

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 359 of 2021**

S. Ponnazhaki 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 Respondents

Complainant :Rep.by Mr.Ralph V.Manohar, Advocate.

Respondents :Rep.by Mr. S. Senthil, Advocate.

Heard on : 08.08.2022
Delivered on : 05.09.2022

ORDER

The above complaint by the complainant claiming compensation for the delay in delivery of possession of twin house booked by her with the respondents under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereafter referred to as RERA Act).

2. **Averments of the complainant, in brief, as follows:**

(a) The complainant booked a twin 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 house is Rs.28,80,242/-.

(b) On 10.06.2016, a construction agreement was executed between the complainant and the second respondent. The second respondent undertook

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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 31.08.2018. 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.3,000/- per month. The complainant issued a legal notice dated 08.05.2021 to the respondents claiming compensation for the delay. The respondents neither paid any compensation nor sent any reply to the legal notice. The complainant is entitled for all the reliefs.

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

4. On the side of the complainant, the complainant filed proof affidavit and marked Ex.A1 to Ex.A4 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 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 booked a 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 10.06.2016, entered between the complainant and the promoters, the agreed date of

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delivery was December 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 31.08.2018, after an inordinate delay and the complainant is entitled for all the reliefs.

(b) Ex.A1 is the construction agreement dated 10.06.2016 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.A3, the completion certificate of the second respondent dated 31.08.2018, the construction of the house was completed and the same was handed over on receipt of the final payment. By Ex.A4, the legal notice dated 08.05.2021, the complainant called upon the respondents to pay compensation for the delay in delivery of the constructed house as per the terms of the agreement.

(c) Even though 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 row house to the complainant only on 31.08.2018. Therefore, the complainant is entitled to compensation for the delay in delivery of the constructed house. 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 RERA Act, the complainant is entitled for compensation as prescribed under the section and by issue of Ex-A4, the

legal notice, the complainant also claimed compensation as per the proviso to section 18 of the Act.

(b) Considering the facts and 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. on the sale consideration of Rs.28,80,242/- from 01.04.2017 to 30.04.2018.

(c) Apart from the above, considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed as compensation towards mental agony and inconvenience 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/-xxxx
G. SARAVANAN
ADJUDICATING OFFICER

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List of witness

CW-1 --- S. Ponnazhaki

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	10.06.2016	Construction agreement
Ex.A2(series)	31.08.2018	Payment Receipts
Ex.A3	31.08.2018	Completion Certificate
Ex.A4	08.05.2021	Legal notice issued by the complainant.

-Sd/-xxxx

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

