

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.2 of 2022**

Hav J. Jayaprakash

..... COMPLAINANT

Vs.

Army Welfare Housing Organisation
Rep. by its Managing Director
Maj Gen Vikal Sahni, SM, VSM (Retd)
(Regn.No.TN/11/Buildings/0130/2021)

..... RESPONDENT

Complainant : Rep. by Mr. K.R. Samratt, Advocate

Respondent : Rep. by M/s. A.A.V. Partners, Advocates

Heard on : 01.03.2023

Delivered on : 15.03.2023

ORDER

The above complaint by the complainant claiming compensation and other reliefs on various grounds including the delay in construction and delivery of apartment from the respondent is filed under Section 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred as RERA Act).

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

(a). The complainant booked a dwelling unit with the respondent in their real estate project, namely, "**Chinnavedampatti – Raman Vihar**" at Coimbatore and paid the amounts towards sale consideration. The total sale consideration of the apartment agreed was Rs.19,58,218/-. The respondent promised to complete and handover delivery of the apartment by the end of December 2014. The complainant paid the sale consideration as per the time schedule and paid Rs.12,97,208/- by the end of December 2014.

(b). Inordinate delay in the construction resulted in increased cost of the apartment. The respondent also collected penal interest on delay in payment not paid according to payment schedule. The sale deed of the property was

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not handed over as promised by the respondent. The complainant had to take over the dwelling unit on 04.04.2018 and was asked to pay the care taking charges before taking possession of the dwelling unit. The respondent also collected Rs.20,000/- towards corpus fund for association and one year maintenance charge for common areas and central amenities. There was shortage of carpet area of the residential unit as against the agreed carpet area by the respondent. The complainant was also put to rental loss due to the delay. Hence the complainant is entitled for compensation for the delayed period and other reliefs.

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

(a). The respondent denies all the allegations in the complaint, except specifically admitted, as false. The complainant applied for the dwelling unit which is a small family apartment (SFA) in the project through his application dated 04.03.2013. The tentative cost of the unit was Rs.19.52 lakhs excluding parking space and other additional expenses. After completion of the project, the final cost of dwelling unit including parking was revised to Rs.20,81,335/-. The complainant has paid Rs.21,10,146/- with a benefit of Rs.14,567/-. On 25.01.2018, the respondent issued handing/taking over instructions along with the final statement of account to the complainant and also the clearance letter for taking over the dwelling unit.

(b). The respondent is a non-profit and non-loss society, registered under the Indian Societies Registration Act. The project was registered with the TNRERA as a completed project. The complainant is also a member of the society and allottee of the row house in the project. The allottees were given a withdrawal option on the delay in the project. The respondent society took all out efforts to complete the project in the best interest of the allottees. However, the first building contract ended in cancellation and the second contract was concluded and the project was completed in May 2018 in all respects.

(c). The respondent made it clear that no care taking charges of the dwelling units will be levied till the commencement of the registration of the properties of the project. The respondent uploaded the draft sale deed in October 2018 for the purpose of registration of the units and the registration is in progress and 25 units were registered till date. Regarding the

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facility management charges and corpus, it is submitted that the expenditure on day to day running of the complex is recovered monthly from the allottees once they have taken over the dwelling units. Due to reasons beyond the control of the respondent, the probable date of completion was revised and the allottees were given option of withdrawal. The claims of the complainant are unjustified and cannot be entertained. Without prejudice to the above, the compensation sought is exorbitant and claimed without any basis. Therefore the complaint is liable to be dismissed.

4. An attempt to settle the matters amicably has failed.
5. Both the parties have filed their respective evidence on affidavits with documents.
6. On the basis of the rival contentions of the parties, the following points arise for determination:
 - i. Whether the complainant is entitled for compensation on the grounds of shortage in the carpet area of the residential unit and delay in handing over possession?
 - ii. What are the reliefs, the complainant is entitled to?

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

(a). The learned counsel for the complainant submitted that the complainant booked a small family apartment (SFA) in the project and the respondent agreed for delivery of the apartment with building area of 665 sq.ft and super area of 736 sq.ft and there was shortage in the delivery of the agreed carpet area of the apartment and the sale consideration of Rs.19,58,218/- was paid by the complainant and the respondent promised to handover delivery of the apartment by December 2014, but handed over the apartment only on 22.10.2018 and there was delay in execution of the sale deed and the respondent is also liable to reimburse the amount collected towards facility management charges and corpus fund and other reliefs and the complainant is entitled for compensation on all the grounds raised by him.

(b). The counsel for the respondent contended that the respondent is a welfare society registered under the Indian Societies Act and is a "no profit and no loss" organization and therefore no claim of compensation can be

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made against the respondent and there was no discrepancy in the area of the building and the respondent had made it clear that the building area is not equivalent to carpet area and the building area as promised was handed over and there was no discrepancy and the delay in handing over the delivery of the unit is concerned, the respondent undertook the project works and there was some problem with the first contractor and therefore the contract was terminated and the work was given to a second contractor and only a probable date of completion was given to the complainant and the payment schedule was revised and there was delayed payments on the part of the complainant and the sale deed draft was already made ready and the project was also registered with the TNRERA and the complainant is not entitled for any relief and therefore the respondent prays for the dismissal of the complaint.

(c). On the point of shortage of the constructed area of the apartment is concerned, admittedly, Ex.A8, the technical brochure of the respondent contains the statement of areas regarding the construction of the units and for the apartment type 'SFA', the building area is mentioned as 665 sq.ft. along with balcony/verandah of 225 sq.ft. and a circulation area of 73 sq.ft. and in total a super area measuring 736 sq.ft. As per Section 2(k) of the RERA Act, 'carpet area' means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment. In this regard, there is no written agreement between the parties. Therefore the contentions of the complainant that as per Ex.A8, the carpet area statement of the respondent, the dwelling unit is to have the carpet area of 57.42 sq.mts., equivalent to 617.84 sq.ft. and there was a shortage of carpet area is not acceptable. In the said circumstances, the complainant is not entitled for any compensation on the ground of the shortage in the carpet area of the apartment allotted to him.

(d). On the issue of delay in delivery of the possession of the apartment to the complainant is concerned, according to the complainant, as per the booking letter, the promised date of delivery of the apartment was by December 2014 and the delivery of the apartment was made on 22.10.2018. The same was not disputed by the respondent. However, the counsel for the

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respondent contended that it was only probable date of completion of the apartment and the contractor of the project was not making progress of the construction work as per the schedule and had almost stopped the work for a particular period and therefore the respondent was constrained to revise the probable date of completion. It is relevant to note that only on the assurance of the respondent on the probable date of completion of the apartment, the purchasers, like complainant booked the apartment and started making payments. It is also relevant to note that some of the allottees in the project moved the Forums under the RERA Act and after legal battle, the project was registered under the RERA Act by the respondent. Under the RERA Act, the flat purchasers are treated on par with the financial creditors. Even though, the respondent claims themselves as "no profit and no loss" society carrying on the project, no exemption under the RERA Act is given with regard to the application of the Act. Therefore, the complainant is entitled for the compensation for delay in delivery of the apartment by the respondent.

(e). The complainant further sought compensation and a facility management charges and corpus fund a sum of Rs.38,312/-. Even according to the complainant, he was given two months time to take over the apartment and on failure, the charges were collected before taking possession of the apartment. Ex.A3, the handing and taking over instruction letter was dated 04.04.2018. Admittedly, the complainant took delivery and possession of the apartment on 22.10.2018. Since the complainant has taken possession of the apartment after some time, the amounts under the above heads are liable to be transferred to the association of the owners of the apartment for the purpose of facility management and other expenses. Therefore the claim is liable to be rejected.

(f). It is not the case of the respondent that the complainant has given any undertaking to waive any claim for compensation. The RERA Act is a special enactment giving rights the flat/house purchasers providing compensation for the delay in completion of construction and delivery of the constructed flats/houses to the flat/house purchasers. Therefore, the contention of the counsel for respondent is liable to be rejected as are not sustainable.

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(g). In the above circumstances, it is held that the complainant is entitled for compensation only for the delay in handing over possession of the dwelling unit to the complainant by the respondent. Thus, the point is answered accordingly.

8. Answer for Point No.(ii):

(a). In view of the answer for Point No.(i), the complainant is entitled for compensation for the delay in handing over possession of the apartment. Under Ex.A1, the booking letter, the respondent fixed the probable date of completion by December 2014 and started collecting sale consideration from the complainant. Admittedly, the apartment was handed over to the complainant on 22.10.2018. As per proviso to section 18 of the RERA Act, the complainant is entitled for compensation by way of interest for the amount paid from December 2014 till the date of handing over i.e. 22.10.2018. However, the complainant has paid substantial part of sale consideration only from 31.12.2014. As per rule 18 of TNRERA Rules, the 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 complaint, plus 2% per annum i.e., 9.30% per annum for the amounts paid from the dates of payment till the delivery of possession of the constructed apartment in the following manner, i.e. for the part of the amount paid till the end of December, 2014, i.e., from January, 2015 till 21.10.2018 and for the rest of the amount; from the respective dates of payments till 21.10.2018.

(b). The complainant claimed compensation under the head of loss of rental value and its interest. The RERA Act provides compensation under Section 18, as already pointed out, treating the flat purchasers as financial creditors. Hence the claim of compensation under the head of loss of rental value and its interest is rejected since the same would tantamount to award of double compensation.

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(c). Considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed as compensation towards mental agony and hardships and a sum of Rs.25,000/- is fixed as litigation expenses. The claims of compensation on other heads are rejected. The complainants are 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 compensation and cost as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

**Sd/- 15.03.2023
G. SARAVANAN
ADJUDICATING OFFICER**

CCP.NO. 2 of 2022

LIST OF WITNESSES

CW-1 --- J. Jayaprakash

RW-1 --- Viswanathan M.

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	16.05.2013	Booking Letter
Ex.A2	25.01.2018	Allotment Letter
Ex.A3(Series)	....	Handing over Instruction, Payment Receipt and Statement of Account
Ex.A4	03.04.2018	Extract of Interest of Delayed Payment
Ex.A5	29.08.2018	Clearance Letter for Handing/Taking over
Ex.A6	22.10.2018	Handing over Certificate
Ex.A7	06.08.2019	Intimation from Respondent in regard to Lockdown of Central Amenities
Ex.A8	....	Extract of Carpet Area
Ex.A9	24.11.2021	Proof of Form "N" charges
Ex.A10	Calculation of Compensation

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	Application for Registration of Societies
Ex.B2	20.03.1978	Certificate of Registration of Societies
Ex.B3	....	Master Brochure
Ex.B4	06.04.2005	Demand Survey Advertisement
Ex.B5	....	Architects Drawing
Ex.B6	....	Technical Brochure
Ex.B7	04.03.2013	Application Form
Ex.B8	16.05.2013	Booking Letter
Ex.B9(Series)	....	Revision of Payment Schedule
Ex.B10	25.07.2017	Option Letter
Ex.B11	25.01.2018	Allotment Letter
Ex.B12	04.04.2018	Handing, Taking over Instructions and Statement of Accounts
Ex.B13	29.08.2018	Clearance Letter
Ex.B14	28.12.2018	Letter from TNRERA No.186/2018
Ex.B15	23.04.2021	Letter from TNRERA No.186/2018
Ex.B16	17.01.2019	Chartered Accountant Letter
Ex.B17	02.09.2020	Minutes of Meeting with Allottees - web update
Ex.B18	04.06.2015	Withdrawal Option Letter issued to all allottees
Ex.B19	13.08.2018	Undertaking and Affidavit
Ex.B20	26.04.2022	Email from Respondent - Refund of Interest on Delayed Payment
Ex.B21	19.11.2022	Audited Account Statement of Project

Sd/- 15.03.2023
G. SARAVANAN
 ADJUDICATING OFFICER
 TNRERA, CHENNAI

