

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 283 of 2021**

V.Narayanaswamy Complainant

Vs

1. M/s. Serene Senior Living Private Ltd.
Rep. by its Director.
2. M/s.Adinath Srinivasa Foundation LLP
Rep by its Designated Partner
(Project not registered) Respondents

Complainant : Rep.by Mr.Ralph V.Manohar, Advocate.
Respondents : Remained absent

Heard on : 29.03.2022
Delivered on : 19.04.2022

ORDER

The above complaint by the complainant claiming compensation for the delay in handing over possession of row house booked by him with the respondents 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 row house with the respondents in their project namely, "Serene Kshetra", in Nathapettai Village, Kancheepuram district and paid booking advance and further amounts. The total sale consideration of the row house is Rs.40,30,598/-.

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(b) On 02.09.2016, construction agreement was executed between the complainant and the second respondent. The second respondent undertook to handover possession of the row house by 31.12.2016, with a grace period of 3 months.

(c) The respondents completed the construction and handed over possession of the unit on 30.04.2018. As per the construction agreement, the compensation payable by the respondents for the delay in delivering possession of the unit to the complainant was fixed at Rs.4,500/- per month and the respondents made a part payment of Rs.27,000/- towards compensation for the delay in handing over possession of the unit. The respondents are still liable to pay the balance amount of compensation. The complainant is entitled for all the reliefs.

3. In spite of service of notice, the respondents remained absent.

4. On the side of the complainant, the complainant filed proof affidavit and marked Ex.A1 to Ex.A7 documents.

5. On the basis of the averments of the complainant, the following points arise for consideration:-

- i. Whether the complainant is entitled for the delay compensation, and compensation for mental agony and litigation cost from the respondents?
- 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 the complainant on 18.12.2013 booked a row house in the project, jointly promoted by the respondents, on payment of booking advance and subsequently made

payments as per the payment schedule under the construction agreement dated 02.09.2016, entered between the complainant and the second respondent and the respondents undertook to complete the construction and to deliver the row house on 31.12.2016, with a grace period of 3 months, but the respondents completed construction and handed over possession of the unit to the complainant only on 30.04.2018, after an inordinate delay and the complainant is entitled for all the reliefs.

(b) Ex.A2 is the construction agreement dated 02.09.2016 entered between the complainant and the second respondent as the developer of the project. Under clause-6 of the agreement, the second respondent undertook to complete the construction and to handover possession of the row house by December 2016. As per Ex.A4, the completion certificate of the second respondent dated 30.04.2018, the construction of the row house was completed and the same was handed over on receipt of the final payment. As per Ex.A5, the letter of the second respondent dated 30.04.2018, the complainant has paid excess amount towards the sale consideration of the unit and it was intimated to the complainant that they will refund the amount with delay compensation calculated as per the terms of the agreement.

(c) Even though the respondents undertook to complete the construction and to handover the row house by December 2016, they were able to complete the construction and to deliver the constructed row house to the complainant only on 30.04.2018. Therefore, the complainant is entitled for delay compensation and other reliefs. Thus the point is answered accordingly.

7. Answer for Point no.(ii)

(a) The learned counsel for the complainant submitted that as per the proviso to section-18 of the Act, the complainant is entitled for compensation as prescribed under the section and Ex-A5, the letter by the second respondent cannot restrict the claim of delay compensation by the complainant and the same cannot be construed as a waiver on the right of the complainant to claim compensation as per the proviso of the Act.

(b) There was inordinate delay in handing over the unit to the complainant by the respondents. The respondents started collecting advance booking amount subsequent payments from November, 2013, but entered into written agreement with the allottee only in September, 2016 after the RERA Act came into force without minding the rights of allottees under the Act. The terms of the agreement are one sided and not fair. In the circumstances of the case, it is held that the complainant is entitled for compensation as per proviso of section-18 of the RERA Act. Hence the complainant is entitled for delay compensation at the rate of interest payable by the promoter to the allottee shall be the highest marginal cost of lending rate of SBI plus 2% p.a. Therefore, the complainant is entitled for interest @ 7.30%, which was the highest marginal cost of lending rate of S.B.I. at the time of filing the complaint, plus 2% per annum i.e., 9.30% p.a. from 01.04.2017 to 30.04.2018. The amount already paid towards delay compensation is liable to be adjusted out of the compensation payable under the order.

(c) Apart from the above, 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 respondents.

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

In the result, the respondents are directed as follows:

The respondents, shall jointly or severally, pay the complainant the amounts of compensation and cost as per the findings in Answer for Point No.(ii), Para 7 of this order within 30 days from the date of issue of this order.

Sd/- 19.04.2022
G. SARAVANAN
ADJUDICATING OFFICER

List of witness

CW-1 --- V.Narayanaswamy

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	...	Final payment receipts
Ex.A2	02.09.2016	Agreement for construction
Ex.A3	20.06.2017	Payment request letter
Ex.A4	30.04.2018	Completion certificate
Ex.A5	30.04.2018	Letter from second respondent
Ex.A6	08.06.2021	Legal notice issued by complainant
Ex.A7	...	Calculation sheet for compensation

Sd/- 19.04.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY
19.4.2022
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY