

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 50 of 2022**

1. K. Ganesan
2. V. Mahalakshmi

.... COMPLAINANTS

Vs.

M/s. Newry Properties Pvt. Ltd.
Rep. by its Director, Sanjeev Gopalakrishnan
(Regn. No.TN/1/Building/0001/2017)

.... RESPONDENT

Complainants : Rep. by M/s. Chennai Law Associates, Advocates
Respondent : Rep. by Dr. S. Padma , Advocate.

Heard on : 06.03.2023
Delivered on : 29.03.2023

ORDER

The complaint by the above complainants claiming compensation on the ground of rectification of major defects in the apartment purchased from the respondent is filed under section 31 read with 71 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred as RERA Act).

2. **Averments of the complainants, in brief, as follows:**

(a). The complainants jointly purchased the flat in the project of the respondent namely, "NEWRY SHANMITA" at Jelandianpettai Village, Kancheepuram District. In January, 2020, the respondent issued a letter for handing over physical possession of the flat and subsequently recorded handing over the physical possession of the flat to the complainants. After all the formalities were over, the complainants moved into their new flat in the last week of February 2020 and settled down in 3 months time.

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(b). On 29.05.2020, the complainants made a list of the defects noticed with regard to the construction of their flat and intimated the same to the facility manager of the respondent who also inspected the flat and noted down the defects and assured to address the same within the shortest possible time. Some of the defects have been rectified and the rectification work took place until the first week of July 2020. On 23.07.2020, the complainants issued a representation. On 30.07.2020, the respondent received the representation.

(c). There are several defects in the construction of the flat. Manufacturing defects in the flooring tiles used resulted in uneven the flooring. There was a huge patch of dampness showing the seepage of water from third floor toilet. There was no provision for sun-shade. The door locks and fittings are not properly functioning. There was fault in the design and implementation of the wind passage. The toilet fittings attached to the bed rooms were of sub-standard quality. The trip switches and indicators were also sub-standard quality. Apart from the above, there were wall cracks with varying height and depth found on the flat.

(d). The respondent has not made any steps to cure the defects mentioned in the representation of the complainants. Hence the complainants issued legal notice dated 07.09.2020. The respondent issued a reply notice dated 23.09.2020 wherein they admitted the defects in the flat and assured to rectify the defects.

(e). However, the respondent failed to rectify and cure the defects and has not taken any steps to cure the same. The complainants are to rectify the defects by themselves. Hence the complainants are entitled for the compensation towards rectification work and other reliefs.

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

(a). The claim by the complainants are not tenable in terms of law and facts. Except admitted, all the averments and allegations are incorrect and false. The project was registered with the Authority, and was completed and the Chennai Metropolitan Development Authority (CMDA) also issued completion certificate dated 04.02.2019. The complainants entered into sale and construction agreements dated 22.08.2019 with the respondent and the possession was taken

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by the complainants on 23.12.2019. Prior to the handing over of the flat, the respondent attended and completed all the snag points raised by the complainants and after full satisfaction of construction, the physical possession of the flat was taken by the complainants.

(b). On 12.07.2020, the complainants reported complaint in the Customer Service Register provided at the site with the following defects namely, wall cracks, flush tank leakage, power switches and wash basin blockage. On the same day, the representative of the respondent inspected the flat and steps taken to resolve the rectifications which were due to the normal usage. The complainants also acknowledged that the issues have been addressed by the respondent. On 03.08.2020, the complainants again reported the same issues. The technical team of the respondent again visited the flat of the complainant on 04.08.2020 and addressed the issues and the same was acknowledged by the complainants. The tiles for the flooring were provided by reputed manufacturer. There were no defective tiles used by the respondent. The complainants have not raised any objections until July 2020 i.e. more than 7 months of taking possession of the flat.

(c). Water proofing work had been carried out at the time of construction itself. The issue of dampness may be from a plumbing perspective also. The respondent had initiated necessary action and the issue was resolved. The door locks and stoppers were properly functioning and the same was rectified. Flush tank leakage of the complainants has already been attended by the respondent team on 12.07.2020 and 04.08.2020. The respondent while attending these complaints have also informed by the respondent to the complainants that the reason for flush tank leakage may be due to dirt sediments accumulated in the flush. All the outdoor air-conditioning units were positioned in the earmarked spaces. The claim of repair works is with a clear intent to harass and tarnish the reputation of the respondent. The respondent sent a detailed reply to the legal notice issued by the complainants covering all the points of allegation as false and baseless. The respondent also sent the technical team for re-examination and also to explain everything to the complainants on the issues raised by the complainants. Hence the complainants are not entitled for any compensation and other reliefs. The complaint filed after two years by the

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complainants is not maintainable. Hence, the respondent prays for the dismissal of the complaint.

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

5. Both the parties have filed their respective evidence on affidavit with documents.

6. On the basis of the contentions of both sides, the following points arise for determination:-

- i. Whether the complainants are entitled for compensation on the ground of rectification of major defects in their flat purchased from the respondent?
- ii. What are the reliefs, the complainants are entitled to?

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

(a). The learned counsel for the complainants filed written notes of arguments and submitted that the complainants purchased a flat with amenities in the project of the respondent and the complainants moved to their flat in the last week of February 2020 and it took 3 months time to settle down and on 29.05.2020, they made a list of defects in the flat and reported the same to the respondent and the respondent assured to address the same immediately and started rectification work till the 1st week of July 2020, but the respondent has not cured the defects which are structural defects and as per the terms of clause 11 of the Ex.A5, the construction agreement and Section 14(3) of the RERA Act, the defects are to be rectified at the cost of the respondent and since the respondent failed to rectify the defects, the complainants have to do the rectification works all by themselves and therefore, the complainants are entitled for compensation on the ground of structural defects in the flat and other reliefs.

(b). However, the learned counsel for the respondent contented that the complainants purchased the flat in the project of the respondent and the project was completed and Completion Certificate was issued by the CMDA on 04.02.2019 and the possession of the flat was taken over by the complainants on 23.12.2019 and subsequently, the complainants reported complaints of defects namely, wall cracks, flush tank leakage, power switches and wash basin blockage

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on 12.07.2020 in the Customer Service Register of the respondent and on the same day, the respondent deputed their technical team to inspect and to take steps to resolve the same and rectify the complaints and they tested the functioning of power switches and found to be working properly and observed that the wall cracks pointed out are seasonal cracks which occur due to seasonal changes in weather and are prone to occur in new constructions and the same was explained to the complainants and acknowledged by the complainants in the Customer Service Register and the issues have been addressed by the respondent and the complainants have taken possession of the flat after satisfying themselves that the flat with specifications as per the agreement was constructed and even after rectification works, the complainants have willfully chosen to allege false claims and the complaint filed after two years and the complainant are not entitled for any reliefs and the complaint is liable to be dismissed.

(c). It is not in dispute that after taking possession of the newly constructed flat by the complainants, they made complaints on structural defects of the flat to the respondent and the respondent also deputed a team to attend the defects. Even though, the respondent stated that they have attended some of the defects, they pointed out that the defects such as wall cracks occurred due to seasonal changes in the weather and are prone to occur in new construction. Therefore the respondent cannot take the stand that all the defects pointed out by the complainants were rectified by them. Ex.B4 and B5 are the customer service reports of the respondent in which the nature of service required by the complainants as reported by them are recorded clearly. Even though the respondent claims to have attended the defects and noted in the report in Ex.B4 dated 12.07.2020 as "All points issue attended" and the report also contains signature of one of the complainants, the column on customer feedback is left blank and the customer rate clause to be filled by the customer is also left blank. In Ex.B4, the customer service report dated 03.08.2020, the nature of service as reported by the customer are detailed as below:

"1. Hall wall dampness, 2. RR Tiles issue in MB & 2nd, 3. Minor wall cracks, 4. RR Door issue, 5. Door stopper, 6. MB window grill issue, 7. Power indicator, 8. Bad smell in hall. Hot air, 9. 3rd Bedroom RR side not finishing".

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The report also contains the customer feedback in blank and the service rating also left blank and no signature of the complainants are found in the document. Therefore it is clear that the structural defects reported by the complainants were not attended by the respondent to their satisfaction.

(d). The respondent relied on Ex.B1, B2, B3 and B6, the certificates and also customer service reports. So far as the Structural Stability Certificate in Ex.B1 issued by consultancy services and B2, completion certificate issued by CMDA are concerned, these certificates are issued by the concerned to that effect that the building has been completed as per approved plan and norms for issue of completion certificate by the Authority and it has nothing to do with the structural defects or other defects in the apartments of the project.

(e). Section 14(3) of the RERA Act lays down that in case of any other structural defects or any other defects in workmanship, quality or provision of services or any other obligations of the promoter is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within the satisfied time and also for compensation to the allottees in case of failure to rectify such defects by the promoter. Clause 11 of the Ex.A5, the Construction Agreement which deals with the defects liability and rectification of defects also covers the liability of the promoter to rectify the defects within 5 years from handing over of the apartment to the allottees.

(f). Considering all the above circumstances, it is held that the complainants are entitled for compensation on the ground of structural defects and other defects in the apartment constructed and handed over by the respondent to them and other reliefs. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

In view of the answer for point no.(i), the complainants are entitled for compensation towards rectification of major defects in the apartment purchased by them from the respondent. Ex.A12 is the Engineer's Report on the work abstract and their cost by Licensed Civil Engineers. Under the certificate, the estimate of the works to be attended is fixed at Rs.4,50,000/-. Therefore a sum of Rs.4,50,000/- is fixed as compensation towards rectification of structural defects

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or other defects of the apartment of the complainants purchased from the respondent. Apart from the same, a sum of Rs.50,000/- as compensation towards mental agony and hardships suffered by the complainants and a sum of Rs.25,000/- towards as litigation cost are fixed. The complainants are entitled for all the reliefs as above.

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/- 29.03.2023
G. SARAVANAN
ADJUDICATING OFFICER

CCP.NO. 50 of 2022

LIST OF WITNESSES

CW-1 --- K. Ganesan

RW-1 --- Sanjeev Gopalakrishnan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	04.02.2019	Completion Certificate
Ex.A2	22.02.2019	Requisition Letter
Ex.A3	26.06.2019	Allotment Letter
Ex.A4	22.08.2019	Agreement for Sale
Ex.A5	22.08.2019	Construction Agreement
Ex.A6	26.09.2019	Sale Deed
Ex.A7	24.12.2019	Supplemental cum Maintenance Agreement
Ex.A8	Apartment Handing over Letter
Ex.A9	28.07.2020	Representation by the Complainant
Ex.A10	07.09.2020	Legal Notice along with Postal Tracking
Ex.A11	23.09.2020	Reply to Legal Notice
Ex.A12	02.11.2020	Engineer Report
Ex.A13	07.12.2020	Rejoinder with AD Card
Ex.A14	31.12.2019	Statement of Account
Ex.A15	Photographs shown wall cracks and defects

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	13.10.2018	Structural Stability Certificate
Ex.B2	04.02.2019	Completion Certificate issued by CMDA
Ex.B3	Certificate of Completion of work by Kharche and Associates
Ex.B4	12.07.2020	Customer Service Report
Ex.B5	03.08.2020	Customer Service Report
Ex.B6	Certificate given by Head of Project

Sd/- 29.03.2023

G.SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI.

