

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.05 of 2021

1. M.S. Ganesh
2. R.K.Kalpana Complainants

Vs.

M/s. Amarprakash Developers Private Ltd,
Rep. by its Authorised Signatory
(PROJECT NOT REGISTERED) Respondent

Complainant : Rep. by Mr. P.Venkatesan, Advocate.

Respondent : Remained absent.

Heard on : 26.10.2021

Delivered on : 23.11.2021

ORDER

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

(a) The complainants booked a flat in the project of the respondent namely, "Palm Riviera-Chennai's Vennice" at Thirumudivakkam Village, Sriperumbudur Taluk, Kancheepuram District. The total cost of the flat is Rs.71,93,775/-. The complainants paid Rs.8,28,460/- on various dates.

(b) On 18.09.2013, the complainants and the respondent entered into an agreement of projection promotion and construction. The payment of sale consideration as per the agreement was stage by stage. Due to sudden financial crises, the complainants could not make further payments but sought

TRUE COPY

leg
23/11/2021

time for making further installments. But the complainants were shocked to receive letters from the respondent as notices before cancellation dated 10.01.2014, 12.02.2014 and 10.09.2014 stating that unless the agreed installments were paid, the booking of the above flat would be cancelled.

(c) Various attempts made by the complainants to make payments ended in vain. The complainants also went to the office of the respondent seeking return of the amount paid by them. The respondent asked the complainants to surrender the original agreement and payment receipts to complete the cancellation process and initiate refund process. The complainants handed over all the original documents to the respondent. However, the respondent failed to return the amount. Hence the complainants are entitled for all the reliefs.

3. On receipt of the notice, the respondent appeared through counsel and undertook to file vakalat and counter on their behalf. However, subsequently, the counsel or the respondent has not filed any vakalat or counter and remained absent.

4. On the side of the complainants, proof affidavit was filed and documents were marked.

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

- i. Whether the complainants are entitled to get back the amounts paid to the respondent towards purchase of flat with interest and compensation in pursuance of notices of cancellation issued by the respondent to the complainant?
- ii. What are the reliefs, the complainants are entitled to?

10/11/2021
10/11/2021
23/4/2021

6. Answer for Point No.(i)

(a) The learned counsel for the complainants submitted that on 18.09.2013, the complainants and the respondent entered into an agreement of project promotion and construction for purchase of an apartment for a total sale consideration of Rs.71,93,775/- and the complainants in total paid Rs.8,28,460/- on various dates and subsequently could not make payments and sought time for making further installments and the respondent sent notices before cancellation on various dates and there was no progress of any construction and the attempts of the complainants to make further payments ended in vain and therefore the complainants sought return of the amount and the respondent assured to return the amount and received all the original documents, but failed to make return of the amount and the complainants were put to hardship and mental agony and are entitled for all the reliefs.

(b) The first complainant was examined as CW-1 and filed his proof affidavit and produced Ex.A1 to Ex.A4 documents to prove his claim. Ex.A2 is the agreement for project promotion and construction entered between the complainants and the respondent for purchase of the flat for a total sale consideration of Rs.71,93,775/-. Ex.A1, (series) are payment receipts. Ex.A3, (series) are cancellation notices sent by the respondent. Ex.A4 is the notice dated 23.09.2018 sent by the complainants to the respondent seeking return of the amount of Rs.8,28,460/-.

(c) As per Ex.A2, agreement, the respondent undertook to complete the construction of the apartment and to deliver the same on or before July 2015. Annexure-I, payment schedule in the agreement contains various stages for making payments on completion of particular stages. In Ex.A3, notices seeking

TRUE COPY

10/11/2021

further payments, the respondent has not stated anywhere as stages mentioned in the payment schedule was completed. By their evidence and documents, the complainants proved their claim against the respondent.

(d) In the above circumstances, it is held that the complainants are entitled for refund of the amounts paid to the respondent together with interest. Thus, the point is answered accordingly.

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

(a) It is not in dispute that the complainants paid a sum of Rs.8,28,460/- in total towards the purchase of flat to the respondent. Therefore, the complainants are entitled for refund of the said amount with interest.

(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 complainants are entitled for the interest at the rate of 7.30% per annum which is currently the highest marginal cost of lending rate of interest of SBI, at the time of filing of the complaint, plus 2% per annum i.e., 9.30% per annum for the amounts paid from the dates of respective payments till repayment by the respondent..

(c) Apart from the above, considering the facts and circumstances of the case, a sum of Rs.50,000/- as compensation towards mental agony and a sum of Rs.25,000/- towards legal expenses is fixed. The complainants are entitled for reliefs as detailed above. Thus, the point is answered accordingly.

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

- (1) The respondent shall pay the complainants the amounts at the interest rate, as per the findings in the answer for Point No.(ii), Para 7 of this order, within 30 days from the date of issue of this order.

189
23/4/2020

- (2) The charge of the aforesaid amount shall be on the flat booked by the complainants till the repayment. The office of this Forum is directed to intimate the encumbrance created by charge in this order to the Sub Registrar concerned.

Sd/- 23.11.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESS
CW-1--- S.Ganesh

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	...	Payment receipts (series)
Ex.A2	18.09.2013	Agreement for project promotion and construction
Ex.A3	...	Cancellation notices (series)
Ex.A4	...	Communications between complainants and respondent

Sd/- 23.11.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

CERTIFIED TO BE TRUE COPY


23.11.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY