

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 291 of 2021**

1. K.Valarmathi
2. C.Paneerselvam
- Complainants

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

Complainants : Rep.by Mr.Ralph V.Manohar, Advocate.
Respondent-1 : Rep.by Mr.S.Senthil, Advocate
Respondent-2 : Remained absent

Heard on : 20.07.2022
Delivered on : 03.08.2022

ORDER

The complaint by the above complainants claiming compensation for delay in handing over possession of row house by 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 complainants, in brief, as follows:**

(a) The respondents jointly promoted the project in the name and style of "SERENE KSHETRA" in Nathapettai Village, Kancheepuram District. The complainants purchased a house in the project. The total sale consideration is Rs.32,55,083/-

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(b) On 30.11.2015, a construction agreement was entered between the complainants and the second respondent. The second respondent undertook to handover possession of the constructed house by December 2016 with a grace period of 3 months.

(c) The respondents completed the construction and handed over possession of the house only on 22.04.2019. As per the construction agreement, the compensation payable by the respondents for the delay in delivering possession of the unit to the complainants was fixed at Rs.4,500/- per month. The respondents are liable to pay compensation as per the law. The complainants are entitled for all the reliefs.

3. On behalf of the first respondent, no counter filed. The second respondent remained absent.

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

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

- i. Whether the complainants are entitled for compensation and other reliefs on the ground of delay on the part of the respondent to deliver possession of the house booked by them in accordance with the date and terms agreed by the respondents?
- ii. What are the reliefs, the complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that the complainants booked a house in the project jointly promoted by the

respondents and entered into a construction agreement dated 30.11.2015 with the respondents and paid the sale consideration and the respondents undertook to complete the construction and handover possession of the house by December 2016, with a grace period of 3 months, but the respondents completed construction and handed over possession of the unit to the complainants only on 22.04.2019, after an inordinate delay and the complainants are entitled for all the reliefs.

(b) Ex.A2 is the construction agreement dated 30.11.2015 entered between the complainants and the second respondent as the developer of the project. Under clause-6 of the construction agreement, the second respondent undertook to complete the construction and to handover possession of the house by December 2016. As per Ex.A4, the completion certificate of the second respondent dated 22.04.2019, the construction of the house was completed and the same was handed over on receipt of the final payment. As per Ex.A5, the letter dated 22.04.2019, the keys were handed over by the second respondent to the complainants.

(c) Eventhough, the respondents undertook to complete the construction and to handover the house by December 2016, they were able to complete the construction and to deliver the constructed house to the complainants only on 22.04.2019. Therefore, the complainants are 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 complainants submitted that Ex-A5, the letter by the second respondent cannot restrict the claim of delay compensation by

the complainants and the same cannot be construed as a waiver of the right to claim compensation as per the proviso of section 18 of the RERA Act.

(b) Considering the circumstances of the case, it is held that the complainants are entitled for interest on the amounts paid to the respondent towards delay compensation as per proviso of section-18 of the RERA Act. Under Rule 18 of the TNRERA Rules, 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 complainants are 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 22.04.2019.

(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 complainants are 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 complainants 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/- xxxxx

G. SARAVANAN
ADJUDICATING OFFICER

List of witness

CW-1 --- K.Valarmathi

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1 (Series)	...	Payment receipts
Ex.A2	30.11.2015	Construction agreement
Ex.A3	20.06.2017	Payment request letter
Ex.A4	22.04.2019	Completion certificate
Ex.A5	22.04.2019	Letter from second respondent
Ex.A6	04.06.2021	Legal notice issued by complainant
Ex.A7	...	Calculation memo



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