

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.165 of 2021**

R. Arun Prasad

..... Complainant

Vs.

M/s. Mahindra Residential Developers Ltd,
Rep. by its authorised signatory, A.M.Nandagopal
(TN/01/Building/0062/2017)

..... Respondent

Complainant : Rep. by Mr. N.S.Sivakumar, Advocate.

Respondent : Remained absent.

Heard on : 12.11.2021

Delivered on : 30.11.2021

ORDER

The complaint by the above complainant seeking refund of amount paid to the respondent towards purchase of an apartment with interest and cost 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 24.05.2017, the complainant booked a flat in the project of the respondent, namely, 'AQUALILY' at Paranur Village, Mahindra World City, Chengalpattu Taluk, Kancheepuram District on payment of booking advance of Rs.7,39,028/-.

(b) On 12.06.2017, the complainant expressed his inability to purchase the unit due to the serious condition of his brother-in-law who has been undergoing treatment and made a request for refund of the amount. On 20.06.2017, the respondent replied that the cancellation of the booking will attract forfeiture of 12% of the sale consideration of the unit and tax applicable. Thereafter, the complainant approached several officers of the respondent company, but of

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no use. Subsequently, the complainant directly approached the MD of the company through his e-mail.

(c) The complainant received a letter dated 08.08.2018 from the respondent that the entire booking advance amount has been forfeited, apart from service tax and GST. The respondent misappropriated the entire amount under the name of forfeiture clause which will not attract to the case as there is no agreement entered between the complainant and the respondent. Hence the complainant is entitled for all the reliefs.

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

4. On the side of the complainant, proof affidavit was filed and documents were marked.

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

i. Whether the complainant is entitled to get back the booking advance paid to the respondent towards purchase of flat with interest and compensation?

ii. What are the reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that on 24.05.2017, the complainant booked a flat on payment of booking advance of Rs.7,39,028/- in the project of the respondent but could not continue with the purchase and requested the respondent for refund of the amount and the respondent forfeited the entire amount illegally and there is violation of section13 of the Act and the complainant is entitled for the reliefs .

(b) Ex.A2 is the payment receipt for payment of booking advance of Rs.7,39,028/-to the respondent. Ex.A3 is the statement of accounts. Ex-A4,

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series of e-mail communication reveals that the complainant expressed his inability to purchase the unit due to the serious condition of his brother-in-law. Ex-A5 is the intimation letter for cancellation of booking by the respondent. Ex-A6 is the legal notice of the complainant dated 23.09.2019. Ex-A7 are the series of reply legal notices by the respondent. Ex-A8 is the lease deed.

(c) As per section 13 of the RERA Act, no deposit or advance can be taken by a promoter without first entering into an agreement of sale. The respondent has not entered into any agreement of sale or construction with the complainant prior to the receipt of booking advance amount. It is a case of violation of section-13 of the RERA Act.

(d) In the above circumstances, it is held that the complainant is entitled for refund of the amount paid to the respondent together with interest. Thus, the point is answered accordingly.

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

(a) The complainant paid a sum of Rs.7,39,028/- towards booking advance of flat to the respondent. Therefore, the complainant is entitled for refund of the said amount with interest.

(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 complainants are entitled for the interest at the rate of 7.30% 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., 9.30% per annum for the amounts paid from the dates 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/- as compensation towards mental agony and a sum of

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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 complainant the amounts at the interest rate, 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 as encumbrance shall be on the flat booked by the complainant till the repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in this order to the Sub Registrar concerned.

Sd/- 30.11.2021

G. SARAVANAN

ADJUDICATING OFFICER

LIST OF WITNESS

CW-1--- R.Arun Prasad

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	24.05.2017	Application form
Ex.A2	09.06.2017	Payment receipt
Ex.A3	...	Statement of accounts (series)
Ex.A4	...	E-mail communication (series)
Ex.A5	04.05.2018	Cancellation letter
Ex.A6	23.09.2019	Legal notice by complainant
Ex.A7	...	Reply notice by respondent (series)
Ex.A8	15.02.2019	Lease deed

Sd/- 30.11.2021

G. SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI.

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LAW OFFICER

TN REAL ESTATE REGULATORY AUTHORITY