

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

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

CCP No. 62 of 2022

1. S. Natarajan
2. T. Gomala Geetha

.... COMPLAINANTS

Vs.

M/s. Rajkham Infra Pvt. Ltd.
Rep. by its Managing Director, M. Arumugam
(Not registered)

.... RESPONDENT

Complainants : Rep. by Mr. Ramasubramaniam Raja, Advocate
Respondent : Rep. by Mr. G. Arun, Advocate

Heard on : 08.05.2023

Delivered on : 05.06.2023

ORDER

The complaint by the above complainants claiming compensation for loss incurred relating to work on interiors, painting, balcony grill, sun shade, electrical and plumbing etc. in the flat booked by them is filed under Section 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred to as RERA Act).

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

(a). On 26.10.2020, the complainants booked a residential apartment in the project of the respondent, namely, "SILVER CREST" at Madurapakkam, Chennai on payment of advance amount. The respondent issued allotment letter dated 29.10.2020 for flat no.F203 in Block No.VI of the project. Subsequently on 18.11.2020, the complainants and the respondent entered into agreements for sale and construction of the apartment. The complainants made payment of Rs.25,00,000/- between the months of October 2020 to December 2020.

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(b). The complainants carried out interiors in the flat and performed house warming ceremony on 27.01.2021 with the consent and prior approval of the respondent. The complainants had spent Rs.2,87,435/- towards interiors, painting, balcony grill, sunshade, electrical and plumbing in the flat.

(c). The respondent had availed project loan from Shriram Housing Finance Ltd. and has mortgaged the project land and they were required to deposit the entire sale proceeds in the account of the project loan. The respondent was unable to obtain NOC from the finance company in order to register the flat in favor of the complainants. Subsequently, the respondent unilaterally cancelled the booking of the flat. On account of cancellation, the respondent had assured to refund the amount paid to them and also issued cheques for the amounts. But one of the cheques was returned dishonoured by the bank as payment stopped by the drawer. The complainants also initiated proceedings under section 138 of the Negotiable Instrument Act. Subsequently, the complainants came to know that the apartment was sold by the respondent to another buyer. The respondent has sold the apartment along with the interiors, painting, balcony grill, etc. works by the complainants for the apartment.

(d). The complainants have filed complaint under Form-M for refund of booking amount, reserving its rights to file compensation towards losses suffered by them. The present reliefs are relating to compensation for the works carried out by the complainants in the apartment. The complainants are entitled for the compensation and cost.

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

(a). Except admitted, all the averments are denied. It is admitted that the respondent received Rs.25,00,000/- out of total sale consideration of Rs.42,00,000/- from the complainants with regard to the sale of the flat in the project of the respondent. The complainants never adhered to the terms of the company right from the beginning of the allotment. They used to have quarreled with the staff of the company for no reasons. The complainants informed that due to some financial crisis, they could not pay the remaining sale consideration and sought time for getting approval from their bank to get financial assistance. On humanity ground, the complainants have permitted to have welcome ceremony in the property. It is not true that the complainants spent money

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towards interior work, painting, balcony grill and kitchen, sunshade, electrical and plumbing, etc.

(b). The complainants who were no way connected with Shriram Housing Finance Ltd approached the finance company and quarreled with them. The respondent issued cheques for the amount paid by the complainants only for the purpose of security and the complainants were never instructed to present the cheques into their bank for payment. The respondent called the complainants to receive demand draft for a sum of Rs.10,00,000/- at first and the remaining amount would be paid within a short span of time and the complainants were not ready to receive the same. Therefore, there was delay in repayment of the amount of Rs.25,00,000/- to the complainants. The respondent is not liable to refund the booking amount along with the interest as there was no fault on the part of the respondent. The complainants filed complaint under section 138 of Negotiable Instrument Act before the Fast Track Court II at Coimbatore. The complaint is devoid of any merits and it is liable to be rejected on merits.

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

5. On the side of the complainants, the complainants filed proof affidavit with documents. No evidence was let in on the side of the respondent.

6. On the basis of the contentions of the complainant, the following points arise for determination;

- i. Whether the complainants are entitled for compensation on the ground of loss incurred relating to works on interiors, painting, balcony grill and kitchen, sunshade, electrical and plumbing, etc. in the flat booked by them and other reliefs?
- ii. What are the reliefs, the complainants are entitled for?

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

(a). The learned counsel for the complainants submitted in his written notes of arguments that the complainants sought the reliefs of compensation for the loss incurred by them on works relating to interiors, painting, balcony grill and kitchen, sunshade, electrical and plumbing, etc. spent for the booked flat and bank interest charges and rental expenses and other reliefs and the respondent

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permitted the complainants to perform house warming ceremony and carry out interior works even before the execution of the sale deed and subsequently, the respondent unilaterally cancelled the booking of the above flat and the complainants had spent a sum of Rs.6,87,435/- towards interior works on the flat and they were staying in a rental accommodation and due to the cancellation, they paid the rentals and also suffered mental agony and are entitled for all the reliefs and costs.

(b). The learned counsel for the respondent also filed written notes of arguments and contended that the respondent received a sum of Rs.25,00,000/- out of total sale consideration of Rs.42,00,000/- with regard to the sale of the booked flat and the complainants never adhered to the terms of the agreement from the beginning of the allotment and on humanity ground, the complainants were permitted to conduct welcome ceremony in the property and the amounts alleged to have spent on the interior works are not admitted and there were no evidence for payments to the laborers or the contractors is produced and the respondent is not liable to pay any amount for the same and they have filed two applications before the Authority and also proceedings under section 138 of the Negotiable Instrument Act and the complainants are not entitled for any reliefs.

(c). On perusal of the complaint, it is seen that under the column for reliefs sought for, the complainants sought Rs.6,37,435/- as compensation for the loss on the works of interiors, painting, balcony grill, sunshade, electrical and plumbing, etc. spent towards the flat and a sum of Rs.1,50,000/- towards rental expenses incurred by them apart from the compensation for mental agony and deficiency in service with litigation cost. The relief with regard to direction for claiming bank interest charges is deleted in the prayer column. The claim for compensation is filed under section 31 read with section 71 of the RERA Act. Section 31 deals with the filing of complaints with the Authority or the Adjudicating officer by any aggrieved person. Under section 71 of the Act, the Adjudicating officer is given power to adjudicate compensation under sections 12, 14, 18 and 19 of the RERA Act. Section 12 deals with the obligations of the promoter regarding the veracity of the advertisement or prospectus. Section 14 deals with the adherence to sanctioned plans and project specifications by the promoter. The complaint is not coming under the purview of sections 12 and 14 of the RERA Act.

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(d). Section 18 of the RERA Act deals with return of the amount and compensation. The first proviso to section 18 provides for compensation where an allottee does not intend to withdraw from the project, he is entitled for compensation by way of interest for every month of delay, till the handing over possession of the flat. Under para (xvi) of the complaint, it is specifically stated as "***The complainant has filed complaint under Form M for refund of booking amount, reserving its rights to file compensation towards losses suffered under Form N***". Therefore, the complaint is also not filed seeking compensation under section 18 of the RERA Act.

(e). Section 19 of the RERA Act deals with the rights and duties of the allottees. The claim of compensation sought by the complainants does not come under the section 19 dealing with the rights and duties of the allottees. Admittedly, the complaint is not filed for any of the compensation that can be claimed under the section 71 of the RERA Act. The claim of compensation other than the compensation under sections 12, 14, 18 and 19 of the RERA Act is not coming under the purview of the Adjudicating Officer. In the said circumstances, it is held that the complainants are not entitled for any reliefs in the claim petition filed under section 71 of the RERA Act.

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

In view of answer for point no.(i), the complainants are not entitled for any relief. The complaint is liable to be dismissed.

In the result, the complaint is dismissed. No costs.

Sd/- 05.06.2023
G. SARAVANAN
ADJUDICATING OFFICER

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CCP.NO. 62 of 2022**LIST OF WITNESSES**

CW-1 --- S. Natarajan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	29.10.2020	Allotment Letter
Ex.A2	18.11.2020	Sale Agreement
Ex.A3	18.11.2020	Construction Agreement
Ex.A4(Series)	Booking Form and Payment Receipts
Ex.A5(Series)	Email Communications
Ex.A6	Cheques issued by the Respondent and return memos
Ex.A7	24.12.2021	Legal Notice issued by the complainant under section 138
Ex.A8	31.12.2021	Encumbrance Certificate of the Project
Ex.A9	30.12.2021	Construction Agreement dated 30.12.2021
Ex.A10	30.12.2021	Sale Deed dated 30.12.2021
Ex.A11	03.01.2022	Reply Legal Notice by the Respondent under section 138
Ex.A12	01.02.2021 to 06.01.2022	Statement of Accounts for Rental Payment
Ex.A13	03.12.2020 to 08.12.2021	Statement of Account of Gold Loan
Ex.A14	10.02.2021	Proof of Expenditure for Interiors

Sd/- 05.06.2023

G. SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI

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Secretary (Finance & Admn.)
TNRERA, Chennai - 8.