

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

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member  
CCP No. 136 of 2020**

S. Hema

..... Complainant

**Vs.**

M/s. Oragadam City Developers Pvt Ltd.,  
Rep by its Managing Director

..... Respondent

**Complainant** : Rep by M/s. V. Shankar, Advocates.

**Respondent** : Rep by M/s. A.V. Arumugam, Advocates.

**Heard on** : 04.08.2022

**Delivered on** : 28.12.2022

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of row house with interest, and costs is filed under section 31 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) The complainant's father booked a row house apartment in the respondent's project in the name of his differently abled son and was allotted a row house with unit 245 B RH 1 with a built up area of 1136.50 sq.ft subsequently, changed to a bigger size row house with the UDS of 1342.24 sq.ft and was allotted a Unit No.188-B-RH1 as a total cost of Rs.28,43,213/-. The agreed date of delivery was promised within 18 months with a grace period of 3 months from 08.02.2011 being the date of booking of the unit.

(b) The complainant further avers that as per the Clause 5(c) of the draft sale cum construction agreement and even as per the e-mail dated 10.07.2012, the respondent in clear terms agreed to complete the

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construction and hand over by September 2012. In pursuant to the commitment of payment of the consideration, the entire amount to the tune of Rs.28,94,484/- was paid between February 2011 and July 2014 as against the total sale consideration of Rs.28,43,213/-.

(c) The complainant has paid the entire consideration only on the basis of draft sale cum construction agreement which he had received vide e-mail dated 10.07.2012. No construction and sale agreement was subsequently executed by the respondent. Even after completion of the stipulated date of delivery i.e., September 2012 the respondent, neither completed the house nor did he execute the sale and construction agreement.

(d) Despite having paid the entire consideration, the respondent avers that he had received the e-mail dated 29.11.2019 wherein the respondent had admitted to the row house being still incomplete. Aggrieved, the complainant seeks refund of the amount paid by her with interest, compensation and litigation costs.

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

(a) The respondent submits and vehemently denies the allegation. The respondent firstly avers that no sale and construction agreement has been executed and even the sale deed in respect to the UDS is also not executed but admits that the entire sale consideration was paid for the purpose of purchasing the Row House No. RH-1-0188B at INNO GEO CITY, Oragadam. However, he goes on to submit that in the absence of any agreement, the amount of Rs.28,94,484/- being paid as consideration is not maintainable as it cannot be even termed as having been paid as sale consideration.

(b) The respondent thereafter denies all the other allegations made by the complainant including his promise to handover the row house within 18 months from booking. He even denies his commitment made as per the Para 5 (c) of the draft sale cum construction agreement and also the e-mail

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dated 10.07.2012 to complete the construction by September 2012 while denying all other averments he does not offer any counter to the averments made by the complainant except simply denying them. Thus, pleads for dismissal of the complaint.

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

5. To prove their claim the complainant filed their respective evidence on affidavit with documents.

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

(i) Whether there was a delay in handing over of the apartment by the respondent to the complainant?

(ii) What are the reliefs made out?

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

(a) The complainant was allotted a Row House unit 245 B RH 1 on 08.02.2011 (Ex.A4). Subsequently, he changed over to a bigger size unit and was allotted a Row House No. 188-B-RH1. The total sale consideration of Rs.28,43,213/-. Neither construction nor sale agreement was executed though a draft of the same was sent to the complainant vide a e-mail dated 10.07.2012 (Ex.A9). The draft sale cum construction agreement stipulates the completion date to September 2012 after a period of 18 months with a grace period of 3 months (Ex.A11 in Para 5(b)).

(b) The complainant has paid the entire consideration between 09.02.2011 and 09.07.2014 in 10 installments (Ex.A2 payment receipts) summing up to Rs.28,94,484/-. No sale or construction agreement has been entered between the two parties however, the respondent has sent an e-mail dated 10.07.2012 wherein he had referred to the draft sale cum construction agreement Clause 5 (c) and in case of delay in delivery had agreed to

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compensate in accordance with Clause 5 (c). The said e-mail dated 10.07.2012 also mentions the commitment of the respondent to deliver the possession of the unit by September 2012 (inclusive of 3 month grace period) and had agreed that the compensation under Clause 5 (c) would commence from October 2012 the month after the committed month of delivery. The respondent had shared the draft sale cum construction agreement which remain unexecuted however there is an exchange of e-mails between the respondent and the complainant (Ex.A8 series), wherein, repeated dates have been scheduled and postponed for registration of the agreement.

(c) The facts of the case would emerges as follows:-

(i) That the complainant was initially allotted a Row House unit 245 B RH 1 on 08.02.2011 (Ex.A4) and subsequently, he changed over to a bigger size unit and was allotted a Row House No. 188-B-RH1 which is clear from the exchange of e-mails between the complainant and the respondent.

(ii) That the draft sale cum construction agreement was shared by the respondent through e-mail but was never executed

(iii) That the consideration of the apartment was put at Rs.28,43,213/- and the entire amount was paid by the complainant to the respondent by July 2014.

(iv) That the completion date was scheduled to be on or before September 2012.

(d) The respondent has questioned the maintainability of the CCP No. 136 of 2020 on grounds that even though an amount of Rs.28,94,484/- has been admittedly received by him but in the absence of any agreement it cannot be termed as sale consideration. The first point to be established is whether there is a promoter/allottees relationship between the two parties

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and that whether absence of an executed agreement would affect the claims of the complainant.

(e) Section 2 (zk) defines a promoter and the relevant part of the Section which shows the respondent as a promoter reads as below:-

*“(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

It is clear that the respondent fits in to the definition and is thus a promoter.

(f) The complainant too fits in the definition of allottee as per Section 2(d) of the RERA Act which read as follows:-

*“allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;”*

The complainant clearly fits in to the definition as he has been allotted a unit (Ex.A4) for which he has paid money duly acknowledged by the respondent thus clearly a promoter/allottees relationship exists between the two parties entitling both the parties of all the duties and liabilities mentioned in the RERA Act. Non-execution of the agreement is violation of Section 13(1) where the complainant has paid more than 10% of the cost of the apartment in spite of which the agreement has not been carried out.

The non-execution of the agreement will in no way stand as a hindrance to the rights of the complainant and contrary to the arguments by the respondent would not affect the maintainability of the CCP. The respondent thereafter has offered no argument to contradict the claims made by the complainant except simply denying them.

(g) It is a fact that the apartment has not been handed over even as late as 17.01.2018 which would be clear from the complainant e-mail to the respondent mentioning the same, as also the legal notice dated 07.07.2020 (Ex.A14) where too the issue of non delivery is flagged. There is a clear delay in delivering the row house for the complainant entitling the complainant for refund. Thus, the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.28,94,484/- from the respondent.

(b) 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 marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 9.30% p.a for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.50,000/- towards litigation expenses is fixed. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

**In the result, the respondent is directed as follows:-**

- (i) The respondent shall pay the amount at the interest rate and cost as per the findings in answer for Point No. (ii) in

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Para No. 8 of this order within 30 days of issue of this order.

- (ii) For non-execution of the agreement even after obtaining more than 10% of the sale consideration as per Section 13 of the RERA Act, a sum of Rs.50,000/- is imposed as penalty on the respondent.
- (iii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

Sd/- 28.12.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- S.Hema

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	24.10.1997	Certificate by AIIMS for loss of hearing & speech
Ex.A2	---	Payment receipts
Ex.A3	08.03.2011	Welcome letter to complainant
Ex.A4	08.03.2011	Allotment letter to complainant
Ex.A5	---	Statement of account
Ex.A6	---	Payment schedule by respondent
Ex.A7	05.07.2016	Prescription of digital hearing AID
Ex.A8	---	E-mail communications
Ex.A9	07.12.2017	Draft sale deed
Ex.A10	---	Statement of account by respondent
Ex.A11	---	Agreement for sale cum construction agreement (Draft)
Ex.A12	25.03.2019	Advance receipt by Max Health care

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Ex.A13	08.04.2019	Death certificate of N.Sankararaman
Ex.A14	07.07.2020	Legal notice to respondent with proof

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**

Sd/- 28.12.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

