

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos.87, 88 and 90 of 2020**

1. Grace Ranjitham
2. Irene James
3. Srividya Amudhan

..... Complainants

Vs.

M/s. Marg Properties Limited
Rep by its MD, G.R.K. Reddy.
(Regn. No.TN/01/Building/0055/2018)

..... Respondent

Complainants : Rep. by Mr. J. Pachiyappan, Advocate
Respondent : Rep. by Dr.(Mrs.) S. Padma, Advocate

**Heard on : 19.08.2021
Delivered on : 07.09.2021**

ORDER

The complaints filed by the above complainants seeking refund of the entire amount paid to the respondent towards purchase and construction of booked flats 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. Since all the complaints are relating to same project of the respondent and same points arise for determination, the complaints are heard together and disposed of by a common order.

3. **Averments of the complainants, in brief, as follows:**

(a) The complainants booked flats with the respondent in their project, namely, "**Brindavan**", Pondur Village, Sriperumbudur Taluk, Kancheepuram District and paid advance and further amounts as agreed by them.

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(b) The details of the flats allotted to the complainants, the agreed price and the amount paid by them to the respondent and the due dates for delivery of flats are as follows:-

Complainants Name	CCP Nos.	Allotted Flat Nos.	Price Agreed Rs.	Amount Paid Rs.	Due Date for delivery of the Flat
(1)	(2)	(3)	(4)	(5)	(6)
Grace Ranjitham	87/2020	F-5011	24,68,329 /-	12,30,031/-	September 2015
Irene James	88/2020	A-508	27,05,520/-	18,87,330/-	December 2015
Srividya Amudhan	90/2020	B-206	23,63,898/-	14,76,592/-	June 2013

(c) The dates of delivery of the flats were fixed as above, with a grace period of four months for complainants 1 and 2. Till date, the flats have not been completed in construction and handed over to the complainants. The entire project lays abandoned and there is no development. The construction was not completed and the respondent has not handed over the flats to the complainants as promised by them.

(d) As per the provisions of the RERA Act, the respondent is liable to return the amounts with interest, compensation and cost to the complainants. Hence, the complainants filed the complaints withdrawing from the project and seeking full refund of the entire amounts paid with interest, compensation and other reliefs.

4. **Counter averments of the respondent in all the cases , in brief, as follows:**

(a) Except admitted, the respondent denies all the allegations. The complaints are liable to be dismissed as devoid of merits. The complainants

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have not paid payments stage wise as demanded by the respondent and they cannot seek interest and compensation as per TNRERA Rules. The complainants booked flats and entered into a construction agreements with the respondent. As per the terms of the agreement, the respondent is liable to hand over the possession of the apartments only after the receipt of all the amounts due under the agreement.

(b) The respondent submit that customers like the complainants should pay their respective dues on time to the respondent for developing the entire project, as well as the flats, failing which this respondent is put to heavy loss and it cannot be compensated in any means. The complainants never requested the respondent for cancellation of the project. The claim of the complainants is barred by limitation and is liable to be dismissed. There is no cause of action for the complaint. The complainants suppressed the material facts and approached this forum with unclean hands. The complainants never made payments on time and are not eligible to get interest. The respondent prays for dismissal of all the complaints.

5. An attempt to settle the matter amicably has failed.
6. Both the parties have filed their respective evidence on affidavit with documents.
7. On the basis of the rival contentions of the parties, the following points arise for determination:
 - i. Whether the complainants are entitled to get back the amounts paid to the respondent with interest and

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compensation on the ground of failure on the part of the respondent to give possession of the apartment booked by them in accordance with the date and terms of agreements for sale and construction?

ii. What are the reliefs, the complainants are entitled for?

8. Answer for Point No.(i)

(a) The learned counsel for the complainants submitted that the complainants in all the cases are the flat purchasers in the project of the respondent and paid the part of the sale consideration and the respondent undertook to complete the construction and handover possession of the apartments within the time specified under the construction agreements and the respondent also executed sale deed for the UDS land in favor of the complainants in CCP Nos.87 and 88 of 2020 and the respondent kept extending the time for completion of the construction on one ground or another and there is no development or progress and therefore, the complainants decided not to continue the purchase of the flats in the project and the complainants are entitled for all the reliefs.

(b) The learned counsel for the respondent contended that the complainants entered into an agreement for construction with the respondent and paid stage dues in piecemeal on various dates and they agreed to take over the finished flats as per the terms of the agreement and the respondent also registered the UDS land in the name of the complainants and the complainants paid the dues belatedly and not in time and the respondent was not able to complete the construction of the flats

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within the time due to several reasons including force majeure conditions and therefore, the complainants are not entitled for any reliefs.

(c) Section 18 of RERA Act gives a right to flat purchasers 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. In CCP.No.87/2020, as per Ex.A2, the construction agreement dated 30.09.2013, the respondent undertook to complete the construction and handover possession of the flat by September 2015 with a grace period of 4 months. In CCP.No.88/2020, as per Ex.A2, the construction agreement dated 16.06.2014, the respondent undertook to complete the construction and handover possession of the flat by December 2015 with a grace period of 4 months. In CCP.No.90/2020, as per Ex.A2, vide e-mail dated 29.08.2011 the respondent assured to deliver possession of the constructed flat by June 2013. As per the terms of the above agreements and the promise and assurance to the complainant in CCP No.90 of 2020, the due date for delivery of flats in all the cases was over long back. Admittedly, till date, the respondent has not completed the construction and not handed over the flats to the complainants.

(d) The learned counsel for the respondent contended that the claim is barred by limitation. Admittedly, the respondent registered the project in dispute with TNRERA as an ongoing project on the basis of declaration made by them under section-4 of the RERA Act. Since it is still an ongoing project, the question of limitation does not arise.

(e) The respondent is under legal obligation to complete the construction and deliver the flats within the time specified under the agreement. If the

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respondent fails or is unable to handover possession of the apartments within the time specified under the agreement, he is bound to return the amount with interest and compensation. Therefore, the complainants are entitled for refund of the amount paid towards purchase of the flats with interest and compensation. Thus, the point is answered accordingly.

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

(a) There is no dispute to the amounts paid by the complainants to the respondent. In view of the answer for Point No.(i), the complainants are entitled for refund of the amount of Rs.12,30,031/- in CCP No.87/2020, Rs.18,87,330/- in CCP No.88/2020 and Rs.14,76,592/- in CCP No.90/2020 respectively 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 complainants are entitled for the interest at the rate of 8.20% per annum which was currently the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum i.e., 10.20% p.a for the entire amount paid from the date of respective payment till repayment by the respondent. Apart from the above, each complainant is entitled for compensation of Rs.1,00,000/- towards mental agony and inconvenience and Rs.25,000/- towards legal expenses incurred by them. The complainants are entitled for reliefs as detailed below. Thus, the point is answered accordingly.

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In the result, the respondent is directed as follows:

1. The respondent shall pay the amounts at the interest rate, compensation and cost to the complainants as per the findings in answer for Point No.(ii), Para No.9 of this order within 30 days of issue of this order.
2. The charge of the aforesaid amount as encumbrance shall be on the flats booked by the complainants 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 complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 07.09.2021
G. SARAVANAN
ADJUDICATING OFFICER

CCP No.87/2020

List of Witnesses

CW1 -- Grace Ranjitham
RW1 -- K.S.Gajendra Babu

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	30.09.2013	Agreement for sale
Ex.A2	30.09.2013	Construction agreement
Ex.A3	20.12.2013	Payment request letter

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Ex.A4	03.03.2014	Sale deed
Ex.A5	25.09.2013	Payment receipts (Series)
Ex.A6	30.09.2016	Customer individual payment report
Ex.A7	28.11.2019	TNRERA order copy
Ex.A8	03.03.2014	Sale deed registration receipt
Ex.A9	03.03.2014	Sale deed stamp duty receipt

List of documents filed by the respondent

Ex.No	Date	Documents Name
Ex.B1	..	News paper article

CCP No.88/2020

List of Witnesses

CW1 -- Irene James
RW1 -- K.S.Gajendra Babu

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	10.04.2014	Agreement for sale
Ex.A2	10.04.2014	Construction agreement
Ex.A3	16.06.2014	Sale deed
Ex.A4	11.04.2014	Payment receipts (Series)
Ex.A5	31.08.2015	Customer individual payment report
Ex.A6	28.11.2019	TNRERA order copy
Ex.A7	16.06.2014	Sale deed registration receipt
Ex.A8	16.06.2014	Sale deed stamp duty receipt

List of documents filed by the respondent

Ex.No	Date	Documents Name
Ex.B1	..	News paper article

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CCP No.90/2020**List of Witnesses**

CW1 -- Srividhya Amudhan

RW1 -- K.S.Gajendra Babu

List of documents filed by the complainant

Ex.Nos	Date	Documents Name
Ex.A1	10.04.2014	Booking letter
Ex.A2	28.08.2011	E-mails from respondent
Ex.A3	18.02.2011	Payment receipts (Series)
Ex.A4	29.11.2012	Payment request letters
Ex.A5	10.12.2019	Customer individual payment report
Ex.A6	---	Bank pass book of complainant

List of documents filed by the respondent

Ex.No	Date	Documents Name
Ex.B1	..	News paper article

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7.9.2021

LAW OFFICER

T.M. REAL ESTATE REGULATORY AUTHORITY

Sd/- 07.09.2021
 G. SARAVANAN
 ADJUDICATING OFFICER
 TNRERA, CHENNAI