

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 54 of 2020**

1. C. Rajendran
2. R. Chitra

..... COMPLAINANTS

Vs.

M/s. Metroline Promoters Private Ltd
Rep.by its authorized signatory, C.Rajamony
(Project not registered)

..... RESPONDENT

Complainants : Rep. by Mr. S. Sivakumar, Advocate.
Respondent : Remained absent.

Heard on : 16.03.2021

Delivered on : 25.03.2021

ORDER

The complaint claiming the refund of the amounts paid by the above complainants to the Respondent towards the purchase of constructed commercial unit with interest and compensation is filed *u/s 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016* (hereinafter referred to as RERA Act).

2. Averments of the complainants, in brief, as follows:

- (a) The complainants made application for allotment of commercial unit which is a shop in a commercial complex, namely, "**GOLD SOUK GRANDE**" at GST Road, Vandalur, Chengalpet Taluk promoted by the respondent and paid the amount.
- (b) The complainants were allotted the shop No.GF-55, for a total sale consideration of Rs.66,88,000/- and the entire amount was paid by the complainants and the respondent undertook to deliver the constructed shop to the complainants on or before 30.06.2013 inclusive of grace period.

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(c) Subsequently, on 11.12.2009, unit buyer agreement and on 15.12.2009, a memorandum of understanding were entered between the complainants and the respondent and subsequently, after cancellation of the memorandum of understanding, another unit buyer agreement was entered between the complainants and the respondent. The respondent agreed to pay Rs.1,14,880/- till the date of offer of possession of the unit. However, the respondent paid the amount as promised only from 01.01.2010 to 31.01.2012.

(d) In spite of payment of the entire money and the possession of the shop was not handed over. There was no progress thereafter. Whenever, the complainants approached the respondent, the respondent gave evasive reply and not bothered to take any steps to pay the rent or the return of the amount.

(e) As on date of the commencement of the Act, the project was not given completion certificate and still it is an ongoing project. As per the provisions of the RERA Act, the respondent is liable to return the amount with interest and compensation to the complainants and hence, the complainants withdraw from the project and seek full refund of entire amount with interest and compensation.

3. On receipt of the notice of hearing, the respondent remained absent.

4. On the side of the complainants, the complainants filed their evidence on affidavit with documents.

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

- i. Whether the complainants are entitled for refund of the amounts paid to the respondent towards purchase of the constructed shops with interest and compensation on the ground of failure on the part of the respondent to give

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possession of completed shop booked by them in accordance with the date and terms of agreements?

- ii. Whether the complainants are entitled for all the reliefs as prayed for?

6. **Answer for Point No: (i)** -

(a) The learned counsel for the complainants submitted that the respondent launched the project namely "GOLD SOUK GRANDE" which is a commercial complex and invited applications for allotment of units and the complainants submitted application forms for allotment of unit in pursuance of which unit buyers agreement entered between the complainants and respondents followed by the memorandum of understanding over the construction of the unit allotted to the complainants and the complainants paid entire amount and subsequently there was no progress and therefore the complainants are entitled for the reliefs prayed by them.

(b) The complainants were examined as CW1. The complainant stated that they made the application for allotment on 27.07.2009 which is marked as Ex.A1 and the cheques issued by the complainants and receipts for the payment issued by the respondent are marked as Ex.A2 and the unit buyer agreement and the memorandum of understanding are Ex.A3 and Ex.A4 respectively, and subsequently the agreement was cancelled and exchange deed was executed by the respondent which are marked as Ex.A5 and Ex.A6 respectively, and Ex.A7, is the unit buyer agreement dated 24.11.2012 by which the respondent undertook to handover possession of the unit on or before 30.06.2013. It is the evidence of the complainants that the respondent paid rents for few months and subsequently, since there was no progress, the complainants were put to hardship.

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(c) The evidence of the complainants proved that they paid the amounts to the respondent towards purchase of the constructed commercial unit and the respondent has not completed the construction and failed to hand over the possession of the completed unit to them.

(d) *Section 18 of the 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 is unable to give possession of the shops on the dates specified in the agreement.

(e) In the above circumstances, it is held that the complainants are entitled for the refund of the amount paid by them to respondent towards the purchase of shop with interest and compensation on the ground to failure on the part of the respondent to complete and hand over the constructed unit to the complainants. Thus, the point is answered accordingly.

7. Answer for Point No.(ii)

(a) In view of the answer for point No.(i) the complainants are entitled for refund of the amount paid to the respondent with interest and compensation. The complainants paid Rs.66,88,000/- to the respondent as per the Ex.A4, memorandum of understanding. Therefore, the complainants are entitled for refund of the amount of Rs.66,88,000/- with interest and compensation from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest payable 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 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% per annum for the amounts paid from the dates of respective payment till repayment by the respondent. Considering the facts and circumstances of the case,

compensation of a sum of Rs.2,00,000/- is fixed towards mental agony, hardship and inconvenience caused to complainants. Towards litigation expenses a sum of Rs.20,000/- is fixed. Thus, the point is answered accordingly.

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

- (1) The respondent shall pay the complainants the amounts at the interest rate, compensation and litigation cost as per the findings in the answer for Point No.(ii), Para 7 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 units booked by the complainants till repayment.

G. SARAVANAN
ADJUDICATING OFFICER

C.C.P.No. 54/2020

List of witness

CW-1 --- C. Rajendran

List of documents filed by the complainants

Ex.Nos	Date	Documents Name
Ex.A1	-----	Application for allotment
Ex.A2	----	Payment receipts
Ex.A3	11.12.2009	Unit buyer agreement
Ex.A4	15.12.2009	Memorandum of understanding
Ex.A5	15.12.2009	Cancellation deed
Ex.A6	27.07.2009	Exchange deed
Ex.A7	24.11.2012	Unit buyer agreement

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

[Handwritten Signature]
LAW OFFICER 5
53, 2021
TN REAL ESTATE REGULATORY AUTHORITY