

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP No. 162 of 2022**

Krishnamurthi Eswaran

.... COMPLAINANT

**Vs.**

M/s. Amar Prakaash Developers Pvt. Ltd.  
Rep. by its Managing Director, Aadarsh Surana  
(Regn. No.TN/01/Building/0118/2018)

.... RESPONDENT

Complainant : Rep. by Mr. Krishnamurthi Eswaran, Party in person  
Respondent : Remained absent.

Heard on : 01.03.2023  
Delivered on : 20.03.2023

**ORDER**

The complaint by the above complainant claiming compensation for the delay in handing over of the apartment by 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 complainant, in brief, as follows:**

(a). On 10.02.2015, the complainant booked an apartment with the respondent in their project namely "TEMPLE WAVES", Phase-III, Tirumudivakkam, Kundrathur Village, Sriperumbudur Taluk, Kanchipuram District. The total sale consideration of the apartment is Rs.30,30,816/-.

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(b). On 11.05.2015, the complainant and the respondent entered into an agreement of project promotion and construction. On 29.05.2015, the respondent executed sale deed for the UDS land in favor of the complainant. The respondent undertook to complete the construction and deliver the apartment on or before December 2016. The construction was not completed and the apartment was not handed over to the complainant as on date.

(c). Under the agreement, time is essence of the contract. The complainant made payments to the respondent as and when demanded by them. The complainant approached the TNRERA Authority in C.No. 482 of 2019 for appropriate direction to handover the apartment. By order dated 30.06.2021, the Authority also directed the respondent to handover possession of the apartment completed in all respects to the complainant before 07.01.2021 without fail. The respondent has not handed over the apartment. The complainant is entitled for compensation and other reliefs.

3. The complainant filed his evidence on affidavit with documents.

4. On the basis of submissions made by the complainant, the following points arise for determination:

- i. Whether the complainant is 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 apartment as per the terms of the agreement?
- ii. What are the reliefs, the complainant is entitled to?

5. Answer for Point No.(i):

(a). The complainant submitted that on 10.02.2015, he booked the apartment in the project of the respondent and entered into an agreement of project promotion and construction on 11.05.2015 with the respondent and the respondent as the power agent of the owners of the land executed the sale deed on 29.05.2015 and the respondent undertook to complete the construction and hand over the apartment on or before December 2016 and the respondent failed to complete the construction and deliver the apartment till date and the complainant also filed a complaint before the Authority in C.No.482 of 2019 and by the order dated 30.06.2021, the Hon'ble Authority directed the respondent to complete the construction of the apartment in all respects and to deliver the apartment before 31.07.2021 without fail, but the respondent failed to comply with the direction and the complainant was put to loss and hardships and therefore the complainant is entitled for compensation and other reliefs.

(b). On perusal of the records, it is seen that the complainant and the respondent entered into an agreement of project promotion and construction on 11.05.2015 and the respondent undertook to complete the construction and to deliver the apartment on or before December 2016 and subsequently, the respondent as power agent of the owners of the land executed sale deed for UDS land on 29.05.2015 in favour of the complainant. EX.A6 (series), the payment receipts were issued by the respondent for the payments made by the complainant. Ex.A13 is the copy of the final order in C.No.482 of 2019 dated 30.6.2021 and the Authority was pleased to direct the respondent to complete the construction in all respects, as per the agreement for project promotion and construction

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to the complainant before 31.07.2021 without fail. From the evidence of the complainant, it is 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 complainant. Hence the complainant is entitled for compensation and other reliefs. Thus, the point is answered accordingly.

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

(a). In view of the answer for Point No.1, the complainant is entitled for compensation and other reliefs. 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 7.80% per annum, which was 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., 9.80% per annum for the amounts paid from January, 2017, till delivery of the constructed flat by the respondent.

(b). Apart from the above, considering the facts and circumstances of the case, a sum of Rs.50,000/- 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 complainant the amounts of compensation and cost as per the findings in Answer for Point No.(ii), Para 6 of this order within 30 days from the date of issue of this order.

Sd/- 20.03.2023  
G. SARAVANAN  
ADJUDICATING OFFICER

**CCP.NO. 162 of 2022**

**LIST OF WITNESS**

CW-1 --- Krishnamurthi Eswaran

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.No	Date	Documents Name
Ex.A1	11.05.2015	Agreement of Project Promotion and Construction
Ex.A2	21.05.2015	Home Loan Sanction Letter by TATA CHF
Ex.A3	29.05.2015	Sale Deed
Ex.A4	10.02.2015	Quotation issued by Respondent
Ex.A5(Series)	....	Payment Remainder Letter
Ex.A6(Series)	....	Payment Receipts
A7	07.12.2019	Payment Ledger Statement
A8	04.03.2019	Waiver Request by Complainant
A9	09.05.2019	Waiver Consideration Mail from Respondent
A10	18.07.2018	2 <sup>nd</sup> Partial Completion Certificate
A11(Series)	....	Day Order Notes in C.No.482/2019
A12	04.03.2020	Payment Ledger Statement
A13	30.06.2021	Copy of the Final Order in C.No.482/2019
A14(Series)	....	Email Communications

Sd/- 20.03.2023

G.SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.

