

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

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

**CCP No. 47 of 2022**

R. Dinesh Kumar

.... COMPLAINANT

**Vs.**

M/s. Akshaya Private Limited

Rep. by its Authorised Signatory, T. Senthil Kumaran

(Regn.No.TN/01/Buildings/0159/2021)

.... RESPONDENT

Complainant : Rep. by Mr. Rahul J. Krishnan, Advocate.

Respondent : Rep. by Mr. Mani Sundar Gopal, Advocate.

**Heard on** : 26.04.2023

**Delivered on** : 31.05.2023

**ORDER**

The complaint by the above complainant claiming compensation for the delay in handing over possession of the constructed flat 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:**

(a). On 15.05.2017, the complainant booked a villa and entered into agreements for sale and construction with the respondent in their project, namely, "TANGO" at Thoraipakkam, Kancheepuram District. The total sale consideration was Rs.53,93,421/- which included service tax, infrastructure development charges, etc. The respondent undertook to handover possession of the villa by December 2017 with a grace period of 90 days.

(b). The complainant made the payments as per the payment schedule. There was delay in construction and delivery of possession of villa by the respondent. The respondent completed and handed over possession of villa only on 23.09.2020. There was inordinate delay of 30 months. The

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respondent is liable to pay compensation as per clause 8 of the construction agreement and also 10.5% interest on the amount paid by the complainant apart from the compensation for mental agony and cost.

**3. Averments in the counter of the respondent, in brief, as follows:-**

(a). Except admitted, all the averments and allegations are denied. The project was launched in the year 2014. The complainant booked the apartment and entered into agreements for sale and construction on 15.05.2017 towards purchase of the apartment for a total consideration of Rs.53,62,241/-. The project was completed as of August 2020 and the complainant had taken possession of the apartment in September 2020. The complainant himself had delayed in the schedule wise payments of sale consideration which was also one of the reasons for the overall delay in timely completion of the project.

(b). The bona fide reason for the delay was communicated to the complainant periodically. The complainant has not raised any issues about the delay at the relevant points of time. The accumulated interest on delayed payment was waived off due to the delay in delivery of possession of the apartment. The delay was caused due to various external factors that were beyond the control of the respondent. The Covid-19 pandemic outbreak and its consequences which were beyond the control of the respondent led to the delay in delivery of the apartment. Clause 8 of the construction agreement can be invoked by the complainant only if he has made all the payments on time. The claim of compensation with cost is baseless and is liable to be rejected. Hence the respondent prays for the dismissal of the complaint as not maintainable.

4. An attempt to settle the matter 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 ground of delay in construction and delivery of the villa

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by the respondent in accordance with the date and terms of the memorandum of agreements?

ii. What are the reliefs, the complainant is entitled to?

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

(a). The learned counsel for the respondent contended that the complainant delayed in the schedule wise payments of the sale consideration and the same was one of the reasons for the delay in timely completion of the project and the complainant had not raised any issues about the delay at the relevant points of time and as per sections 73, 74 and 75 of the Contract Act 1872, the parties are to plead and prove the claim of compensation and there was no specific pleadings of any loss to the complainant and apart from the same, the complainant failed to make stage wise payments and the respondent had waived off the interest amount due on delay payment of sale consideration by the complainant at the time of handing over of the apartment and it amounts to promissory estoppel, particularly estoppel by conduct and section 88 of the RERA Act provides for application of other laws and the Contract Act is applicable and therefore the complainant is not entitled for compensation. The learned counsel also relied on the following decisions in support of his contentions:

**1. *State of Kerala and Others Vs. United Shippers and Dredgers Ltd.*  
reported in AIR 1982 Ker 281.**

**2. *R.S. Maddanappa (Deceased) after him by his Legal Representatives Vs. Chandramma & Another* reported in AIR 1965 SC 1812.**

(b). The learned counsel for the complainant submitted that as per terms of agreement for construction, the date for handing over delivery of villa was December 2017 and the villa was handed over only on 23.09.2020 and the complainant had paid Rs.53,93,421/- which was the cost of the villa inclusive of all taxes and charges to the respondent and the factors under section 72 are to be taken into consideration and as per section 89 of the RERA Act, the provisions of the RERA Act have overriding effect in case of inconsistency with any other law and as per section 18 of the RERA Act, the complainant is entitled for all the reliefs.

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(c). It is not in dispute that as per the terms of the Ex.A2, construction agreement dated 15.05.2017, the respondent undertook to deliver the apartment in December 2017 with a grace period of 90 days which was over by March 2018 and the constructed apartment was handed over by the respondent to the complainant only on 23.09.2020.

(d). Section 18 of the RERA Act deals with the return of the amount and compensation. As per the first proviso of the section, in case of delay of construction and delivery of the constructed apartment to the allottee, if the allottee does not intend to withdraw from the project, the promoter has to pay interest for every month of delay till the handing over of the possession, at such rate as may be prescribed. The section is very clear on the right of the complainant/allottee to claim compensation for the delay. Under terms of the construction agreement also, in the event of delay in handing over the apartment, the respondent undertook to pay compensation. Therefore, there is no question that any specific pleading of loss is required on the part of the complainant.

(e). The next contention of the learned counsel for the respondent is that the interest amount due to the delay payment was waived at the time of handing over by the respondent and it amounts to estoppel by conduct of the complainant not to claim any compensation. A perusal of the payment schedule of Ex.A2, the construction agreement reveals that except to the first payment of Rs.20,29,500/- which was paid on or before 01.06.2017, all the other payments are to be made on completion of particular stages of construction and on handing over of the apartment. The payment schedule in Ex.A1, the agreement for sale also reveals that the booking advance of Rs.2,00,000/- was received by the cheque dated 03.05.2017 and the balance sale consideration for the UDS Rs.16,30,500/- was to be paid on or before 01.06.2017. The complainant had made payment of Rs.34,34,529/- by 14.06.2017 and other amounts subsequently to the respondent. When there was delay in the completion of particular stages of the construction and delivery of apartment and there was no fixed dates for all the stage wise payments by the complainant, the complainant cannot be found fault for making payments belatedly that are prior of the completion of particular stage of construction or the handing over of the apartment.

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(f). Under section 88 of the RERA Act, the provisions of the RERA Act are applicable in addition to, and not in derogation of, the provisions of any other law for the time being in force. However, section 89 makes it clear that the RERA Act is to have overriding effect and the provisions of the RERA Act shall have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The RERA Act is a special enactment which came into force since 2016 to protect the interests of the flat purchasers. The application of the provisions of the Contract Act can be made only if the provisions of the Contract Act are not inconsistent with the provisions of the RERA Act. Therefore, the contentions of the learned counsel for the respondent on section 88 of the RERA Act are liable to be rejected and the decisions relied by him cannot be made applicable to the case under the RERA Act.

(g). Considering all the above circumstances, it is held that the complainant is entitled for compensation for the delay in completion and delivery of the constructed villa to the complainant.

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

(a). In view of the answer for the point no (i), the complainant is entitled for compensation on the ground of delay in completion of construction and handing over possession of the apartment to the complainant. The complainant has claimed compensation relying on clause 8 of the construction agreement with the respondent and also relying on section 18 of the RERA Act. For the delay, the compensation cannot be granted under both the heads since it will amount to double compensation. Therefore, the complainant is entitled for compensation by way of interest on the amount paid from the promised date of delivery of possession till the date of actual handing over possession of the apartment at the prescribed rate. 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 at the rate of 7.30% per annum which was the current 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 as

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sale consideration from the promised date of delivery of possession of the villa, i.e., from January, 2018 till the date of delivery of possession of the apartment to the complainant.

(b). Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- towards compensation for mental agony, loss and hardship caused to the complainant and a sum of Rs.25,000/- towards litigation expenses are 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 amounts at the interest rate, compensation and cost 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/- 31.05.2023  
G. SARAVANAN  
ADJUDICATING OFFICER

**CCP.NO. 47 of 2022**

**LIST OF WITNESSES**

CW-1 --- R. Dinesh Kumar

RW-1 --- J. Ravi

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.No.	Date	Documents Name
Ex.A1	15.05.2017	Agreement for Sale
Ex.A2	15.05.2017	Construction Agreement
Ex.A3	23.06.2017	Sale Deed
Ex.A4	27.08.2020	Email Communications
Ex.A5	23.09.2020	Apartment Handing over and Possession Letter
Ex.A6	23.09.2020	Account Statement

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

<b>Ex.No.</b>	<b>Date</b>	<b>Documents Name</b>
Ex.B1	15.05.2017	Agreement for Sale
Ex.B2	15.05.2017	Construction Agreement
Ex.B3	23.06.2017	Sale Deed
Ex.B4	26.08.2020	Email to Complainant regarding Apartment readiness.
Ex.B5	23.09.2020	Handing over Letter
Ex.B6	26.08.2020	Final Account Statement
Ex.B7	26.08.2020	Customer Interest Calculation Sheet
Ex.B8	23.09.2020	Customer Statement of Account
Ex.B9	27.08.2020	Customer Email seeking compensation and Reply of Akshaya

**Sd/- 31.05.2023**  
**G. SARAVANAN**  
**ADJUDICATING OFFICER**  
**TNRERA, CHENNAI**

