

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 176 of 2021**

T.Senthilnathan Vs .... Complainant

M/s. Serene Senior Living Private Ltd.  
Rep. by its MD, Gireesh Kumar Bhandari .... Respondent

Complainant : Rep.by Mrs R.Chitra, Advocate.  
Respondent : Rep.by Mr.S.Senthil, Advocate.

Heard on : 27.05.2022  
Delivered on : 06.06.2022

**ORDER**

The complaint by the above complainant claiming compensation for the delay in handing over of the flat booked by him with the respondent 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) The complainant booked an apartment with the respondent in their project namely "Serene Rose" at Kadampadi, Sulur Village, Coimbatore District and paid booking advance amount and further amounts. The total sale consideration of the flat is Rs.47,00,000/-, which includes Rs.3,00,000/- towards refundable deposit. The sale deed for the UDS land was registered on 09.03.2015 in favour of the complainant.

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(b) On 09.03.2015, a construction agreement was executed between the complainant and the respondent. The respondent undertook to handover possession of the flat by 31.03.2016 with a grace period of 3 months.

(c) The respondent completed the construction and delivered the flat to the complainant during the first week of April 2018, after an inordinate delay. The Residents' Welfare Association of the flats filed a case before the TNRERA Authority in C.No.417 of 2019 and the Authority passed order dated 09.12.2020 issuing various directions to the respondent.

(d) Subsequently, the respondent settled compensation to many flat purchasers of the project leaving the complainant. The respondent adopted unfair trade practice. The complainant is entitled for compensation and other reliefs.

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

(a) All the averments, except admitted specifically, are denied as false and frivolous. On being fully satisfied with the respondent's project, the complainant booked the flat in the project. The complainant failed to make timely payments as per the payment schedule and the payments were made with inordinate delay.

(b) As per the construction agreement dated 09.03.2015 entered between the complainant and the respondent, the constructed flat was to be handed over by 31.03.2016. Under the terms of the agreement, it was made clear that if there was any delay in payment, then the completion and handing over of the flat will be delayed accordingly. The complainant is not entitled to claim interest or compensation from the respondent. The project got delayed for reasons beyond the reasonable control of the respondent and the same can

be attributed to various bonafide reasons such as, implementation of GST, demonetization, truckers strike, shortage of input materials and shortage of sand and skilled labourers, for which no claim can be made by the complainant.

(c) Against the case filed by the Residents Welfare Association, the respondent challenged the order of the TNRERA before the Appellate Tribunal, wherein all the appeals were dismissed against which the respondent preferred appeal before the Hon'ble High Court and also obtained interim stay and the CMSA is still pending. The complainant suppressed several facts and approached this Forum. Therefore, the complaint is liable to be dismissed.

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 the rival contentions of the parties, the following points arise for determination:-

- i. Whether the complainant is entitled for the delay compensation, and compensation for mental agony and litigation cost from the respondent?
- 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 the complainant booked the flat with the respondent on payment of booking advance and subsequently made payments as and when demanded by the respondent and the respondent promised that the flat will be completed by 31.03.2016,

with a grace period of 3 months and there was delay in the progress of the construction of the flats and the construction activity was completely stopped during October 2015 and subsequently resumed only during December 2017 and the respondent unilaterally revised the date for completion and handing over the constructed flat and completed and delivered the flat only in March 2018 and the complainant was put to hardship and mental agony and therefore the complainant is entitled for all the reliefs.

(b) The learned counsel for the respondent filed written notes of arguments and also contended that as per the payment schedule in the offer letter dated 23.06.2014, the complainant was to make the payment, but the complainant failed to make payment as per the payment schedule and the payments were made with inordinate delay. Even under the terms of the construction agreement, it is made clear that in case the purchaser delays the payment, then the completion and handing over of the flat will also be delayed accordingly and the complainant contravened section 19(6) of the RERA Act and also Rule 19(2) of the TNRERA Rules which makes it clear that the allottee shall not have right of claiming any interest or compensation from the promoter, if he defaults in making timely payment as per the terms of the agreement and due to reasons beyond the control of the respondent, the completion of the project got delayed and as per the completion certificate, the complainant and the respondent mutually agreed that there is no claim pending as against the respondent and therefore the complainant is barred from seeking compensation before this Forum and the complaint is liable to be dismissed.

(c) On perusal of Ex.A2, the offer letter and Ex.A3, the construction agreement, it is seen that there is payment schedule in both the documents and the payment schedule is co-related with the different stages of construction and as soon as the particular stage is completed, the stage-wise payment is to be made by the complainant. Admittedly, the respondent has not filed any documents, such as, intimation of the completion of particular stage with demand notice for stage-wise payment issued to the complainant or any other allottees. It is not in dispute that under clause-12 of the construction agreement, the respondent undertook to complete the construction and handover the flat to the purchaser on 31.03.2016 and the construction of the flat was completed only in March 2018 and thereafter the flat was handed over to the complainant in the first week of April 2018. It is clear that the delayed payment was only due to the delay in construction and completion of different stages of the flats in the project. Therefore, the respondent cannot put the entire blame on the flat purchaser and take advantage of the delay in payment as per the payment schedule.

(d) The learned counsel for the respondent relied on clause 15 of the construction agreement and also Section 19(6) of the RERA Act and Rule 19(2) of the TNRERA Rules to contend that the complainant is not entitled for any compensation. Since the respondent failed to complete the stage-wise construction as per the terms of the construction agreement and the undertaking by him, section 19(6) has no application to the facts of the case. Since section-18 gives right to an allottee to claim compensation, the respondent also cannot rely on the terms of the agreement. So far as Rule 19(2) is concerned, the proviso of Rule 19(2) is quoted by the learned counsel

for the respondent to contend that the allottee has no right to claim any interest or compensation from the promoter. The proviso is to be read as part of Rule 19(2) which lays down the procedure in case of termination of the agreement as per the terms recorded. It is made clear that if the builder has not followed the time schedule, the allottee shall get full refund at any time. Therefore, the above rule has no application to the present case.

(e) The learned counsel for the respondent further contended that the project got delayed for reasons beyond the control of the respondent such as implementation of GST, demonetization, truckers strike, shortage of input materials and shortage of sand and skilled labourers. The reasons attributed for delay on the part of the promoter is vague and not specific. Therefore, the respondent cannot take advantage of vague reasons for the delay. Lastly, the counsel for the respondent also relied on Ex.B4, the completion and no due certificate issued by the respondent to contend that the complainant has agreed that he has no claim pending as against the respondent. As already pointed out, the right to claim compensation is a right available under the RERA Act. Under Ex.B4, the certificate, the complainant has never given up his right to claim compensation for the delay and hardship. Hence the above contention of the learned counsel is also not sustainable. Therefore, the complainant is entitled for compensation for delay and other reliefs. Thus the point is answered accordingly.

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

(a) In view of the answer for Point No.(i), the complainant is entitled for compensation for the delay from April 2016 to March 2018 (both inclusive). As per clause 15 of the construction agreement, the respondent undertook

to pay compensation at the rate of Rs.3,000/- per month for the delay period. Therefore, the complainant is entitled for compensation for the delay from April 2016 to March 2018 at the rate of Rs.3,000/- per month from the respondent.

b) Considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed towards mental agony and Rs. 25,000/- is fixed towards litigation expenses payable by the respondent.

(c) The complainant is entitled for reliefs as detailed above. Thus, the point is answered accordingly.

**In the result, the respondent is directed as follows:**

The respondent shall pay the complainant the amounts of compensation and cost as per the findings in Answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

Sd/- 06.06.2022  
G. SARAVANAN  
ADJUDICATING OFFICER

**List of witnesses**

CW-1--- T.Senthilnathan  
RW-1--- Girish Kumar Bhandari

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	06.06.2014	Booking form
Ex.A2	23.06.2014	Offer letter
Ex.A3	09.03.2015	Construction agreement
Ex.A4	09.03.2015	Sale Deed
Ex.A5(Series)	...	Payment receipts

Ex.A6	20.04.2017	Project update statement
Ex.A7	23.02.2020	E-mail from SRRWA
Ex.A8	04.01.2018	E-mail communication

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	09.03.2015	Construction agreement
Ex.B2	09.03.2015	Sale deed
Ex.B3	...	Ledger account
Ex.B4	...	Completion and no due certificate

Sd/- 06.06.2022  
**G. SARAVANAN**  
**ADJUDICATING OFFICER**  
**TNRERA, CHENNAI**

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