

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

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,

CCP No. 04 of 2022

Ra. Jagan Venkatesh,
Rep. by his PoA S. Rajaram

..... COMPLAINANT

Vs.

M/s. VGN Property Developers Private Ltd,
(Formerly , M/s. VGN Developers Pvt. Ltd.),
Rep. by its Managing Director, D.Pratish Vedhappudi
(TN/02/Building/0013/2018)

..... RESPONDENT

Complainants : Rep. by Ms. A. Smrithi, Advocate

Respondent : Rep. by Mr. K. Harishankar, Advocate.

Heard on : 26.12.2022

Delivered on : 25.01.2023

ORDER

The above complaint by the complainant claiming compensation for the delay in construction and delivery of the booked 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 complainant, in brief, as follows:

The complainant booked an apartment with the respondent in their project, namely, "VGN STAFFORD" at Thirumullaivoyal Village, Avadi Taluk, Thiruvallur District and entered into agreements of sale and construction with the respondent on 20.01.2018 and paid the sale consideration. The total cost of the flat was Rs.40,18,318/-. The complainant paid till date Rs.31,71,944/- to the respondent. The respondent undertook to handover the constructed flat by December 2018 with a grace period of 3 months from the date of the agreement, i.e., by March 2019. The respondent

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postponed the date of delivery several times and there is a delay of about nearly 3 years from the promised date of delivery of the constructed flat. The complainant issued a legal notice dated 28.11.2021 to the respondent but there was no reply from the respondent till date. The complainant is entitled to adequate compensation for the delay and other reliefs.

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

(a). Except admitted, all the averments in the complaint are denied. The complainant booked a flat in the project of the respondent only after being satisfied about all aspects of the project. The complainant and the respondent entered into agreements for construction and sale dated 20.01.2018. The proposed hand over date was 31.03.2019 including the 3 months grace period.

(b). The total sale consideration of the flat was Rs.40,18,318/-. The complainant paid Rs.31,71,994/-. Every payment was done by the complainant only after the due date period. The complainant totally failed in making the payments on date in many occasions. The delay happened due to the delayed payments on the part of the complainant and the reasons beyond the control of the respondent. The respondent executed sale deed for the UDS land on 04.02.2021 in favor of the complainant. The construction works are almost done and the flats are ready to hand over on obtaining completion certificate and the respondent is taking steps to get the completion certificate.

(c). After the extension of the time period of handing over, the Covid-19 pandemic interrupted the work of construction and there were full of lock downs and other restrictions which totally affected the construction activities. The following year 2020 also went in lock down which was not foreseeable. The respondent cannot be made liable since these situations were beyond the control of the respondent. It is also relevant that the value of the property booked by the complainant also got considerably increased. The complainant is only on the side profit zone and the respondents are the one going to incur heavy loss either ways due to the

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delayed payment by the complainant and Covid-19 issue. Therefore the complaint is liable to be dismissed with cost.

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

5. On the side of the complainant, the complainant filed proof affidavit and marked Ex.A1 to Ex.A8 documents. On the side of the respondent, the Senior Manager of the respondent filed proof affidavit and marked Ex.B1 to B5 documents.

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

- i. Whether the complainant is 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 him in accordance with the date and terms agreed by the respondent?
- 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 on 20.01.2018, the complainant entered into agreements of sale and construction with the respondent for purchase and construction of the apartment in their project "VGN STAFFORD" and the respondent undertook to complete the construction and deliver the flat by December 2018, with a grace period of 3 months i.e. by March 2019 and out of the total sale consideration of Rs.40,18,318/-, the complainant paid Rs.31,71,944/- and the respondent kept on delaying the project and revising the payments schedule and there was no delay on the part of the complainant in payment of the sale consideration and the Covid-19 pandemic and the lock downs cannot be taken as valid reasons for the delay and therefore, the complainant is entitled for compensation and other reliefs.

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(b). However, the learned counsel for the respondent filed written notes of arguments contenting that the complainant booked the flat in the project of the respondent and entered into agreements for sale and construction on 20.01.2018 and the respondent undertook to handover possession of the constructed apartment by March 2019 including the grace period, but, due to the spread of Covid-19 pandemic, the work was much affected and therefore the construction works got delayed and it became impossible to hand over the constructed flat within the time limit undertaken in the construction agreement and the complainant also delayed in making the payments as per the payment schedule and the present claim for compensation is unjust and not maintainable and the respondent had called upon the complainant on 05.03.2022 to take possession of the flat, but the complainant, instead of taking the possession of the flat, had adamantly restricted himself from taking possession of the flat citing the dispute of compensation and therefore the complaint is liable to be dismissed.

(c). It is not in dispute that under Ex.A1, the construction agreement dated 20.01.2018 entered with the complainant, the respondent undertook to complete construction and deliver the apartment by December, 2018 with additional grace period of 3 months i.e. by March 2019. In the counter of the respondent dated 04.07.2022, it is stated that the construction works are almost done and the flats in the project are ready to handover which is only stalled due to process of obtaining completion certificate. In the written notes of argument by the respondent filed on 05.01.2023 also, it is specifically mentioned as the process of obtaining completion certificate is under way and any time it will be obtained and the respondent had called the complainant on 05.03.2022 to come and take possession of the said flat but the complainant had adamantly restricted himself from taking possession of the flat citing the compensation dispute. Ex.A4, the email correspondence of the respondent dated 05.03.2022 reads as "we are happy to inform you that handing over milestone is released in your apartment. PFA the pictures and demand letter for your reference. Kindly

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inform us in prior the date for joint inspection". From all the above, it is clear that the flat was not yet ready for handing over by the respondent and the respondent is yet to get the completion certificate from the concerned authority. There is no evidence that the respondent properly intimated the complainant the date of delivery of the flat.

(d). The respondent claimed that the complainant totally failed in making payments on dates in many occasions and also produced the payment particulars in the written notes of arguments. A reading of the particulars of payments by the complainant to the respondent shows that on many occasions, the complainant had made payments in time. The respondent has conveniently ignored that by the terms of the construction agreement, they undertook to deliver the constructed apartment by 31.03.2019 including the grace period and there was inordinate delay in completing the construction and delivery of the constructed flat and the revision in payment schedule. The respondent further relied on the Covid-19 pandemic and lock down restrictions for the delay, but no particulars have been given by the respondent with regard to the specific period for which the work was suspended on the above reasons. Therefore it is clear that the respondent is taking advantage of the above reasons to deny the claim of compensation by the complainant. Considering all the above circumstances, it is held that the complainant is entitled for compensation for the delay in delivery of the flat 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 on the ground of delay in delivery of constructed apartment by the respondent i.e. from April 2019 till the date of handing over of the flat. Section 18 provides compensation by way of interest for every month of delay till handing over possession of the apartment. As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI), plus 2% per annum. Hence, the complainant is entitled for the interest on the

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amounts paid 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 respective dates of payments till the handing over of the flat.

(b). Apart from the above, towards mental agony and inconvenience caused to the complainant, a sum of Rs.1,00,000/- is fixed and towards the legal expenses, a sum of Rs.25,000/- is fixed. The complainant is entitled for 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 for delay, mental agony and inconvenience, and costs as per the findings in answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

Sd/- 25.01.2023
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 -- S. Rajaram (PoA)
RW1 -- A. Rangappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	20.01.2018	Construction Agreement
Ex.A2	04.02.2021	Sale Deed
Ex.A3(Series)	...	Payment Receipts
Ex.A4(Series)	...	Email Communications
Ex.A5	22.10.2021	Specific Power of Attorney
Ex.A6	28.11.2021	Legal Notice to Respondent
Ex.A7	...	Allotment and Welcome Letter
EX.A8	...	Photo of the construction site

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	20.01.2018	Construction Agreement
Ex.B2	20.01.2018	Agreement for Sale
Ex.B3	04.02.2021	Sale Deed for UDS
Ex.B4	25.03.2022	Email Correspondence
Ex.B5(Series)	...	Payment Receipts

Sd/- 25.01.2023
G.SARAVANAN,
ADJUDICATING OFFICER,
TNRERA, CHENNAI.

