

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer**  
**CCP No.49 of 2021**

1. S.Nagarajan  
2. Vishnu Priya Nagarajan .... COMPLAINANTS

**Vs.**

M/s.Amar Prakash Developers Private Ltd,  
Rep. by its Authorised Signatory, S.V.Chidambaram .... RESPONDENT  
**(Project not registered)**

Complainants : Rep. by Mr. J.Prithivi, Advocate.  
Respondent : Remained absent

**Heard on** : 21.10.2021  
**Delivered on** : 11.11.2021

**ORDER**

The complaint by the above complainants seeking refund of the amount paid to the respondent towards purchase of an apartment with interest, compensation and costs 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 complainants, in brief, as follows:**

(a) The complainants booked an apartment in the project of the respondent, namely, "TEMPLE WAVES" at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District. On 07.05.2015, the respondent and the complainants entered into a project promotion and construction agreement. The respondent undertook to complete construction and handover the flat by December 2016 and

subsequently revised the date of delivery of possession to December 2017. The total sale consideration of the apartment is Rs.16,22,084/-.The complainants paid in total Rs.22,28,445/-.

(b) On 07.05.2017, a fresh project promotion and construction agreement was entered between the complainants and the respondent and the respondent undertook to complete the apartment on or before December 2017. Sale deed was also executed for the UDS land by the respondent on the same day. The complainants paid the sale consideration through credit card/cheque, as well as through HDFC Bank Ltd. The complainants availed housing loan from HDFC Bank for the sale consideration and were paying EMI for the housing loan. The complainants were subjected to severe financial strains and mental agony. Hence the complainants are entitled for all the reliefs.

3. In spite of service and receipt of the notice of hearing, the respondent remained absent.

4. On the side of the complainants, the complainants filed their evidence on affidavit with documents.

5. On the basis of the contentions of the complainants, the following points arise for determination:

- i. Whether the complainants are entitled for refund of the amount paid to the respondent towards purchase of apartment with interest and compensation on the ground of failure on the part of the respondent to give possession of completed apartment in accordance with the date and terms of the project promotion and construction agreement?
- 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 respondent launched the project, namely, "TEMPLE WAVES" at Kundrathur, Chennai and the complainants booked an apartment and also entered into a project promotion and construction agreement with the respondent on 07.05.2015 and the respondent undertook to complete construction and handover possession of apartment by December 2016 and subsequently revised it as December 2017 by a fresh project promotion and construction agreement and the complainants availed bank loan and were paying pre-EMI and were put to severe financial strain and great mental agony and the completion and delivery of flat was not made till date and therefore the complainants seeks for refund of the money paid to the respondent with interest and other reliefs.

(b) The first complainant was examined as CW-1, stated that they booked the apartment in the project of the respondent for the total cost of Rs. Rs.16,22,084/- with other incidental charges and taxes. In total the amount payable by the complainants was Rs.17,70,472/-. Apart from the corpus fund of Rs.25,000/-, an advance annual maintenance charges of Rs.24,916/- was payable by the complainants at the stage of completion of plastering of the flat and through credit card/cheque and through bank loan, the complainants paid Rs.22,28,445/- towards the total sale consideration and the respondent undertook to complete the construction and handover possession by December 2016 and subsequently altered the date of handing over of possession to December 2017, but till date not handed over delivery of flat and the complainants were put to severe financial strain and mental agony and are entitled for all the reliefs.

(c) The evidence on the side of the complainants proved that the complainants paid the sale consideration and additional amount towards purchase of flat and the respondent undertook to complete the construction of flat by December 2017 and only executed sale deed for the UDS land and failed to complete the construction within the stipulated time.

(d) Apart from the reliefs of refund of the amount paid to the respondent with interest, compensation for mental agony and hardship and legal expenses, the complainants sought refund of Rs.20,00,000/- as compensation for closing the housing loan and insurance premium loan borrowed from HDFC Bank Ltd and Rs.4,73,669/- as paid to the bank towards pre-EMI with interest and also Rs.3,50,948/- as paid to the bank for housing loan until November 2020, with a prayer for subsequent amount paid by the complainants with interest. Since the total amount of Rs.22,28,445/- which was paid towards total consideration as on date through credit card/cheque as well as through HDFC Bank Ltd is ordered to be refunded to the complainants together with interest as per TNRERA Rules, the above claims separately are not maintainable and therefore rejected.

(e) The complainants further sought Rs.2,10,000/- for damages as per clause-21 of the agreement. Under clause-21, the respondent undertook to pay compensation of Rs.7/- per sq.ft. of the built up area, in the event of delay in handing over. The complainants are seeking refund on withdrawal from the project. Therefore the compensation under clause-21 of the agreement is liable to be rejected. However, with regard to the claim of Rs.37,485/- paid by the complainants towards insurance premium, the complainants are entitled for claiming reimbursement from the respondent. Therefore, the complainants are entitled for the said amount of Rs.37,485/-



(f) In the above circumstances, it is held that the complainants are entitled for refund of the amount paid by them to the respondent towards purchase of flat with interest, compensation, the amount paid towards insurance premium and cost. Thus, the point is answered accordingly.

**7. Answer for Point No.(ii)**

(a) In view of the answer for point No.(i), the complainants are entitled for refund of the amount paid to the respondent with interest and compensation. The complainants paid in total Rs.22,28,445/- to the respondent for purchase of flat and Rs.37,485/- paid by the complainants towards insurance premium. Therefore, the complainants are entitled for refund of the amount of Rs.22,28,445/- with interest, compensation and Rs.37,485/- paid towards insurance premium and cost from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest payable shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainants are entitled for the interest at the rate of 7.30% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint, plus 2% per annum, i.e., 9.30% per annum for the amount paid from the dates of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed as compensation towards mental agony, hardship and inconvenience caused to the complainants. Towards litigation expenses a sum of Rs.25,000/- is fixed. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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**In the result, the respondent is directed as follows:-**

1. The respondent shall pay the amounts at the interest rate, compensation, amount paid towards insurance premium and cost as per the findings in answer for Point No.(ii), Para No.7 of this order within 30 days from the date of issue of this order.
2. The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainants till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
3. The complainants shall execute cancellation of the construction agreement and the sale deed for UDS land, as the case may be, on satisfaction of his claims at the cost of the respondent.

**Sd/- 11.11.2021  
G. SARAVANAN  
ADJUDICATING OFFICER**

**LIST OF WITNESS**

CW-1 --- S.Nagarajan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	07.05.2015	Project promotion and construction agreement
Ex.A2	...	Payment receipts (series)
Ex.A3	17.05.2015	Sale deed
Ex.A4	07.05.2017	Project promotion and construction agreement
Ex.A5	...	E-mail communications (series)

Ex.A6	...	Disbursement history
Ex.A7	...	Certificate of interest (series)
Ex.A8	...	Provisional statements (series)
Ex.A9	...	Statement of accounts

Sd/- 11.11.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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11.11.2021  
LAW OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY