

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.32 of 2022**

D. Varalakshmi

..... 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 : 26.04.2023

Delivered on : 22.05.2023

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 is the wife of the original allottee, namely, Col. M.D. Moorthy who booked the apartment with the respondent in their project namely "**Raman Vihar**" at Coimbatore. The total sale consideration of the apartment agreed was Rs.39,80,000/-. The respondent promised to complete construction and handover the apartment by the end of December 2014. The husband of the complainant paid the consideration as per the payment schedule.

(b). The date of completion was extended several times and finally the apartment was given possession only in 17.08.2018 with a delay of 4 years. Since the husband of the complainant died on 08.07.2020, the apartment was

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transferred in the name of the complainant by letter of the respondent dated 01.11.2021. Till today, the respondent has not executed sale deed for the UDS in the name of the complainant. The complainant was put to hardship due to the delay in delivery of the apartment. Hence, the complainant is entitled for compensation for the delay 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 husband of the complainant applied for an apartment in Coimbatore project vide application for registration dated 28.07.2009. On 10.07.2012, the respondent issued booking letter with a tentative cost of the apartment at Rs.39,80,000/- excluding parking space. The complainant was allotted super deluxe apartment with car parking by letter dated 25.01.2018 of the respondent. The respondent issued handing over instruction along with final statement of account to the complainant on 29.05.2018 and the clearance letter for taking over the apartment was issued on 19.06.2018. After completion of the project, the final cost of the apartment was Rs.47,49,788/-. The respondent decided to refund the interest on delayed payment to all the allottees and hence a sum of Rs.12,998/- is refundable to the complainant.

(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. There was delay in completion of the project due to the non-performance by the contractor. Therefore, the delivery date has been revised due to circumstances beyond the control of the respondent. As per the master brochure, no compensation will be paid by the respondent to the allottee in case of handing over of the dwelling unit is delayed for the reasons beyond the control of the respondent. The respondent handed over the apartment to the complainant on 17.08.2018. The complainant has not come forward to register the sale deed in her favor. The claims of the complainant are unjustified and cannot be entertained. Therefore the complaint is liable to be dismissed.

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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 delay in handing over possession of the apartment and non-execution of sale deed for UDS land in her favor?
 - 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 husband of the complainant booked the apartment and made the payments of sale consideration and the respondent with the promise to deliver the apartment by December 2014 fixed the payment schedule and collected Rs.25,86,084/- out of the total sale consideration of Rs.39,80,000/- by the end of the December 2014 and the respondent delayed the completion of the project and had unilaterally increased the cost of the project collecting additional sum of Rs.3,02,709/- and handed over possession of the apartment only on 17.08.2018 i.e. after a period of 4 years from the promised date of completion and delivery and even then they had not completed other promised common amenities and also not executed the sale deed for the UDS land and also denied the registration of the sale deed to the complainant and the complainant was put to hardship and was unable to rent out the apartment and the respondent had not permitted the allottees to use the common amenities such as club house, swimming pool and other amenities which are kept under lock and key by the respondent and therefore the complainant is entitled for compensation as prayed by her.

(b). The learned counsel for the respondent filed a written argument notes contending that the respondent is a welfare organization and is working on "no profit and no loss" basis and the allottees were explained that no compensation will be paid by the respondent in case of delay in delivery of the apartment for reasons beyond the control of the respondent and

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therefore, no claim of compensation can be made against the respondent and the probable date of completion of the project was December 2014 but due to the constructing contractor having defaulted, the progress of the construction slowed down and a fresh contractor was engaged for completing the unfinished works and the allottees also made delayed payments and the allottees were given option to exit without any penalty, but the allottee in this case decided to continue in the project accepting the terms on escalation of cost as well as delayed possession and the complainant has not come forward to register the sale deed and she has already taken possession of the apartment on 17.08.2018 and the complaint is belatedly filed after more than 3 years after having taken possession and therefore the question of compensation on notional rental value does not arise and the complaint is liable to be dismissed.

(c). On the issue of delay in delivery of the possession of the apartment to the complainant is concerned, it is not in dispute that 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 17.08.2018. However, the counsel for the 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 stalled the work for some time 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 deceased husband of the 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 only after then, the project was registered under the RERA Act by the respondent. The flat purchasers are treated on par with the financial creditors. The respondent claims themselves as "no profit and no loss" society for exemption from payment of any compensation. But no exemption under the RERA Act is given with regard to the application of the provisions of the Act to the project. Therefore, the complainant is entitled for the compensation for delay in delivery of the apartment by the respondent.

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(d). The complainant further sought compensation under the head of non-conveyance of sale deed for UDS by the respondent. It is not in dispute that the respondent has not executed the sale deed for UDS land till the filing of the complaint in favor of the allottee or the complainant and as per section 17(1) of the RERA Act, every promoter is required to execute a registered conveyance deed in favor of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and handover the physical possession of the plot, apartment or building, as the case may be, to the allottees. Under section 19(11) of the RERA Act, every allottee is to participate towards the registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under section 17(1) of the Act. No documents were produced by the respondent fixing any date for registration of the document or calling the complainant to arrange for the registration of the document on any fixed date. Admittedly, the possession was handed over on 17.08 2018. But, the delivery of the apartment is not complete for want of execution of sale deed, which confers title to the allottee over land. Until then, the cause of action continues. Therefore, the contentions of the respondent for not executing the sale deed for the UDS are not acceptable and are liable to be rejected. In the above circumstances, it is held that the complainant is entitled for compensation for the delay in delivery of the apartment and also for non-execution of the sale deed for the UDS and other reliefs. 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 17.08.2018. 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. 17.08.2018. However, the complainant has paid substantial part of sale consideration only from December 2014. As per rule 18 of TNRERA Rules,

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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.

(b). The complainant claimed compensation for non-conveyance of sale deed at 10% of the amount paid to the respondent towards sale consideration. Admittedly, the respondent has not executed the sale deed for the UDS land till the filing of the complaint. However, the claim of compensation at 10% interest rate on the amount paid is not sustainable, since compensation for the delay is awarded at 9.30% p.a. of the sale consideration paid. Therefore considering the facts and circumstances of the case, the compensation for non-conveyance of the sale deed for the UDS is fixed as Rs.1,00,000/- payable by the respondent to the complainant.

(c). Apart from the above, 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 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 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/- 22.05.2023
G. SARAVANAN
ADJUDICATING OFFICER

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CCP.NO. 32 of 2022**LIST OF WITNESSES**

CW-1 --- D. Varalakshmi

RW-1 --- Viswanathan M.

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	10.07.2012	Booking Letter
Ex.A2	25.01.2018	Allotment Letter
Ex.A3	27.04.2018	Statement of Interest on delayed payment
Ex.A4 (Series)	...	Handing over Instructions, Statement of Account, Payment Receipts
Ex.A5	19.06.2018	Clearance Letter for Handing over
Ex.A6	17.08.2018	Handing/Taking over Certificate
Ex.A7	06.08.2019	Intimation of the Respondent regarding Lockdown of Central Amenities
Ex.A8 (Series)	...	Receipts/Vouchers issued by Respondent
Ex.A9	01.11.2021	Letter of Transfer of Ownership
Ex.A10	25.02.2022	Emails sent by the Complainant to Respondent
Ex.A11	07.12.2021	Proof of Fee paid for Form-N
Ex.A12	...	Calculation of Compensation
Ex.A13	17.07.2020	Death Certificate
Ex.A14	06.08.2020	Legal Heir Certificate

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	...	Application Form 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	...	Application Form
Ex.B8	16.06.2009	Booking Letter
Ex.B9	22.10.2013	Revision of Payment Schedule
Ex.B10	25.07.2017	Option Letter

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Ex.B11	25.01.2018	Allotment Letter
Ex.B12	29.05.2018	Handing, Taking over Instructions and Statement of Account
Ex.B13	19.06.2018	Clearance Letter
Ex.B14	28.12.2018	TNRERA Letter dated 28.12.2018
Ex.B15	23.04.2021	TNRERA Letter dated 23.04.2021
Ex.B16	17.01.2019	Chartered Accountant Letter
Ex.B17	02.09.2020	Minutes of Video Conference with Allottees
Ex.B18	04.06.2015	Withdrawal Option Letter by Respondent
Ex.B19	23.05.2018	Undertaking and Affidavit
Ex.B20	24.09.2021	Affidavit & Indemnity Bond by Transferee
Ex.B21	14.03.2021	Letter from Complainant for Transfer of House Proprietor Name
Ex.B22	24.09.2021	Letter from Complainant for enclosing documents for Transfer Process
Ex.B23	01.11.2021	Letter by Respondent to RVAOA, regarding Transfer of Ownership of Flat
Ex.B24	19.11.2022 ,	Audited Account Statement of "Anup Vihar"

Sd/- 22.05.2023
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

