

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 360 of 2021**

1. A. Varadaraj
 2. A. Lavanya
- COMPLAINANTS

Vs.

M/s. Amar Prakash Developers Private Ltd.,
Rep. by its Managing Director,
Aadarsh Prasad Surana
(TN/01/Building/0118/2018)

.... RESPONDENT

Complainant : Rep. by Ms. Hema Srinivasan, Advocate.
Respondent : Rep. by Mr. D. Ravichander, Advocate.

Heard on : 29.08.2022
Delivered on : 26.09.2022

ORDER

The complaint by the above complainants claiming compensation for the delay in handing over of the apartment booked by them with the respondent is filed under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) read with Rule 38(1) of TNRERA Rules 2017.

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

(a) On 08.03.2019, the complainants booked an apartment with the respondent in their project namely "TEMPLE WAVES", at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District and paid the sale consideration to the respondent. The total sale consideration of the apartment is Rs.26,85,902/-.

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(b) On 08.03.2019, the complainants and the respondent entered into an agreement of project promotion and construction. On 15.04.2019, the respondent executed the sale deed for the UDS land in favor of the complainants. The respondent undertook to complete the construction and deliver the apartment within 90 days from the date of registration, which was on 14.07.2019. The construction was not completed and the flat was not handed over as on date.

(c) Under the agreement, time is the essence of the contract. The complainants were made to pay maintenance charges from 2016. The respondent is seeking to handover the flat without proper electricity connection and other basic amenities. The completion certificate has not been issued for the flat. The complainants are entitled for compensation and other reliefs.

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

(a). Except admitted, all the averments are denied as false. It is admitted that the respondent promoted the project and the complainants booked a flat in the project and entered into an agreement of project promotion and construction dated 08.03.2019 and the respondent undertook to complete the construction and handover possession of apartment within 90 days from the date of registration or realization of entire amount due to the respondent.

(b). As per the terms of the agreement, in the event of project being delayed on account of any force majeure event, the respondent is entitled for extension of time for the delivery of the possession of the apartment. Due to Covid-19 pandemic, the respondent suffered severe financial hardships restraining them from performing their obligations towards their customers. The respondent had taken very sincere and effective steps for completion of the project. No default can be attributed to the respondent for the delay.

(c). The complainants are mandated to make payments towards the cost on various stages in strict compliance of the deadlines prescribed in the payment schedule of the agreement. The complainants delayed the payments and the respondent is entitled for the interest at the rate of 24%. The payments were not made by the complainants as stipulated under the demand notes raised for each stage of payment. Towards payment relating to the delay, interest charges is due from the complainants to the extent of Rs.18,597/- as on 26.04.2022 and the same remains due till date. Hence the respondent prays for the dismissal of the complaint with exemplary costs.

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 rival contentions of the parties, the following points arise for determination:-

i. Whether the complainants are entitled for the compensation for delay and for mental agony and litigation cost from the respondent on the ground of failure on the part of the respondent to complete construction and deliver the flat as per the terms of the agreement?

ii. What are the reliefs, the complainants are entitled to?

7. **Answer for Point no.(i):**

(a). The learned counsel for the complainants filed written notes of arguments submitting that on 08.03.2019, the complainants and the respondent entered into an agreement of project promotion and construction and the sale deed for the UDS land was executed by the respondent in favor of the complainants on 15.04.2019 and the total sale consideration of the apartment is Rs.26,85,902/-

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including the customization charges was paid by the complainants as per the terms of the agreement and the apartment was supposed to be handed over within 90 days of the registration and since the registration was executed on 15.04.2019, the scheduled date of handing over was on or before 14.07.2019 and the respondent neither completed the construction nor delivered the apartment to the complainants till date and the complainants are entitled for all the reliefs.

(b). However, the learned counsel for the respondent also filed written notes of arguments contending that the respondent admits the execution of the agreement dated 08.03.2019 with undertaking to complete the construction and to handover possession of the apartment within 90 days from the date of registration, but it was subject to delay due to force majeure event and the delay occurred due to ongoing Covid-19 pandemic and apart from the same, the complainants are to make payments on various stages in strict compliance according to the payment schedule under the agreement and in case of failure, the respondent is entitled for interest at the rate of 24% and the complainants failed to make payments in time and therefore, a sum of Rs.18,597/- is due towards delay interest charges as on 26.08.2022 and therefore, the complaint is liable to be dismissed with exemplary costs.

(c). It is not in dispute that as per the agreement of project promotion and construction entered between the complainants and the respondent, which is marked as Ex.A2 and also B2 on both sides, the respondent undertook to deliver the constructed apartment within 90 days from the date of registration or realization of entire amount whichever is later. Admittedly, the sale deed for UDS land which is marked as Ex.B1 and A3 on both sides was executed and registered on 15.04.2019 and the scheduled date of handing over was on or before

14.07.2019. Even though, the respondent claims delay due to pandemic, no particulars of the period for which the construction work suffered is given.

(d). Even as per Ex.B4, the payment ledger statement of the respondent, the entire sale consideration was paid on 14.10.2019. It is also not disputed that the complainants filed the Complaint No.88 of 2020 before the Authority praying for handing over of the apartment and the Authority also directed the respondent to handover the apartment completed in all respects before 31.07.2021. It is not the case of the respondent that in pursuance of the order, they issued any notice to the complainants for handing over possession of the apartment and claiming any due. Therefore it is very clear that the respondent has not completed the construction in all respects and fulfilled their obligation to complete the construction of the apartment and handover the same to the complainants. Therefore, the complainants are entitled for compensation for the delay and other reliefs. Thus, the point is answered accordingly.

8. Answer for Point no.(ii)

(a) The complainants claimed rental charges incurred by them, owing to the delay in handing over the apartment. As per the proviso to section 18 of the RERA Act, the complainants are entitled for compensation by way of interest for the entire amount paid by them to the respondent at the prescribed rate of interest for the period of delay as compensation for delay.

(b) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 7.30% per annum, which was currently the highest marginal cost of lending rate of interest of SBI at the time of filing of the

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complaint, plus 2% per annum i.e., 9.30% per annum for the amounts paid from 14.07.2019, till delivery of the constructed flat by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, a sum of Rs.1,00,000/- towards compensation for mental agony and inconvenience and a sum of Rs.25,000/- towards legal expenses is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows:

The respondent shall pay the complainants the amounts of compensation and cost as per the findings in Answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

**Sd/- 26.09.2022
G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESSES

CW-1 -- A.Varadaraj
RW1 --- G. Dinesh Kumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1(Series)	...	Receipts for payments
Ex.A2	08.03.2019	Construction Agreement
Ex.A3	15.04.2019	Sale Deed
Ex.A4(Series)	...	Email Communications
Ex.A5	09.06.2020	Legal Notice to Respondent
Ex.A6	03.09.2019	Rental Agreement
Ex.A7	30.06.2021	Order from Authority
EX.A8	...	Affidavit of Respondent
EX.A9	...	Maintenance Agreement
Ex.A10	...	Special Power of Attorney

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	15.04.2019	Sale Deed
Ex.B2	08.03.2019	Agreement of Project Promotion and Construction
Ex.B3	28.02.2019	Completion Certificate
Ex.B4	07.07.2022	Payment Ledger Statement

Sd/- 26.09.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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