

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 234 of 2021**

Lt. Col. Prem Abilash Chandran

..... COMPLAINANT

**Vs.**

Army Welfare Housing Organisation (AWHO)

Rep. by its Managing Director Maj Gen Vikal Sahni

..... RESPONDENT

**(Regn.No.TN/11/Building/130/2021)**

Complainant : Rep. by Mr. K.R. Samrat, Advocate

Respondent : Rep. by M/s. A.A.V. Partners, Advocates

Heard on : 19.12.2022

Delivered on : 18.01.2023

**ORDER**

The above complaint by the complainant claiming compensation and other reliefs on various grounds including the delay in construction and delivery of row house from the respondent is filed under Section 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred as RERA Act).

**2. Averments of the complainant, in brief, as follows:**

(a). The complainant booked a row house with the respondent in their real estate project, namely, "Chinnavedampatti – Raman Vihar" at Coimbatore and paid the amounts towards sale consideration.

(b). The total sale consideration of the row house with carpet area measuring 1440 sq.ft. was fixed at Rs.43,60,000/- and the respondent promised to complete and handover the house by December 2014. The complainant availed finance facility for part of the amount from Army Group Insurance Fund and the balance amount was paid by him. The project work failed to take off and progress as per the schedule of the respondent. The respondent did not adhere to the timelines and halted the construction in the month of October 2013 and unilaterally altered the payment schedule and also increased the cost of the villa to Rs.48,17,067/-. The complainant paid a total sum of Rs.39,08,315/- till November 2017. The respondent further demanded interest on delayed payment at Rs.9,02,633/-.

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(c). The complainant paid a further sum of Rs.5,57,404/-in July 2018 and thus paid a total sum of Rs.44,65,719/- and the balance was only Rs.3,51,348/-. The respondent was exerting pressure on the complainant to take possession of the unit which was not completed in all respects and also to charge interest as caretaking charges. The complainant paid a sum of Rs.3,99,872/- on 05.10.2018 and was forced to pay a sum of Rs.9,02,633/- under the head of interest on delayed payment. Till date, completion certificate had not been obtained for the project. The respondent is attempting to unilaterally alter the UDS of land to be allotted to the complainant and till date the respondent had not executed any sale deed for the UDS land. Apart from the same, the respondent had also collected Rs.20,000/- towards corpus fund for association and another sum of Rs.36,648/- as one year maintenance charges from the complainant.

(d). The respondent instead of constructing and delivering a row house measuring 1440 sq.ft. had only delivered the house with carpet area of 112.85 sq.mt. which translates to 1214.266 sq.ft. and is lesser of 225.74 sq.ft. The respondent is liable to pay compensation for the shortage. Hence the complainant prays for the compensation for the delay in handing over possession and other reliefs.

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

(a). The respondent denies all the allegations in the complaint, except specifically admitted, as false. The complainant applied for a row house in the project through his application dated 29.05.2015. The tentative cost of row villa was Rs.43,60,000/- excluding the parking and any other additional expenses. The complainant was given the choice for flooring and car parking. On 25.06.2018, the respondent issued handing/taking over instructions along with the final statement of account to the complainant and also issued clearance letter for taking over of the row house.

(b). The respondent is a non-profit and non-loss society, registered under the Indian Societies Registration Act. The project was registered with the TNRERA as a completed project. The complainant is also a member of the society and allottee of the row house in the project. The allottees were given a withdrawal option on the delay in the project. The respondent society

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took all out efforts to complete the project in the best interest of the allottees. However, the first building contract ended in cancellation and the second contract was concluded and the project was completed in May 2018 in all respects.

(c). Due to the escalation in costs, the tentative cost of the house was fixed. The total amount paid by the complainant was Rs.57,70,696/- which included Society and Advance Maintenance Fund of Rs.56,648/- which is refundable to RWA and therefore not part of the cost of the house. Interest on delayed payments of Rs.9,07,180/- was charged from the complainants. Subsequently, it was decided to refund the interest on delayed payment after receipt of bank details of the complainant. Therefore, the cost of the unit is Rs.48,06,868/- deducting the interest to be refunded. The respondent issued clearance letter on 31.07.2018 to the complainant for handing over the house and also intimated that care taking charges will be recovered if possession was not taken before 01.01.2019. The respondent also decided that the said charges shall not be levied until the commencement of registration of the property. The respondent has undertaken maintenance and running of services of the project from 01.07.2018 till 31.03.2021 from the maintenance charge of one year collected prior from the allottees and to extend beyond that from the corpus fund. The balance fund has been transferred to RWA. Therefore the demand for compensation by the complainant is unfounded and frivolous.

(d). During May 2018, the respondent began handing over the properties. The draft sale deed was uploaded for registration of the dwelling units on the website of the respondent. The delay in registration of the dwelling unit was due to the hindrance caused by the few allottees. The complainant can get dwelling units registered through the project office at the site. The complainant has been handed over the row house with correct building area which is 1440 sq.ft. The super area have been given in the booking letter and the same is correct. The carpet area of the house as per the RERA definition is 1214.26 sq.ft. The complainant signed a declaration in the application form to abide by the master brochure. Payment of interest due to delay in the project owing to the reasons beyond the control of the respondent cannot be entertained by the respondent. The complainant has approached the Forum with uncleaned hands. The claims of the complainant are unjustified and

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cannot be entertained. Without prejudice to the above, the compensation sought is exorbitant and claimed without any basis. Hence the respondent prays for the dismissal of the complaint.

4. An attempt to settle the matters 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 compensation on the grounds of shortage in the carpet area of the residential unit and delay in handing over possession and delay in execution of sale deed for UDS and other reliefs?
  - ii. What are all 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 row house in the project of the respondent and the respondent agreed for delivery of the row house with carpet area measuring 1440 sq.ft. for which the sale consideration was fixed at Rs.43,60,000/-, but at the time of handing over of the unit, there was lesser carpet area and the respondent handed over the house with carpet area of 112.85 sq.mts. which is equivalent to 1214.26 sq.ft. and there was shortage of the carpet area in delivery of the residential unit to an extent of 225.74 sq.ft. and further, the respondent promised to handover delivery of the unit by December 2014, but handed over the residential house only on 21.01.2019 and apart from the same, there was delay in execution of the sale deed and the respondent is also liable to reimburse the amount charged towards facility management charges and corpus fund and other reliefs and the complainant is entitled for compensation on all the grounds raised by him.

(b). The counsel for the respondent contended that the respondent is a welfare society registered under the Indian Societies Act and is a "no profit and no loss" organisation and therefore no claim of compensation can be made against the respondent and there was no discrepancy in the area of the

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building and the respondent had made it clear that the building area is not equivalent to carpet area and the building area as promised was handed over and there was no discrepancy and the delay in handing over the delivery of the unit is concerned, the respondent undertook the project works and there was some problem with the first contractor and therefore the contract was terminated and the work was given to a second contractor and only a probable date of completion was given to the complainant and the payment schedule was revised and there was delayed payments on the part of the complainants and the sale deed draft was already made ready and the project was also registered with the TNRERA and the complainant is not entitled for any relief and therefore the respondent prays for the dismissal of the complaint.

(c). On the point of shortage of the constructed area of the row house is concerned, admittedly, Ex.A6, the technical brochure of the respondent contains the statement of areas regarding the construction of the units and for the row house, 'RH in approx. 240 sq.yds plot', the building area is mentioned as '1440 (including porch) sq.ft'. The counsel for the respondent contended that the definition of carpet area has undergone change under the RERA Act and carpet area of dwelling unit under RERA definition is 1214.26 sq.ft. and the respondent promised only building area of 1440 sq.ft. Nowhere in the statement of area under Ex.A6, the respondent specified that the carpet area of the row house is 1440 sq.ft. The super area for the dwelling unit has been mentioned as 1524 sq.ft. As per Section 2(k) of the RERA Act, 'carpet area' means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. In this regard, there is no written agreement between the parties. Therefore the contentions of the complainant that as per Ex.A7, the carpet area statement of the respondent, the dwelling unit is to have the carpet area of 112.85 sq.mts. which is equivalent to 1440 sq.ft. and therefore there was a shortage of carpet area of 225.74 sq.ft. is not acceptable. In the said circumstances, the complainant is not entitled for any compensation on the ground of the shortage in the carpet area of the row house allotted to him.

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(d). On the issue of delay in delivery of the possession of the row house to the complainant is concerned, according to the complainant, as per the booking letter, the promised date of delivery of the row house was by December 2014 and the delivery of the row house was made on 21.01.2019. The same was not disputed by the respondent. However, the counsel for respondent submitted that it was only probable date of completion of the row house and as the progress was delayed, the payment schedule was revised. Only on the assurance of the respondent on the probable date of completion of the row house, the purchasers, like complainant booked the row house and started making payments. The project was registered under the RERA Act with the TNRERA as an ongoing project at the time of the registration or at the time of commencement of the Act. Under the RERA Act, the flat purchasers are treated on par with the financial creditors. The respondent is clearly coming within the definition of 'promoter' under Section 2(zk)(iii) of the RERA Act. Eventhough, the respondent claims themselves as "no profit and no loss" society carrying on the project, no exemption under the RERA Act is given with regard to the application of the Act. Therefore, the complainant is entitled for compensation for the delay in delivery of the row house by the respondent.

(e). The complainant has claimed compensation for the delay in execution of sale deed for UDS land of the row house in his favour. As per proviso to section 18 of the RERA Act, an allottee is entitled for interest for every month of delay till the handing over possession of the dwelling unit towards compensation for the delay in delivery of the dwelling unit. Apart from the same, the claim of the complainant separately as compensation for the delay in execution of sale deed for UDS land is not maintainable. At the most, it could have said that the non-execution of the sale deed caused mental agony and the same can be taken into consideration while fixing the compensation for mental agony and inconvenience caused by the respondent. Therefore, the claim of compensation on the delay in execution of sale deed for UDS land is liable to be rejected.

(f). The complainant further sought direction to reimburse a sum of Rs.56,648/- paid as the facility management charges and corpus fund. Since the complainant has taken possession of the row house on completion,

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the amounts under the above heads are liable to be transferred to the association of the owners of the dwelling units for the purpose of facility management and other expenses. Therefore the claim is liable to be rejected.

(g). In support of the contention that the respondent is not liable to pay compensation for the delay in delivery of the constructed row house, the learned counsel for the respondent relied on the order of this Forum in CCP No.341 of 2019 dated 11.03.2021 wherein it was held that in view of clause in the brochure of the respondent laying down that if the construction of dwelling unit was delayed for any reasons, whatsoever no interest or compensation is payable to the allottee and therefore the claim of compensation was denied to the allottee. So far as the present case is concerned, as per clause 74 of the Ex.B2, master brochure, it is laid down as no compensation will be paid by AWHO to the allottee in case handing over of dwelling unit is delayed for the reasons beyond the control of AWHO. The clause does not place absolute restriction on the claim of compensation by the allottees.

(h). The learned counsel also relied on the order of the RERA, Punjab at Chandigarh in Order No. RERA/GCNo.0367/2021TR dated 16.06.2022, wherein it was held that the respondent being a welfare society tasked with the construction of dwelling units for army personnel and their widows on "no profit and no loss" basis has to be treated different from other promoter to carryout their business with profit at the motive and also another order of the RERA, Punjab at Chandigarh in Order No.RERA/GCNo.0464/2021 dated 16.06.2022, wherein it was held that the allottee is not entitled for compensation since he took over possession by categorically waiving of all his claims and except specification with the accounts position and cost of the unit and gave up any claim in regard to the property and further relied on the decision of a National Consumer Disputes Redressal Commission in Consumer Case No.221 of 2017 dated 16.06.2022 wherein it was held that none of the complainants raised objections relating to the delayed compensation at the time of taking possession and they cannot be allowed to raise objections in the respect after long time.

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(i). It is not the case of the respondent that the complainant has given any undertaking to waive any claim for compensation. The RERA Act is a special enactment giving rights the flat/house purchasers providing compensation for the delay in completion of construction and delivery of the constructed flats/houses to the flat/house purchasers. Therefore, the contention of the counsel for respondent is liable to be rejected as the decisions are not applicable to the present case.

(j). In the above circumstances, it is held that the complainant is entitled for compensation only for the delay in handing over possession of the dwelling unit to the complainant by the respondent. 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 only for the delay in handing over possession of the dwelling unit. Under Ex.A1, the booking letter, the respondent fixed the probable date of completion by December 2014 and started collecting sale consideration from the complainant. Admittedly, the row house was handed over to the complainant on 21.01.2019. As per proviso to section 18 of the RERA Act, the complainant is entitled for compensation by way of interest for the amount paid from January 2015 till the date of handing over i.e. 21.01.2019. However, the complainant has paid substantial part of sale consideration only from May, 2016. As per rule 18 of TNRERA Rules, the 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 7.30% per annum which was 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 payment till the delivery of possession of the constructed row house in the following manner, i.e. for the part of the amount paid prior to December, 2014, from January, 2015 till 20.01.2019 and for the rest of the amount; from the respective dates of payments till 20.01.2019.

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(b). The claim of compensation on the ground of delay in execution of sale deed and reimbursement of facility management charges and corpus fund are rejected.

(c). Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed as compensation towards mental agony and hardships and a sum of Rs.25,000/- is fixed as litigation expenses. The claims of compensation on other heads are rejected. The complainants are entitled for the reliefs as detailed above. Thus the point is answered accordingly.

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

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

Sd/- 18.01.2023  
G. SARAVANAN  
ADJUDICATING OFFICER

**CCP.NO. 234 of 2021**  
**LIST OF WITNESSES**

CW-1 --- Lr.Col.P.A. Chandran  
RW-1 --- Col. Muralidharan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.No	Date	Documents Name
Ex.A1	12.07.2012	Booking letter
Ex.A2	25.06.2018	Handing over instructions by Respondent
Ex.A3	21.01.2019	Handing Taking over Certificate
Ex.A4	06.08.2019	Intimation by Respondent regarding Lockdown of Central amenities
Ex.A5	05.07.2021	Online extract of payment particulars of complainant
Ex.A6	....	Technical Brochure of the Respondent
Ex.A7	....	Carpet area statement by Respondent
Ex.A8	....	Details for calculation of compensation

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.No	Date	Documents Name
Ex.B1	20.03.1978	Certificate of Registration of Societies
Ex.B2	....	Master Brochure
Ex.B3	06.04.2005	Demand Survey Advertisement
Ex.B4	....	Architects Drawing
Ex.B5	....	Technical Brochure
Ex.B6	May 2010	Application Form
Ex.B7	12.07.2012	Booking Letter
Ex.B8	23.04.2013	Revision of Payment Schedule
Ex.B9	25.07.2017	Option Letter
Ex.B10	25.06.2018	Handing Taking over Instructions and Statement of Accounts
Ex.B11	17.01.2019	Chartered Accountant Letter
Ex.B12	02.09.2020	Minutes of the Video Conference with allottees
Ex.B13	04.06.2015	Withdrawal Option Letter to all allottees
Ex.B14	24.12.2018	Undertaking given by the complainant

Sd/- 18.01.2023

G. SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI

