

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 268 of 2021**

Sub Maj/Hony Lt. Shunmugavelu.K

..... COMPLAINANT

Vs.

Army Welfare Housing Organisation (AWHO)
Rep. by its Managing Director

..... RESPONDENT

Complainant : Rep. by Mr.R.Ramasubramaniam Raja, Advocate
Respondent : Rep. by M/s. A.A.V. Partners, Advocates

Heard on : 06.02.2023
Delivered on : 27.02.2023

ORDER

The complaint by the above complainant claiming compensation for the delay and other reliefs from the respondent on various grounds including the delay in construction and delivery of apartment 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 a dwelling unit with the respondent and the respondent also allotted the deluxe apartment type dwelling unit,C3-104 in their project at AWHO Raman Vihar, Anna Nagar, Chinnavedampatti Post, Coimbatore District and the complainant paid the entire sale consideration.
- (b). The apartment allotted to the complainant, the agreed price,the amounts paid by them and due date for delivery of the constructed dwelling unit to the complainant are as follows:


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Name of the Allottee and Allotted Dwelling Unit No.	Price Agreed (Rs. in lakhs)	Car Parking Charges (Rs.)	Additional Cost charged due to Contract Failure (Rs.)	Total Amount Paid as per Statement of Accts. (Rs.)	Due Date for delivery of the Dwelling Unit
Sub Maj K Shunmugavelu (C3-104)	36,85,373	2,88,368	--	43,55,366	June 2015

The delivery of the project was postponed many times from June 2015 to March 2018 due to poor handling of construction works. The respondent has not conveyed the rights of the property by conveyance deeds to the complainant. The complainant paid 95% of the total cost by 2017 and the full and final payment by October 2018. The complainant was made to pay the property tax for the unit even though sale deed for the UDS was not conveyed by the respondent. The respondent constructed car parking shed in one of the areas meant for garden purpose and also resorted to separate a part of land by fencing. The respondent approached the revenue authorities of Coimbatore and obtained a separate patta.

(c).The residents of the dwelling units were left to look after themselves when the Project Director was absent in the station and the association of the allottees managed the apartment complex. The respondent collected Rs.20,000/- from the complainant and the other allottees towards corpus fund for the use of the registered association. The entire amount collected with interest was not handed over to the association. There was delay in handing over and delivery of the dwelling unit. The complainant is entitled for compensation for the delay in delivery of the dwelling unit and other reliefs.

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

(a). The respondent denies all the allegations and averments except admitted. The complaint is not maintainable on law or on facts. The respondent organization is a non-profit and non-loss society providing dwelling units to serving and retired members of the army and their families on a "no profit no loss" basis. There is no sale agreement or any other document between the respondent and the complainant for transfer the entire land to the present allottees, including the complainant, either separately or jointly was ever disclosed. Booking letter was issued to the complainant for taking possession of the dwelling unit after making all the payments. It is the right of the legal owners to get the land portion demarcated for the safety of the present residents and also to protect the land from encroachment.

(b). The complainant was issued booking letter dated 24.09.2014 with an estimated cost and excluding parking space at Rs.36,85,373/-. Due to unsatisfactory and untimely progress of work, the contract in place had to be cancelled and a fresh contractor was engaged to complete the work which resulted in increasing the cost. Upon completion of the project, the final cost of dwelling unit including parking was revised to Rs.42,80,493/- and was given benefit of Rs.22,209/- as rebate. A sum of Rs.52,664/- was paid by the complainant as maintenance fund refundable to residents welfare association and the same was not part of the cost of the unit. The effective payment made by the complainant towards the cost of the unit was Rs.42,12,470/-.

(c). The respondent informed to the complainant the reasons for delay and the probable date of completion which was accepted by the complainant without any protest. The registration of the project with the Authority through application is a matter of record. The matter pertaining to the UDSL is pending on the file of the TNRERA Authority vide C.No.226 of 2021. The

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complainant is bound to pay property tax for the building which is in his possession. The reasons for the delay were beyond the control of the respondent. The respondent took prompt action under the contract agreement to enter into arbitration proceedings against the contractor and contested the case leading to award in favor of the respondent. The respondent also filed an Execution Petition to realize the award. Any amount realized from the contractor shall be deposited in the bank account of the project and the surplus funds returned to the allottees in equitable manner. Therefore, the claim of compensation for the delay is not justified. The minor rectifications in the unit due to contractor's default or delay have been promptly rectified without any additional charge and cost. The complainant signed a declaration in the application form and he was to abide by the master brochure. It is made clear that 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 since there is absolutely no profits being made. The complainant is bound by the clauses in the application form, booking letter and master brochure. Therefore the complainant is not entitled for any reliefs and the complaint is liable to be dismissed.

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 from the respondent on the ground of delay in delivery of the constructed flat and other reliefs?

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

7. **Answer for point no.(i):**

(a). The learned counsel for the complainant filed a written notes of arguments submitting that the complainant was promised that the dwelling unit would be handed over in June 2015, but the apartment was handed over only on 24.09.2018 and there was a delay of 3 years and the complainant has absolute right to seek compensation for the delay under Section 18 of the RERA Act and the respondent is liable to pay the compensation and other reliefs and cannot rely on master brochure to wriggle out of liability and the handing over document was one sided and the complainant was compelled to sign it for handing over the apartment by the respondent and therefore the complainant is entitled for all the reliefs and also relied on the following decisions in support of his contentions:

i) Imperia Structures Ltd. Vs. M/s. Anit Patni and another – (2020) 10 SCC 783.

ii) Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP and Others – 2021 SCC Online SC 1044.

iii) Central Inland Water Transport Corporation Ltd. and another Vs. Brojo Nath Ganguly and another – (1986) 3 SCC 156.

iv) Airforce Naval Housing Board Vs. U.P. Real Estate Regulatory Authority and another and other cases of Honb'le Allahabad High Court.

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(b). However, the learned counsel for the respondent contended that the respondent is a no profit and no loss society registered under the law and is a welfare association and not a commercial builder and is providing housing at affordable cost to its members and the dwelling units are constructed in a self-financing basis and any surplus amounts in the project account is refunded to the allottees and therefore the financial model of the respondent is not permitting payment of compensation when the project is delayed due to reasons beyond the control of the respondent and as no surplus funds are available for this service and the complainant is not entitled for any relief. The learned counsel for the respondent also relied on the following various decisions in support of his contentions.

(i) Lt. Col. Prem Abilash Chandran Vs. Army Welfare Housing Organisation (AWHO) in CCP No.234 of 2021.

(ii) R. Venkataraman Vs. The Managing Director, Indian Railway Welfare Organisation in CCP No.341 of 2019.

(iii) Col. Ratneshwar Prasad Singh Vs. Army Welfare Housing Organisation before the RERA, Punjab at Chandigarh.

(iv) Consumer Case No.221 of 2017 with IA/2086/2022 (Permission to file joint complaint), IA/4184/2021 (Withdrawal) before the National Consumer Disputes Redressal Commission, New Delhi.

(vi) Major Sandeep Vinayak & Others Vs. Army Welfare Housing Organisation (AWHO) & Others in the Supreme Court of India Civil Appellate Jurisdiction – Civil Appeal No.8251 of 2022.

(vii) Raman Myer Vs. Army Welfare Housing Organisation (AWHO) before the RERA, Punjab at Chandigarh.

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(viii) Major Sandeep Vinayak & Others Vs. Army Welfare Housing Organisation (AWHO) & Others with Civil Appeal Diary No.30186 of 2022 in the Supreme Court of India Civil Appellate Jurisdiction.

(c). It is very much relevant to mention that in disputes between the ex-servicemen and the respondent, on the issue of claiming exemption under the RERA Act from any liability to pay compensation, this Forum, in CCP Nos.193 and 300 of 2021, by this Order dated 21.11.2022, held as follows:

' The RERA Act is a special enactment and beneficial piece of legislation. In the preamble of the Act, it is made clear that it is an Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers and also to establish an adjudicating mechanism for speedy dispute redressal. Section 3 of the Act makes it clear that all the ongoing projects from the date of commencement of the Act for which, completion certificate has not been issued are to register under the Act with the Authority. Under the RERA Act, there is no provision to exempt any real estate project of promoters on the ground of 'no profit no loss' basis. Therefore the exemption from RERA Act on any claim of compensation on the ground of delay in handing over and delivery of the dwelling units by the respondent is not at all acceptable '. The same applies to this case.

(d). It is not in dispute that the delivery of the dwelling unit was promised to be handed over in June 2015, but the unit was handed over by the respondent only on 24.09.2018. The respondent also contended that there was no progress in the construction work as per the schedule and it was almost

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stopped from April 2015 to February 2016, since the contractor was not making progress as per the schedule and the respondent had to make a fresh contractor engaged to complete the work which resulted in increase in cost. The complainant cannot be blamed for any delay due to the contractor appointed by the respondent. Further the respondent also relied on the application form of the complainant wherein he had undertaken to abide by the master brochure in which it was stated that no compensation will be paid by the respondent in case of handing over of the delivery of the dwelling unit is delayed for reasons beyond the control of the respondent. The respondent cannot escape from any from the liability to pay compensation under the RERA Act with vague reasons.

(e). On perusal of the master brochure, it is seen that under Clause No.74 on delay in handing over of the dwelling unit, it is mentioned that no compensation will be paid by the respondent to the allottees in case of handing over of the dwelling unit is delayed for reasons beyond the control of the respondent. Even though such one sided term in the master brochure is not binding on the complainant seeking reliefs under the RERA Act, there is no absolute bar in the master brochure against the right to claim the compensation by the allottees. The reasons for the delay which are found unacceptable can never be attributed as beyond the control of the respondent. Therefore, the terms and conditions in master brochure and the undertaking given by the allottees are totally unreasonable and not binding on the complainants. The decisions relied by the respondent counsel are not applicable to the facts of the case Considering all the above circumstances, it is held that the complainant is entitled for compensation and other reliefs. Thus, the point is answered accordingly.

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8. Answer for point No.(ii):

(a). The complaint has claimed compensation under different heads and other reliefs. The complainant claimed delay compensation and deficiency in service at 10% interest on the amounts paid and harassment compensation of Rs.5,000/- per month for the delay period on sale deed and also compensation towards loss of rent. Towards compensation, section 18 of the RERA Act provides that the promoter is liable to pay the allottee, interest on the amount paid for every month of delay till the handing over possession of the apartment. Therefore the complainant is not entitled for compensation on deficiency in service and harassment compensation and compensation for loss of rent. However, the complainant is entitled to claim compensation of mental agony and inconvenience.

(b). In the above circumstances, the complainant is entitled for compensation for the delay as provided under section 18 of the RERA Act. 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 the constructed apartment.

(c). Apart from the above compensation for the delay in handing over the dwelling unit, the complainant is entitled for a sum of Rs. 1,00,000/- towards mental agony and deficiency in service by the respondent and a sum of Rs.25,000/- towards litigation expenses.

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(d). So far as the claim of refund of the corpus fund for the use of registered society of allottees is concerned, the respondent shall transfer the corpus fund to the registered society failing which the complainant is entitled to proceed against the respondent before the Authority for the necessary reliefs. The complainant is entitled for the reliefs as stated above.

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.

G. SARAVANAN
ADJUDICATING OFFICER

CCP.NO. 268 of 2021

LIST OF WITNESSES

CW-1 --- K. Shunmugavelu

RW-1 --- Col. Muralidharan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	24.09.2014	Booking Letter
Ex.A2	25.01.2018	Allotment Letter
Ex.A3	12.07.2018	Letter for handing taking over instructions
Ex.A4	24.09.2018	Clearance Letter for handing over

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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	01.09.2010	Master Brochure
Ex.B3(Series)	06.04.2005	Demand Survey Advertisement
Ex.B4	Architects Drawing
Ex.B5	Technical Brochure
Ex.B6	03.07.2014	Application Form
Ex.B7	24.09.2014	Booking Letter
Ex.B8	27.09.2014	Revision Payment Schedule
Ex.B9	25.07.2017	Option Letter
Ex.B10	12.07.2018	Handing Taking over Instructions and Statement of Account
Ex.B11	24.09.2018	Clearance Letter
Ex.B12	17.01.2019	Chartered Accountant Letter
Ex.B13	23.08.2020	Minutes of Video Conference with allottees
Ex.B14	07.12.2021	Email by Respondent seeking Bank Account of Complainant
Ex.B15	04.06.2015	Withdrawal Option Letter issued to all allottees
Ex.B16	06.09.2018	Undertaking Affidavit

-Sd:27.02.2023

G. SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI

