

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

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

CCP No. 65 of 2022

S. Arun Rajaa

.... **COMPLAINANT**

Vs.

M/s. Provident Housing Limited,
Rep. by its Managing Director.

(Project not registered)

.... **RESPONDENT**

Complainant : Rep. by Mr. K. Murugan, Advocate.
Respondents : Remained absent.

Heard on : 10.10.2022

Delivered on : 31.10.2022

ORDER

The complaint by the above complainant claiming compensation and cost of the litigation from the respondent on the ground of delay in construction and delivery of the booked apartment 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 30.05.2015, the complainant entered into agreements for sale and construction of the apartment booked with the respondent in their project namely, "**PROVIDENT GREENPARK**" in Coimbatore Rural Village, Coimbatore District also paid a sum of Rs. 43,49,213/- to the respondent towards sale consideration and the amount included registration and legal fees. The complainant availed bank loan for part of the amount of Rs.31,40,603/.

(b). As per the terms of the agreement, the respondent undertook to complete construction and deliver the apartment on or before 31.12.2016 with a grace period of six months. The respondent failed to complete the

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construction and deliver the apartment even after the expiry of the grace period i.e. 30.06.2017.

(c). In view of the inordinate delay in delivery of the constructed apartment, the complainant preferred cancellation of the apartment and also informed the respondent. In spite of several reminders, the respondent failed to respond with the refund process. Thereafter, on 09.01.2020, the respondent asked the complainant to pay the pending payment. Hence the complainant is entitled for compensation and legal expenses.

3. In spite of service of notice, the respondent remained absent.

4. In evidence to prove his claim, the complainant filed proof affidavit with documents.

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

i. Whether the complainant is entitled compensation and legal expenses on the ground of failure on the part of the respondent to complete the construction and to handover possession of the booked apartment as per the terms and conditions of the agreement?

ii. Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The learned counsel for the complainant submitted that the complainant booked an apartment in the project of the respondent and paid a sum of Rs.43,49,213/- and also entered into sale and construction agreements with the respondent on 30.05.2015 and the respondent

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undertook to construct and deliver the apartment on or before 31.12.2016 with a grace period of six months and even after the expiry of the grace period by 30.06.2017, the respondent failed to deliver the apartment to the complainant and the complainant informed the respondent about cancellation of the apartment and the respondent failed to process the refund and the complainant is entitled for compensation and legal expenses.

(b) The complainant filed the proof affidavit and examined himself as CW1. Ex.A1 is the copy of the construction agreement and Ex.A2 is the agreement for sale entered between the complainant and the respondent. Under the Ex.A1, construction agreement, the respondent undertook to construct the apartment and deliver the same to the complainant on or before 31.12.2016 with a grace period of six months. Ex.A5 and Ex.A6 are the legal notices sent by the complainant to the respondent on the cancellation of the construction agreement and the agreement for sale and seeking return of the amount with compensation. It is the evidence of the complainant that the respondent has not responded to pay the amount towards return of the sale consideration and compensation.

(c) Through the documents and by his proof affidavit, the complainant proved that the respondent failed to complete construction and deliver possession of constructed flat as agreed by them and subsequently on expiry of the due date, the complainant preferred for cancellation of the agreements seeking return of the amount and compensation and the respondent failed to return the amount and pay compensation. Therefore, it is held that the complainant is entitled for compensation and legal expenses. Thus the point is answered accordingly.

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

(a) In view of the answer for Point No.(i), the complainant is entitled for compensation and legal expenses from the respondent.

(b) As per the section 18 of RERA Act, the complainant is entitled for return of the amount from the respondent with interest including compensation in the manner as provided under the Act. The complainant is entitled to file a separate complaint on return of the amount before the Authority.

c) Considering the facts and circumstances of the case and also the rule 18 of the TNRERA Rules, it is held that the complainant is entitled for interest on the amount paid towards compensation. Hence, the complainant is entitled for interest at the rate of 7.50% 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., 9.50% per annum on the amount from the date of respective payments till repayment by the respondent.

d) Towards compensation for mental agony, a sum of Rs.1,00,000/- and towards 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:-

1. The respondent shall pay the compensation as per the order within 30 days of issue of this order.
2. The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till the payment of compensation as per this order.

G. SARAVANAN
ADJUDICATING OFFICER

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LIST OF WITNESS

CW-1--- S. Arun Rajaa

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	30.05.2015	Construction Agreement
Ex.A2	30.05.2015	Agreement for sale
Ex.A3	19.04.2017	Home Loan sanction letter from ICICI Bank
Ex.A4	15.09.2018	Email from Respondent regarding refund
Ex.A5	03.09.2020	Legal Notice sent by the complainant
Ex.A6	03.07.2021	Legal Notice sent by the complainant

Sd/- 31.10.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

