

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 78 of 2020**

V. AlavandharComplainant

Vs

M/s. Manju Foundations Pvt Ltd.,
Rep. by S. ChellakannanRespondent

Complainant : Rep. by. Ms. Ferosha Shiffon Ansari, Advocate.
Respondent : Remained absent

Heard on : 22.12.2020
Delivered on : 31.12.2020

ORDER

The above complaint by the complainant claiming the refund of the amounts paid to the respondent towards the purchase and construction of the booked flat with interest, compensation and costs is filed u/s 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) The complainant booked an apartment with the respondent in their project namely " SWARNADHARA GRAND CITY- PHASE-I" at Melakondaiyur Village, Thiruvallur Taluk, Thiruvallur District. The total sale consideration of the flat is Rs.10, 84,200/-.

(b) On 29.07.2016, the complainant and the respondent entered into a construction agreement. Under the agreement, the respondent undertook to complete the construction and handover possession of the apartment within a period of 12 months from the date of the construction agreement. On 29.07.2016, the sale deed was executed for the UDS land in favor of the

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complainant. The flat was not handed over as agreed by the respondent. Out of the total sale consideration, the complainant has paid Rs.8,50,000/- to the respondent. As per section 18 of the RERA Act, the complainant is entitled for refund of the amount with interest, compensation and costs.

3. In spite of service of notice, the respondent remained absent.

4. In evidence to prove his claim, the complainant filed proof affidavit with documents.

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 with interest, compensation on the ground of failure on the part of the respondent to complete the construction and handover possession as per the terms and conditions of the agreement?
- ii. Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The learned counsel for the complainant submitted that the complainant booked apartment in the project of the respondent and entered into an agreement for construction of the flat on 29.07.2016 with the respondent and the respondent undertook to complete the construction work within a period of 12 months from the date of the agreement and out of the sale consideration of Rs.10,84,200/-, the complainant paid a sum of Rs. 8,50,000/- to the respondent and the respondent failed to handover possession of the constructed flat within the

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period promised by them and the complainant has been put to irreparable loss and hardship and is entitled for all the reliefs.

(b) The complainant filed the proof affidavit and examined him as CW1. Ex.A2 is the construction agreement dated 29.07.2016 between the complainant and the respondent. As per the clause 6, the respondent undertook to complete the construction of the flat within a period of 12 months from the date of signing the construction agreement. The time limit expires by June 2017. Ex.A1 series are the payments receipts issued by the respondent for receipt of a total sum of Rs.8, 50,000/- .

(c) Through documents and by proof affidavit of the complainant, it is proved that the respondent failed to complete the construction of the booked flat and give possession of the flat as agreed and undertaken by them. Therefore, it is held that the complainant is entitled for return of the amount with interest, compensation and cost. Thus, the point is answered accordingly.

7. Answer for Point No. (ii)

(a) In view of the answer for Point No.(i), the complainant is entitled for refund of the amount paid by him i.e., a sum of Rs.8,50,000/- with interest, compensation and cost from the respondent.

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 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% per annum for the amounts paid from the date of respective payment till repayment by the respondent.

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(c) Considering the facts and circumstances of the case, a sum of Rs.50,000/- towards compensation for mental agony, loss and hardship caused to the complainant and Rs.25,000/- 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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31/12/2020

List of witness

CW-1 --- V. Alavandhar

List of documents filed by the Complainant

Ex.Nos	Date	Documents Name
Ex.A1	-----	Payment receipts
Ex.A2	29.07.2016	construction agreement
Ex.A3	29.07.2016	Sale deed
Ex.A4	29.07.2016	Registration receipt
Ex.A5	-----	E-mail communication

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