

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 56 of 2020**

Amrita Chaudhary ..... Complainant

**Vs.**

M/s. VGN Property Developers Pvt Ltd.,  
Rep by its MD, Pratish Vedhappudi  
(TN/29/Building/0066/2017) ..... Respondent

Complainant : Rep by Ms. Hema Srinivasan, Advocate.

Respondent : Rep by Mr. K. Harishankar, Advocate.

Heard on : 25.06.2021  
Delivered on : 13.07.2021

**ORDER**

The complaint by the above complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together 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 complainant , in brief, as follows:**

(a) On 12.11.2018, the complainant booked an apartment with the respondent in their project, namely, " VGN Fairmont" on payment of Rs.1,00,000/- as booking advance. Subsequently, on 28.11.2018, the complainant made further payment of Rs.9,62,480/-. The complainant has paid in total a sum of Rs.10,62,480/- to the respondent. On 14.12.2018, the complainant and the respondent entered into an agreement of construction and also an agreement for sale.

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(b) After making initial payment, the complainant approached the SBI, Egmore branch, for obtaining a home loan for purchase of the flat. The bank refused to approve the grant of loan on the ground that the land for the project was attached by the Enforcement Directorate (ED) on 13.02.2018. The respondent never disclosed this fact to the complainant at the time of booking or at the time of entering into the agreements.

(c) On 29.01.2019, the complainant approached the respondent seeking information on the title defect. The respondent assured that they are taking steps to resolve the issue. Since the complainant was seeking benefits of capital gains under the Income Tax Act, she was required to purchase the flat before 15.02.2019. Therefore, on 02.02 2019, the complainant had to cancel the booking.

(d) The respondent stated that the refund process would take 120 days from the date of cancellation. Subsequently, there was no reply from the respondent. Hence, the complainant issued a legal notice for which the respondent sent a belated reply stating that deduction of cancellation charges of 10% of the total flat cost.

(e) The respondent acted in violation of the provisions of the RERA Act. The complainant is entitled for refund of the entire amount with interest, compensation for mental agony, hardship and cost.

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

(a) All the allegations except admitted are denied. It is admitted that the complainant booked a flat in the project of the respondent and also entered into agreements for construction and sale on 14.12.2018. The

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project commenced in the year 2015 after getting necessary permissions and approval from the appropriate authorities.

(b) In December 2016, the CBI filed FIR against the respondent company with regard to the transactions which happened at the time of purchase of the land for the project. In January 2018, the Enforcement Directorate attached the property and the construction work was stopped. After an extensive legal battle, the Tribunal for PMLA, New Delhi had lifted the attachment by order dated 14.02.2019. Subsequently, the CBI filed the closure report. There is no attachment or stay with regard to the project.

(c) The complainant was informed about the attachment over phone and in person at the time of booking of the apartment and assured that the respondent would resolve the issue by the end of February 2019. The complainant booked the apartment with the knowledge of attachment. The copies of the title deeds and encumbrance certificates with details of attachment were served on the complainant. The order of interim stay on attachment was also served to the complainant on 29.01.2019. The respondent acted bona fide.

(d) The complainant was not interested to proceed with the sale process. The respondent informed that as per the terms of the agreement between the parties, 10% of the total cost of the flat will be charged as cancellation fee and after deduction of the same the balance amount will be refunded. There is no default on the part of the respondent company. The complainant is entitled to repayment of initial payment without any interest and only after deduction of the 10% of the total cost of the flat as cancellation charges. Hence, the complaint is liable to be dismissed.

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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 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 failure to provide correct information and suppression of fact in terms of Section 12 of the RERA Act?
  - 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 based on the representation made by the respondent, the complainant entered into agreements for sale and construction with the respondent for purchase of flat and the respondent suppressed that the project land was attached by the Enforcement Directorate and the complainant came to know about the defects in the title and the order of the ED only when the complainant approached the bank for availing house loan and the bank informed the same and therefore, the complainant sought refund of the amount paid to the respondent and the complainant is entitled for return of the amount with interest, compensation and cost.

(b) The learned counsel for the respondent contended that the complainant booked the apartment with the respondent only with the knowledge of the attachment of the property and the respondent resolved

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the ED issue prior to 15.02.2019 and informed the complainant about the same and the complainant was not interested to proceed with the sale process and as per Clause 14 of the sale agreement, the respondent is entitled to charge 10% of the total cost of the flat and pay the balance after deduction to the complainant.

(c) The learned counsel further submitted that as per Section 74 of the Indian Contract Act, when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled to receive from the party who has broken the contract and also relied the decision of the National Consumer Disputes Redressal commission, New Delhi in M/s. Sahara India Commercial Corporation Ltd., and Amr vs Madhu Babu [2011 SCC Online NCDRC 113].

(d) It is admitted by the respondent that all the construction work of the project was stopped subsequent to the filing of FIR by the CBI and the attachment of the property by the Enforcement Directorate in January 2018 and only after extensive legal battle, the attachment was lifted by order of the Tribunal only on 14.02.2019. The complainant booked the flat on 12.11.2018, and the agreements for sale and construction were entered between the complainant and the respondent on 14.12.2018.

(e) Under clause 3 of Ex.A3, the agreement of sale entered between the complainant and the respondent, it is specifically mentioned that the property agreed to be conveyed and transferred by the promoter to the allottee is free from all encumbrance and defects in title. Under clause 2 of

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the same document, it is mentioned as the promoter represented that there was an existing charge created over the property with VISTRA ITCL for availing project finance. However, there is failure to mention the charge created by order of attachment by the Enforcement Directorate.

(f) If the complainant was already well informed by the respondent about the order of attachment made by the Enforcement Directorate at the time of booking of the flat and was served with copies of title deeds and encumbrance certificate in which the details of attachment were clearly enumerated, nothing prevented the respondent to mention the same in the agreement. Therefore, it clearly proves that the respondent suppressed the fact of attachment of the property by the Enforcement Directorate to the complainant.

(g) It is the case of the respondent that they promised to resolve the dispute before 15.02.2019 and they cleared the dispute as promised, but the complainant had wantonly cancelled the booking on 02.02.2019 for the purpose of the case. Admittedly, by order of the Tribunal for PMLA the order of attachment of Enforcement Directorate was lifted only on 14.02.2019. The complainant cancelled the booking on 02.02.2019 on an apprehension that the issue would not be resolved soon. The specific plea of the complainant that on 02.02.2019, she submitted the cancellation form provided by the respondent specifying that the cancellation was due to "ED Issue" and the same was confirmed by the respondent by sending a copy of a signed cancellation deed to her on 03.02.2019 is not at all

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disputed by the respondent. Therefore, no malafide intension can be attributed to the complainant on the issue of cancellation.

(h) RERA Act is a special enactment. The very object of the RERA Act is to ensure sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers and also to ensure greater accountability towards consumers. Under Sections 12 and 19(1) of the RERA Act, the respondent is under obligation to provide correct information to the consumers and in case of incorrect and false statement, the complainant is entitled to withdraw from the project and is entitled for return of entire investment along with interest and compensation. Therefore, Section 74 of the Contract Act and decision of the National Consumer Disputes Redressal Commission relied by the learned counsel of the respondent are not applicable to the facts of the case.

(i) In the above circumstances, it is held that the complainant is entitled for refund of the entire sale consideration paid to the respondent together with interest, compensation and costs. Thus, the point is answered accordingly.

**8. Answer for Point No. (ii)**

(a) It is not in dispute that the complainant paid a sum of Rs.10,62,480/- in total towards the purchase of the flat to the respondent. Therefore, the complainant is entitled for refund of the said amount 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

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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% p.a for the entire amount paid from the date of respective payments till repayment by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, a sum of Rs.50,000/- towards compensation for mental agony and inconvenience and a sum of Rs.25,000/- towards legal expenses is fixed. The complainant is entitled for 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 litigation 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.
2. The charge of the amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order.
3. On repayment of the claim as per this order, the complainant shall execute the cancellation of the construction agreement and the 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--- Amrita Chaudhary

RW-1--- A. Rangappan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Payment receipts
Ex.A2	14.12.2018	Construction agreement
Ex.A3	14.12.2018	Agreement for sale
Ex.A4	02.02.2019	Cancellation request form
Ex.A5	---	E-mail communications
Ex.A6	04.10.2019	Legal notice to the respondent
Ex.A7	16.10.2019	Interim reply by respondent
Ex.A8	07.12.2019	Reply legal notice

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	14.12.2018	Construction agreement
Ex.B2	14.12.2018	Agreement for sale
Ex.B3	28.12.2016	FIR filed by the CBI
Ex.B4	13.02.2018	Provisional attachment order
Ex.B5	14.02.2019	Order copy of the PMLA Tribunal
Ex.B6	---	CBI final report

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(Sd): 13.07.2021  
**G.SARAVANAN,**  
**ADJUDICATING OFFICER,**  
**TNRERA, CHENNAI.**

*13.7.2021*  
**LAW OFFICER**  
**TN REAL ESTATE REGULATORY AUTHORITY**