

**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. 153 of 2020

(i) Tharana
Rep by its POA, Mr. R.S. Shakthivel
(ii) Abdul Khader Azeem
..... **Complainants**
Vs.

M/s. Phoenix Serene Spaces Pvt Ltd.,
(Formerly known as M/s. Phoenix Hodu Developers Pvt Ltd)
Rep by its Authorized Signatory,
Mr. PVRK Chaithanya Raju
..... **Respondent**

Complainants : Rep by M/s. Chennai Law Associates, Advocates.

Respondent : Rep by M/s. T. Sai Krishnan, Advocates.

Heard on : 04.02.2022

Delivered on : 30.05.2022

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 an apartment with the respondent in their project, namely, "The Village", at Kalavakkam Village at OMR, Chengelpet Taluk, Kancheepuram District. The complainants have entered into an unregistered sale and construction agreement with the respondent on 27.09.2013. Both the documents were retained by the respondent only and confirmation of the same was given to the complainants by way of e-mail from the respondent. The complainants made stage wise payments as per the demands raised by the respondent.

(b) The completion and handing over was projected to be in April, 2015 with a grace period of 6 months hence October, 2015. The complainants

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have made a total payment of Rs.51,73,089/- and obtained receipts for the same. The complainants submit that even after more than 3 years the agreed date of delivery October, 2015 nothing has been done to ensure the handing over of the flat. The complainants avers that in February, 2019 the respondent had informed the complainants about the flat being complete for delivery but when the authorized agents of the complainants visited the flat in December, 2018 they were found to be extremely unsatisfactory condition.

(c) The complainants efforts to point out the shortcoming via e-mails met with no response. Hence, after suffering for more than 6 years, the complainants moved for refund of the money paid by them.

3. The respondent has not filed any counter, proof affidavit or written arguments.

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

5. The complainants have filed their respective evidence of affidavit with documents. No document has been filed by the respondent.

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 the project and the complainants are entitled to refund of the amount paid by them to the respondent?

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

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

(a) The complainants had entered into a sale agreement dated 27.09.2013 (Ex.A1) and construction agreement also on 27.09.2013 (Ex.A2). The construction agreement vide Para 5 stipulates the date of completion and delivery on or before April, 2015 with a grace period of 6 months. The consideration for sale executed of Rs.53,25,875/- towards the construction

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works of Rs.3,83,700/-towards fit-outs/interiors. The complainants have paid a sum of Rs.51,73,089/- as follows:-

DATE	PAYMENTS MADE BY THE COMPLAINANTS IN RS.
11.12.2013	8,49,575/-
23.06.2014	11,49,575/-
16.03.2016	5,74,788/-
26.02.2015	5,74,788/-
22.05.2015	5,74,787/-
24.12.2014	5,74,788/-
20.12.2016	5,74,788/-
TOTAL	48,73,089/-

(b) The complainants has not been able to provide evidence for having paid Rs.3,00,000/- as advance. However, the same has been considered for refund as the complainants in his document evidence in Ex.A4 (Page 40 of the typed set of complainant) the respondent has acknowledged the receipt of Rs.3,00,000/-. The respondent cannot take the plea of incomplete payments as Clause 1(4) of the sale agreement clearly says that in case of delay/default by the purchasers to pay the sale consideration shall be entitled to issue a notice could be given and even after 15 days the payment is not made, the respondent could terminate the agreement. There is no evidence provided by the respondent for having given such notice.

(c) Since, the respondent has failed to deliver the project on October, 2015 the complainants are entitled for a tune of Rs.51,73,089/-. Thus, the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainants are entitled for refund amount of Rs.51,73,089/-.

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(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 8.20% 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., 10.20% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainant is 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 interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 of this order within 30 days of issue of this order.
- (ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (iii) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
- (iv) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 30.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

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LIST OF WITNESS

CW-1 --- R.S. Shakthivel (POA)

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	27.09.2013	Agreement to sell
Ex.A2	27.09.2013	Construction agreement
Ex.A3	---	Payment receipts
Ex.A4	---	Payment demand letters
Ex.A5	---	E-mail communications
Ex.A6	13.07.2018	Occupation/completion certificate
Ex.A7	11.10.2019	Legal notice by complainant
Ex.A8	23.10.2019	Postal track consignment receipt
Ex.A9	11.10.2019	Special power of attorney

LIST OF DOCUMENTS FILED BY THE RESPONDENT**NIL**

Sd/- 30.05.2022

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

