

**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. 151 of 2020**

1. H. Vijayakumar
2. V. Kousalaya

..... **Complainants**

Vs.

M/s. Vivendi Ventures Padappai Project Pvt Ltd.,
Rep by its Director,
Mr. Sri Ramana Ankipatti

..... **Respondent**

Complainants : Rep. by M/s. A. Karthikeyan, Advocates.

Respondent : Rep by M/s. Anil Relwani, Advocates.

Heard on : 01.02.2022

Delivered on : 28.06.2022

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of an apartment 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 complainants, in brief, as follows:**

(a) The complainants had booked a row house in the year 2013 at total cost of Rs.15,35,429/-. This amount was inclusive of Rs.4,12,879/- for the land cost. The complainants has already paid a sum of Rs.14,34,814/-. The UDS in favor of the complainants was executed on 24.03.2016. The above flat was to be handed over within a period of 30 months including 3 months grace period and in the event of failure to handover, the complainants was to be compensated by reducing the selling price by Rs.1884/- per month or part

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thereof and such reduction in the price shall be adjusted by the complainants while handing over possession.

(b) The apartment was to be handed over in the year 2016. The complainants had received an e-mail from the respondent dated 07.11.2019 intimating that the row house was ready for being handed over. However, the complainants further submit that there is no progress in the construction of the project and that there was no intimation from the respondent as to when the flat will be ready for handover. The complainants therefore want to withdraw and seek refund of the entire amount paid to the respondent with interest, compensation and costs.

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

The learned counsel for the respondent admitted to the delay in completing the construction of the villa due to unavoidable reasons. The respondent further avers that the construction was completed way back in the year 2019 and the same was intimated to the complainants on 07.11.2019 itself. Subsequently, the complainants was delaying taking over and finally on 09.11.2019 the complainants were informed that the villa will be handed over on the payment of Rs.32,791/- which amount is yet to be paid by the complainants to the respondent.

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 rival contentions of the parties, the following points arise for determination.

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

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(ii) If so, what are the reliefs made out?

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

(a) The construction agreement between the complainants and the respondent was entered on 10.06.2013 (Ex.A6). While, the sale deed was registered on 22.03.2016 (Ex.A7). The cost of villa was agreed to be Rs.15,35,429/- calculated on the basis of Rs.3260 per sq.ft of built up area. The project term was agreed to be 27 months from the project commencement date subject to the condition that the purchaser makes timely payment arrangement.

(b) The construction agreement allows for extension by a period of 3 months. The agreement further provides for a payment of Rs.1884/- per month in case of delay in handing over on time agreed. The total amount received by the respondent from the complainants is Rs.14,34,814/- (Ex.A10).

(c) While above being so, the respondent admits that there was a delay in handing over of the villa but further avers that it is due to a balance amount of Rs.32,791/- that the complainants have not taken possession of the villa. The respondent has submitted an e-mail communication between him and the complainants (Ex.B1) indicating that there was a dispute between the complainants and the respondent where the complainants were seeking reduction of the balance amount to be paid by them to the respondent.

(d) The complainants also appears to be not happy with the way the project came out and the Encumbrance Certificate clearly indicate that the delay in taking over from 07.11.2019 and thereafter was limited to waver of balance amount to be paid. The e-mail also indicates that the complainants were not happy with the way the project had shaped out. It would thus appears that

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between 07.11.2019 and date of which he seeks refund there is a change of mind by the complainants and as the project was not shaping up to the expectation of the complainants as also for wavier of the balance amount.

(e) The evidence clearly indicates that the respondent had, as agreed in the construction agreement, given a waiver of Rs.67,824/- at the rate of Rs.1884/- per month and to that extent the intension of the respondent is clearly shows the delay in taking over is restricted to not on the non-completion of the project on time but due to the project not living up to the expectation of the complainants and for waiver of balance amount.

(f) It would have been fair if due to delayed handing over the complainants had sought refund, however, in the case at hand, while, the offer was received on 07.11.2019 the complainants filed a complaint on 15.09.2020 and thus it is clear that the change of mind is not due to delayed delivery. While, the delay on the part of the respondent in handover is contravention of the construction agreement. It would be unjust if a refund is allowed when the completion and handing over was intimated to the complainants who has not come forward to take possession from 07.11.2019 to 15.09.2020 when he filed for refund on 15.09.2020. Hence, the refund is not made out. Thus, the point is answered accordingly.

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

In view of the answer for Point No. (i), the complainants are not entitled for refund amount. Thus, the point is answered accordingly.

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

(i) The respondent would once again calculate the compensation for delayed delivery up to 07.11.2019 and offer the villa for takeover by the complainants at the rate as agreed in the construction agreement.

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(ii) The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.

Sd/- 28.06.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1 --- H. Vijayakumar
RW-1 --- Sriramana Anikipatti

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	---	Aadhaar card of the 1 st complainant
Ex.A2	---	PAN card of the 1 st complainant
Ex.A3	---	Aadhaar card of the 2 nd complainant
Ex.A4	---	PAN card of the 2 nd complainant
Ex.A5	---	Pricing sheet
Ex.A6	10.06.2013	Construction agreement
Ex.A7	22.03.2016	Sale deed
Ex.A8	---	Payment receipts
Ex.A9	07.11.2019	E-mail from respondent
Ex.A10	---	Statement of account

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	---	E-mail communications between complainant and respondent



Sd/- 28.06.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI