

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 21 of 2022**

1. A.V. Sivaram
2. P. Haripriya

.... COMPLAINANTS

Vs.

M/s. Selene Estate Ltd.,
Rep. by its Authorised Signatory G. Natarajan
(Regn. No.TN/01/Building/0023/2017)

.... RESPONDENT

Complainants : Rep. by M/s. Chennai Law Associates, Advocates
Respondent : Rep. by Mr. A.R. Vishwaram, Advocate.

Heard on : 03.04.2023
Delivered on : 19.04.2023

ORDER

The complaint by the above complainants seeking compensation on the ground of delay in handing over the apartment by the respondent and other reliefs 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) In the year 2017, the complainants booked an apartment with the respondent in their project, namely, "**INDIABULLS GREENS**" at Jalladianpettai Village, Kancheepuram District. The total sale consideration of the flat was Rs.76,88,123/-. On 21.12.2017, the complainants and the respondent entered into agreements for sale and construction. The respondent undertook to deliver the constructed apartment on 31.05.2019. There was delay in delivery of the flat.

(b) Due to the delay in construction and delivery of the apartment by the respondent, the complainants were put to hardship and heavy loss.

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The respondent changed the dates for delivery of the apartment to the complainants. Hence the complainants were constrained to file a complaint before the Authority in C.No.25 of 2020. The Hon'ble TNRERA passed an order directing the respondent to handover the flat in December 2020. However, the respondent handed over the flat to the complainants only for carrying out fitments in the month of December 2020. Only on 30.07.2021, the flat was occupied by the complainants with all the facilities. The works for other amenities such as lifts, club house are not yet completed. The respondent also collected GST at 12% as against the permissible GST at 5%. The complainants issued legal notice dated 20.10.2021 for compensation for the delay and refund of excess GST paid by the complainants. The respondent failed to comply with the demand of the complainants. Hence the complaint.

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

(a) Except admitted, all the averments and allegations are denied. The respondent and the complainants entered into agreements for sale and construction dated 27.06.2019. In terms of agreements, the respondent was to handover the apartment by 31.12.2019. Due to reasons beyond the control of the respondent such as short supply of construction materials, restrictions imposed by State Government on other state laborers, the respondent could not complete and handover the apartment by 31.12.2019.

(b) Timely payments by the customer were sine-qua-non for effective implementation of the project. The complainants delayed the payments of the sale consideration. The respondent arranged the funds and ensured the completion of the project and the apartment of the complainants was ready and handed over in a livable condition by April 2023. Due to force majeure clause and pandemic situation, the respondent cannot be paid liable for the compensation. Hence the respondent prays for the dismissal of the complaint with exemplary cost.

4. An attempt to settle the matter amicably has failed.

5. On their side, the complainants filed their evidence on affidavit with documents. There was no evidence on the side of the respondent.

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6. On the basis of rival contentions of the parties, the following points arise for determination:-

- i. Whether the complainants are entitled for compensation and other reliefs on the ground of delay on the part of the respondent to deliver possession of the flat booked by them in accordance with the date and terms agreed by the respondent?
- ii. What are the reliefs, the complainants are entitled to?

7. **Answer to Point No.(i):**

(a) The learned counsel for the complainants submitted that the complainants booked an apartment in the project of the respondent namely, "INDIABULLS GREENS" at Jalladianpettai Village, Kancheepuram District and the respondent allotted a flat by the allotment letter dated 01.11.2017 and the complainants and respondent entered into agreements for sale and construction on 21.12.2017 and the respondent undertook to complete construction and handover delivery of the flat by 31.05.2019 and the complainants paid the entire sale consideration and the respondent delayed the completion of the construction and handed over the apartment for carrying out fitments in December 2020 which was not in a habitable condition and there were no basic amenities such as water, power, lift, security, etc. and the complainants occupied the flat only by 30.07.2021 and due to the delay, the complainants were put to heavy loss and hardship and apart from the above, the respondent also collected GST at 12% of the sale consideration as against the permissible GST at 5% and therefore the complainants are entitled for compensation and refund of the excess amount of GST and other reliefs.

(b) However, the learned counsel for the respondent contended that due to reasons beyond the control of the respondent such as short supply of construction materials, restrictions imposed by State Government on other State laborers, the respondent was not able to complete and handover the apartment by the date mentioned in the agreements and there was lockdown imposed due to the Covid-19 pandemic and the same also affected the

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progress of the work and therefore the complainants are not entitled for compensation and the complaint is liable to be dismissed.

(c) It is not in dispute that the complainants booked the apartment in the project of the respondent and Ex.A3, the construction agreement was entered between the complainants and the respondent on 21.12.2017 and under clause 6.1 of the agreement for construction, the respondent undertook to complete the construction on 31.05.2019. As per Ex.A7, the handing over certificate of the respondent dated 31.12.2020, the complainants acknowledged receipt of keys and vacant physical possession of the apartment by 01.01.2021.

(d) The respondent cited several reasons for the delay as the delay occurred due to reasons beyond the control of the respondent. In their counter, the respondent stated that the delay was due to short supply of construction materials, restrictions imposed by State Government on other State laborers, shortage of sand and Covid 19 pandemic as the reasons for the delay. Nowhere in the counter, the periods of delay on each of the grounds are specifically mentioned. The reasons stated by the respondent are vague and unacceptable.

(e) In the above circumstances, it is held that the complainants are entitled for compensation on the ground of delay in delivery of the constructed flat by the respondent to them. However, with regard to the refund of excess GST paid by them, in view of M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Others decision of the Supreme Court reported in 2021 SCC Online 1044 dated 11.11.2021, any claim regarding the refund is to be filed before the Authority. Hence, it is held that the complainants are entitled for compensation on the ground of delay. Thus, the point is answered accordingly.

8. Answer for Point No.(ii):

(a) In view of the answer for point No.(i), the complainants are entitled for compensation on the ground of delay from the respondent.

(b) 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%. The complainants are entitled for the interest at the rate of 7.30% per annum which was currently the highest

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marginal cost of lending rate of interest of SBI at the time of filing of the complaint plus 2%, i.e., 9.30% per annum for the amounts paid from the dates of respective payments till the date of delivery of the flat by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, it is held that the complainants are entitled for a sum of Rs.1,00,000/- towards compensation for mental agony and hardship caused and Rs.25,000/- towards litigation costs incurred by them. 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 the cost to the complainants as per the findings in answer for Point No.(ii), Para No.8 of this order within 30 days of issue of this order.

Sd/- 19.04.2023
G. SARAVANAN
ADJUDICATING OFFICER

CCP.NO. 21 of 2022

LIST OF WITNESS

CW-1 --- A.V. Sivaram

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1 (Series)	23.10.2017	Payment Proofs
Ex.A2	01.11.2017	Allotment Letter
Ex.A3	21.12.2017	Construction Agreement
Ex.A4	21.12.2017	Agreement for Sale
EX.A5	27.06.2019	Construction Agreement (Registered)
Ex.A6	27.06.2019	Sale Deed (Registered)
Ex.A7	31.12.2020	Handing Over Certificate
Ex.A8	04.08.2021	No due Certificate
Ex.A9	20.10.2021	Legal Notice issued by the Counsel for Complainants

Sd/- 19.04.2023
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

