to an extent of 1453 sq.ft and the unit agreed to be constructed for the allottee under schedule 'D' is mentioned as unit No.216A of an area of 1136 sq.ft. As per schedule 'C', in Ex-A3 sale deed, the property conveyed as 726.50 sq.ft of undivided share of land out of the total extent of the property described in schedule 'B' of the documents under plot No.216. Even under the sale deed for the plot executed by the respondents in favor of the complainants, the respondents clearly mentioned that as on date of the deed the

TRUE COPY

leg
19/11/2011

purchaser was put in lawful, peaceful and absolute possession of the property described under the sale deed. Therefore, the contention of the respondents that there is discrepancy in the description of the property is not sustainable.

8. Answer for Point No. (ii)

(a) In view of the answer for Point No.(i), the complainants are entitled to recover the amounts paid to the respondents with interest, compensation and costs. The complainants paid in total Rs.25,16,957/- to the respondents for purchase of the flat. Therefore, the complainants are entitled for refund of the amount of Rs.25,16,957/- with interest compensation and cost from the respondents.

(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 complainants are entitled for the interest at the rate of 8.15% 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., 10.15% per annum for the amounts paid in both the cases from the date of respective payment till repayment by the respondents.

(c) Apart from the above, considering the facts and circumstances of the case, it is held that the complainants are entitled for a sum of Rs.1,00,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by them. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:

1. The respondents, either jointly or severally, shall pay the complainants the amount at the interest rate, compensation and cost as per the findings in the answer for Point No.(ii), Para 8 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 complainants till the repayment. The office of this Forum is directed to intimate the encumbrance created by charge in this order to the Sub Registrar concerned.
3. The complainants shall execute the cancellation of agreement and sale deed, as the case may be, on satisfaction of their claims at the cost of the respondents.

Sd/- 19.11.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 ... M.R.Sundararaman
RW-1 ... C.V.Lakshmanan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	18.10.2011	Welcome letter
Ex.A2	08.11.2011	Agreement for sale cum construction
Ex.A3	09.11.2011	Sale Deed
Ex.A4	09.02.2012	Payment request letter
EX.A5	12.10.2011	Payment receipt
Ex.A6	30.05.2017	Statement of accounts
Ex.A7	12.09.2018	Specific power of attorney
Ex.A8	...	Site photograph

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

Sd/- 19.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY


LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY