

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 318 of 2021

Madhu Khatri

.... **COMPLAINANT**

Vs.

M/s. India Golf Assets Pvt. Ltd.
Rep. by its Chief Executive Officer S. Akshay Dwani
(Regn.No.TN/30/Building/0193/2017)

.... **RESPONDENT**

Complainant : Rep. by Ms. Deepika Murali, Advocate
Respondent : Rep. by Mr. V. Raghavachari, Advocate.

Heard on : 18.01.2023

Delivered on : 15.02.2023

ORDER

The above complaint by the complainant claiming compensation on the ground of delay in completion and providing infrastructure facilities to her villa by the respondent and litigation cost 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). On 13.01.2015, the complainant entered into development agreement, construction agreement and infrastructure and usage agreement with the respondent for construction and development of independent villa in the project of the respondent, namely "18 & Oak Project" (formerly known as 'Clover Greens Project') and paid the sale consideration within the stipulated time.

(b). Under the infrastructure usage agreement, the respondent promised to provide the infrastructure facilities listed in the agreement on or before

TRUE COPY

15/2/23

December 2016, with a grace period of 6 months. The complainant has been in possession of the villa since January, 2018. The sale deed was executed on 19.12.2019. But the respondent has not adhered to the contractually stipulated covenants of the development agreement and the infrastructure usage agreement. In spite of numerous complaints, the respondent has failed to provide infrastructural facilities.

(c). The complainant has been put to serious hardships and mental agony, due to frequent overflow of sewage, irregular water supply and electricity in the absence of regular electricity meter, etc. The complainant issued legal notice dated 09.06.2020 calling up on the respondent to adhere to their obligations under the agreements. The respondent sent a reply with bogus and vague contentions. Hence the complaint is filed for the reliefs.

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

(a). The complaint is not maintainable in law and on facts and is liable to be dismissed with cost. The complainant suppressed material facts. The complainant filed a complaint in C.No.242/2021 against the respondent to complete the pending infrastructure and the same has been reserved for orders. The complaint lacks bona fides.

(b). The project is a development project initiated by the respondent. The complainant has taken possession of the completed villa with the discount of Rs.5,00,000/- as she had undertaken to complete the repair work and had been using the same as her residence ever since.

(c). The complainant had taken possession of a model villa that was used to exhibit the facilities. Due to her requirement of a home immediately, she has taken possession of the villa. The respondent has completed the committed infrastructure up to the villa and the infrastructure work for

TRUE COPY

15/12/21

overall development is under progress. The respondent obtained extension for completion of Phase-I from TNRERA up to 21.09.2022.

(d). The respondent is not collecting the maintenance charge from the complainant. The respondent ensured the safety and comforts of the complainant and other few occupants in the project. The respondent constantly attended the complainant whenever there was requirement. All the repair works were completed swiftly.

(e). The present complaint is filed to harass the respondent. Multiple complaints filed on the same cause of action. The complaint is liable to be rejected and 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 contentions of the complainant, the following points arise for determination:

- i. Whether the complainant is entitled for compensation on the ground of delay in completion and providing infrastructural facilities to her villa by 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 filed written notes of arguments and submitted that there was an inordinate delay in completion of amenities and infrastructure as per the terms of the infrastructure agreement and the complainant has sought for compensation for the delay and she also filed a complaint before the Authority in C.No.242 of 2021 and

TRUE COPY

15/2/23

the respondent is attempting to mislead this Forum as the complainant filed the complaint on the same cause of action twice and the Authority has disposed of the complaint by order dated 29.09.2022 directing the respondent to ensure the basic amenities agreed under the agreement completed by 31.12.2022 and also to pay the complainant as per the terms of the agreement till the infrastructure is made available by the respondent and the order of the Authority is no bar to grant compensation for the delay with mental agony and litigation cost under Section 72 of the RERA Act in the light of various difficulties and hardships caused to the complainant. The learned counsel also relied on the various decisions in support of his contentions.

(b). The learned counsel for the respondent also filed written notes of arguments and contended that all the works sought to be completed by the complainant in the complaint have been completed and photographs and documents have been filed by the respondent and there is no pending work whatsoever and the complainant took possession of the villa which was a model villa as she was in an urgent need of a home and the respondent also allowed a discount on the ground that she would undertake to complete the repair works of the villa and TNRERA also granted extension of time for completion of the project and the Authority passed an order in the C.No.242 of 2021 granting compensation to the complainant and this Forum should not in any way burden the respondent to pay the compensation twice and the complainant's claim for compensation for mental agony cannot be quantified by any arithmetic means and therefore the complaint is liable to be dismissed. The learned counsel also relied on the following decisions in support of his contentions:

TRUE COPY

15/12/23

- 1. Ghaziabad Development Authority Vs. Union of India (2000)
6 SCC 113)**
- 2. Victoria Laundry (Windsor) Ld. V. Newman Industries Ld.,
Coulson & Co. Ld. (Third Parties) (1949) 2 K.B. 528)**
- 3. CCP No.16 of 2021 dated 11.01.2022.**

(c). It is not in dispute that the complainant has been in possession of the villa since January 2018 and she contended that the project infrastructure remained incomplete till date of filing and also listed the infrastructure facilities which were not completed by the respondent. In paragraph 9 of their objections to the complaint, the respondent has given the latest status of development of the works. The respondent stated that except Item Nos. 1 & 8, all the other facilities were completed by them. As far as Item No.1, 6m carriage way as per the Master Plan is concerned, it is stated as 98% of the work completed and as far as Item No.8, the Water Treatment Plant, it is stated as the work in progress. Even though with respect to the other infrastructure facilities, the respondent has stated that they have completed the works, they have not given exact date on which the work was completed by them. Therefore, the case of the complainant that the infrastructure facilities remained incomplete till the date of filing of the complaint is proved by her.

(d). Under Clause 4(1)(c) of the Ex.A4, the Infrastructure usage agreement dated 13.01.2015, the respondent undertook to complete the infrastructure work on or before December 2016 with a grace period of six months and in case of failure to pay the complainant, a penalty of Rs.3/- per sq.ft. on the plot area per month till the infrastructure facilities are made available to the purchase for their use. Therefore, the complainant is

TRUE COPY

15/12/22

entitled for compensation as per the terms of the Ex.A4, the agreement from February 2018 to August 2021 as prayed for.

(e). As far as the compensation for mental agony is concerned, the learned counsel for the respondent submitted that the contract between the parties is commercial in nature and the Hon'ble Supreme Court held that in cases having a commercial flavor no amount of money could be granted to a party seeking for compensation or damages under the head of mental agony. It is relevant to note that on the basis of the decision of the Hon'ble Supreme Court, the definition of the word 'compensation' as per Wharton's Law Lexicon (15th Edition) is as follows:

Compensation, according to dictionary, means 'compensating or being compensated; thing given as recompense'. In legal sense, it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury, or loss, - Ghaziabad Development Authority Vs. Balbir Singh, (2004) 5 SCC 65(75). AIR 2004 SC 2141.

Therefore, it cannot be said that the complainant is not entitled for compensation on mental agony. The complainant purchased the villa for her own use and the contract cannot be termed as commercial in nature. The possession of the villa, without infrastructure facilities, would definitely cause physical and mental agony to any one or as in the case of the complainant. Therefore, the decisions relied by the learned counsel for the respondent are not applicable to the facts of the case.

(f). Admittedly, the Authority in its order in C.No.242of 2021 directed the respondent to pay the complainant compensation as per the terms of the infrastructure agreement. There is no question of ordering compensation twice. The respondent is bound to pay the compensation as directed by

TRUE COPY

15/12/23

the Authority as per the terms of the infrastructure agreement from the date committed in the agreement till all the infrastructure is made available to the complainant. Thus, the point is answered accordingly.

8. **Answer for Point No: (ii)**

In view of the answer for Point No.(i), the complainant is entitled for compensation for the delay in terms of the clause 4(1)(c) of the Infrastructure and usage agreement as compensation for the delay in completion of the infrastructure facilities from February 2018 to August 2021 as prayed by the complainant. Towards mental agony and hardships caused to the complainant, a sum of Rs.1,00,000/- is fixed with a further sum of Rs.50,000/- towards litigation expenses. The order of the Authority in C.No.242of 2021 dated29.09.2022 shall merge with this order. The complainant is entitled for reliefs as stated above.

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/- 15.02.2023
G. SARAVANAN
ADJUDICATING OFFICER

TRUE COPY

15/2/23

C.C.P.No.318/2021**LIST OF WITNESSES**

CW-1 --- Mdhu Khatri

RW-1 --- Thiruppathi

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	Brochure of the Project
Ex.A2	13.01.2015	Development Agreement
Ex.A3	13.01.2015	Construction Agreement
Ex.A4	13.01.2015	Infrastructure Usage Agreement
Ex.A5	19.12.2019	Sale Deed
Ex.A6(Series)	26.08.2021	Proof of Payment
Ex.A7	Email correspondence between Complainant and respondent
Ex.A8	Status Report
Ex.A9	09.06.2020	Legal Notice issued by the Complainant
Ex.A7	13.07.2020	Reply Notice issued by the Respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	29.11.2022	Copy of the Order in C.No.242/2021
Ex.B2	06.05.2022	Extension Certificate for completion of project by TNRERA
Ex.B3	Photographs of 6M Carriage way
Ex.B4	Photographs of 2.4M Car park
Ex.B5	Photos of Street Light along the Road
Ex.B6	Sewage treatment Plant
Ex.B7	Photos of Access Control at Entry and
EX.B8	Photos of Landscape along with Road
EX.B9	Photos of repair work taken up at Villa
EX.B10	Master Plan

Sd/- 15.02.2023

G. SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI.

CERTIFIED TO BE TRUE COPY



ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY