

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 330 of 2021**

P. Gomathi Complainant

Vs.

1. M/s. Serene Senior Living Pvt. Ltd.
Rep. by its Director.
2. M/s.Adinath Srinivasa Foundation LLP
Rep. by its Designated Partner Respondents

Complainant : Rep.by Mr. Ralph V. Manohar, Advocate.
Respondents : Rep.by Mr.S. Senthil, Advocate.

Heard on : 24.08.2022
Delivered on : 19.09.2022

ORDER

The above complaint by the complainant claiming compensation for the 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 complainant, 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 complainant purchased a row house in the project. The total sale consideration is Rs.35,10,145/-.

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(Handwritten signature)

(b) On 16.06.2016, a construction agreement was entered between the complainant and the respondents. The respondents undertook to handover possession of the constructed house by 31.12.2016, with a grace period of three months.

(c) The respondents completed the construction and handed over possession of the house only on 25.10.2017. 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. The compensation amount would be a sum of Rs.31,500/- for the delay in handing over possession of the unit. The respondents are still liable to pay the balance amount of compensation as per law. The complainant is entitled for all the reliefs.

3. On behalf of the respondents, no counter filed.

4. On the side of the complainant, the complainant filed proof affidavit and marked Ex.A1 to Ex.A5 documents. No evidence for the respondents.

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

- i. Whether the complainant is 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 her in accordance with the date and terms agreed by the respondents?
- ii. What are the reliefs the complainant is entitled to?

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6. Answer for Point No. (i)

(a) The learned counsel for the complainant submitted that the complainant booked a house in the project, jointly promoted by the respondents and entered into a construction agreement dated 16.06.2016 with the respondents and paid the sale consideration and the respondents undertook to complete the construction and handover possession of the house by 31.12.2016, with a grace period of three months, but the respondents completed construction and handed over possession of the unit to the complainant only on 25.10.2017, after an inordinate delay and the complainant is entitled for all the reliefs.

(b) Ex.A1 is the construction agreement dated 16.06.2016 entered between the complainant 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.A3, the completion certificate of the second respondent dated 25.10.2017, the construction of the house was completed and the same was handed over on receipt of the final payment.

(c) Even though the respondents undertook to complete the construction and to handover the house by 31.12.2016 with grace period of three months, they completed the construction and delivered the constructed house to the complainant only on 25.10.2017. Therefore, the complainant is entitled for compensation for the delay for 7 months, i.e., from 01.04.2017 to 25.10.2017 and other reliefs. Thus the point is answered accordingly.

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7. Answer for Point No.(ii)

(a) The learned counsel for the complainant submitted that the respondents fixed the rate of compensation at Rs.4500/ per month arbitrarily under clauses in the construction agreement and they cannot restrict the claim of delay compensation by the complainant and the complainant is entitled 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 complainant is 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 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. 09.30% p.a. from 01.04.2017 to 25.10.2017. If any amount already paid towards delay compensation, such amount 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 inconvenience suffered by the complainant and a further sum of 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.

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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/-xxxx
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESS

CW-1 --- P. Gomathi

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	16.06.2016	Construction Agreement
Ex.A2	20.06.2017	Payment Request
Ex.A3	25.10.2017	Completion Certificate
Ex.A4	04.06.2021	Legal Notice issued by complainant
Ex.A5	...	Calculation sheet

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Secretary (Finance & Admn.)
TNRERA, Chennai - 8.

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