

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

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

CCP Nos. 82 and 98 of 2020

CCP No. 82 of 2020:

1. A. Jayakumar
2. J. Mangayarkarasi

... Complainants

Vs.

1. M/s. Pacifica (Chennai Project) Infrastructure
Co Pvt Ltd.,
Rep by its MD, Rakesh Israni.
2. M/s. Pacifica Builders Pvt Ltd.,
Rep by its MD, Rakesh Israni.

.... Respondents

CCP No. 98 of 2020:

1. R. Nirmala
2. K.N. Sony

... Complainants

Vs.

1. M/s. Pacifica (Chennai Project) Infrastructure
Co Pvt Ltd.,
Rep by its MD, Rakesh Israni.
2. M/s. Pacifica Builders Pvt Ltd.,
Rep by its MD, Rakesh Israni.

.... Respondents

Complainants : Rep. by. Ms. Sudha Ramalingam, Advocate.

Respondents : Rep. by Mr. Stephen C. Kumar, Advocate.

Heard on : 09.07.2021

Delivered on : 30.07.2021

ORDER

Both the above complaints by the respective complainants claiming refund of entire amount paid by them to the respondents towards purchase of flats booked by them with interest, compensation and costs are filed under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

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2. Since both the complaints are relating to same project of the respondents, both the complaints were heard together and disposed of by a common order.

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

(a) The complainants booked flats with the respondents in their project, namely, "**Pacifica Aurum Phase-2**", Pride Towers at Rajiv Gandhi Salai (OMR), Padur, and paid advance and further amounts as agreed by them.

(b) The details of the flats allotted to the complainants, the agreed price and the amount paid by them to the respondents 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)
1. A. Jayakumar 2. J.Mangayarkarasi	82/2020	Unit B-111 in 'B' Block	47,08,790/-	47,91,075.80/-	30.06.2015
1. R. Nirmala 2. K.N. Sony	98/2020	Unit D-806 in 'D' Block	44,38,720/-	45,31,459.62/-	30.06.2015

(c) The dates of delivery of the flats were fixed as above with a grace period of 6 months. The sale deeds for UDS were executed by the respondents. Till date, the flats have not been completed and handed over to the complainants.

(d) The complainants in CCP No. 82 of 2020 approached the Authority in C.P.No.142 of 2018 for registration of the project under the RERA Act. The Authority passed an order directing the respondents to register the project with TNRERA. The respondents preferred appeal before the Tribunal and subsequently withdrew the appeal and registered the project under TNRERA on 30.10.2019.

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(e) Due to the delay, the complainants were put to hardship and inconvenience. Hence, the complainants filed the complaints withdrawing from the project and seeking refund of the amount with interest, compensation and cost.

4. Counter averments of the respondents, in both the cases, in brief, as follows:-

(a) All the averments in the complaints are false. It is true that the complainants entered into sale and construction agreements for purchase of flats in the project of the respondents and paid amounts towards sale consideration. The respondents have not handed over possession to the complainants in time.

(b) The project construction was already completed before the Act came into force. But the podium was connected with main building. The project was registered with the Authority and the Authority granted validity to complete the project till 30.10.2021.

(c) Due to COVID-19, situation, the matter being gets delayed. Many home buyers in the project have been put into possession of their respective flats. The respondents made substantial investment in the project. Any direction for refund of the amount will suffer the project and will open the gate for litigations. The complainants should wait till the completion of the project period for possession of their flats. The interest claimed is exorbitant. The complaints are abuse of process of law. Hence, the complaints are liable to be dismissed.

5. An attempt to settle the matters amicably has failed.

6. In both the cases, the parties have filed their respective evidence on affidavit with documents.

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7. 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 with interest, compensation and cost on the ground of failure on the part of the respondents to give possession of the apartment booked in accordance with the date and terms of the agreement for construction?
- ii. What are the reliefs, the complainants are entitled to?

8. Answer for Point No.(i)

(a) The learned counsel for the complainants submitted that the complainants in CCP No. 82 of 2020 entered into an agreement for construction on 19.07.2013 and the complainants in CCP No. 98 of 2020 entered into an agreement for construction on 20.11.2014 with the respondents and the respondents undertook to complete the construction and to handover the flat to the complainants by 30.06.2015 with a grace period of 6 months which is also expired by 30.12.2015 and out of the total sale consideration, the complainants have paid almost the entire amount and not committed any default in payment and the respondents executed only the sale deed for UDS and not completed the construction and failed to handover flats and fulfill the obligations and the complainants are entitled for all the reliefs.

(b) The learned counsel for the respondents fairly conceded that in both the cases, the complainants and the respondents entered into a separate agreements for sale and construction of apartment and the complainants paid amounts towards sale consideration, but contended that due to

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inevitable circumstances the construction of the flats could not be completed in time for delivery of the same to the complainants as agreed under the terms of the agreement for construction and the complainants can claim compensation and interest only as per clause 6 of the construction agreement and rate of interest claimed by the complainants is exorbitant and they are not entitled for compensation as per their claims and the complaints are liable to be dismissed with cost.

(c) It is not in dispute that as per the construction agreement entered with the complainants in both the cases, the respondents undertook to complete the construction and to handover flats by 30.06.2015 with a grace period of 6 months and the time limit including the grace period was over by 30.12.2015. Section 18 of 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 fails or is unable to give possession of the flat on the date specified in the agreement.

(d) The learned counsel for the respondents relied clause 6 of the construction agreement in support of his contentions that compensation and rate of interest can be claimed only under the said clause. Clause 6 of the construction agreement provides for damages an amount of 1% of the amount received per month for such delay subject to maximum of 3% of the total amount received in cases of claim of delay compensation. The clause is incorporated in the agreement with a view of payment of meager compensation in cases of claims of compensation for the delay in delivery of constructed flats. The same cannot be relied by the respondents. The complainants parted their money to the respondents and the flats booked are not delivered by 30.12.2015. Therefore, the contentions of the learned

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counsel of the respondents are not sustainable. The complainants are entitled for compensation as per the provisions of the RERA Act.

(e) The respondents also stated that the matter was delayed due to Covid-19 situation and all the pending works are carried out by the respondents to handover possession to the buyers. In this regard, it is relevant to note that in Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors., the Hon'ble Supreme Court is held that the appellant-builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the respondent-purchaser within the time stipulated in the agreement, or within a reasonable time thereafter and the respondent-flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired.

(f) In the above circumstances, it is held that the complainants in both the cases are entitled for refund of the entire sale consideration paid to the respondents together with interest, compensation and costs. Thus, the point is answered accordingly.

9. Answer for Point No.(ii):-

(a) In view of the answer for point No.(i), the complainants are entitled for the refund of the amounts paid and other reliefs as discussed below.

(b) CCP No.82/2020:-

(i) The complainant paid in total a sum of Rs.47,91,075.80/- to the respondents. The respondents are liable to return the amount to the complainants. Therefore, the complainants are entitled for refund of the amount of Rs.47,91,075.80/- from the respondents with interest.

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(ii) 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 was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 10.15% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondents.

(iii) Considering the circumstances of the case, a sum of Rs.2,00,000/- is fixed towards mental agony and a sum of Rs.25,000 is fixed towards litigation expenses. The claim of notional rental expenses without any documents is rejected. Therefore, the complainants are entitled for the relief as detailed above.

(c) CCP No.98/2020:

(i) The complainants paid in total a sum of Rs.45,31,459.62/- to the respondents. The respondents are liable to return the amount to the complainants. Therefore, the complainants are entitled for refund of the amount of Rs.45,31,459.62/- from the respondents with interest.

(ii) 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 was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 10.15% per annum for the amounts payable under the order from the date of respective payments till repayment by the respondents.

(iii) Considering the circumstances of the case, a sum of Rs.2,00,000/- is fixed towards mental agony and a sum of Rs.25,000 is fixed towards

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litigation expenses. So far as the claim of rental expenses, the complainants produced rental agreements and proof of online payment of rents. Hence the complainants are entitled for compensation of monetary loss under rental expenses to a sum of Rs.6,12,000/- Therefore, the complainants are entitled for the relief as detailed above. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:-

1. The respondents shall pay the amounts at the interest rate, compensation and litigation cost 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 amount as encumbrance shall be on the flats booked by the complainants till repayment of the claim as per this order.
3. On repayment of the claim as per this order, the complainants shall execute the cancellation of the construction agreement and the sale deed, as the case may be, at the expense of the respondents.

**G. SARAVANAN
ADJUDICATING OFFICER**

CCP.No. 82/2020

List of witnessess

CW-1 --- A. Jayakumar

RW-1 --- S. Vijayaraghavan

List of documents filed by the complainants

Ex.Nos	Date	Documents Name
Ex.A1	19.07.2013	Construction agreement
Ex.A2	12.12.2013	Sale Deed
Ex.A3	---	Payment statement issued by respondents

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Ex.A4	22.11.2019	Certificate of interest on bank loan
Ex.A5	11.10.2017	Legal notice

List of documents filed by the respondents

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2020	Board resolution copy
Ex.B2	30.10.2019	Project registration certificate by TNRERA

CCP.No. 98/2020

List of witnesses

CW-1 --- K.N. Sony

RW-1 --- S. Vijayaraghavan

List of documents filed by the complainants

Ex.Nos	Date	Documents Name
Ex.A1	20.11.2014	Construction agreement
Ex.A2	20.11.2014	Sale Deed
Ex.A3	-----	Payment statement and receipts by respondents
Ex.A4	10.05.2019	Rental agreement
Ex.A5	----	Rental receipts

List of documents filed by the respondents

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2020	Board resolution copy
Ex.B2	30.10.2019	Project registration certificate by TNRERA

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 LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY

sd/- 30.07.2021
 G. SARAVANAN
 ADJUDICATING OFFICER
 TNRERA, CHENNAI