

**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. 155 of 2020

R. Lakshmi Devi **Complainant**

Vs.

1. M/s. RRP Housing Pvt Ltd.,
2. P. Thamizh
3. N. Padmanabhan

.... **Respondents**

Complainant : Rep. by Mr. S. Parthasarathy, Advocate.

Respondents : Respondent remained absent.

Heard on : 10.02.2022

Delivered on : 17.06.2022

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondents 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 complainant, in brief, as follows:

(a) The following various advertisement in English and Tamil dailies, the complainant decided to purchase a flat in the project, namely, "S.S.R. Garden Ascon Residency", at Kannivakkam Village, Chengalpattu Taluk, Kancheepuram District.

(b) The complainant was allotted a Flat No. 1, in the Ground Floor in Plot No. 3D, Phase-I for which she paid a sum of Rs.2,00,000/- on 08.01.2014. The sale agreement was entered on 11.03.2013 for sale of an UDS measuring 504 sq.ft out of total extent of 3290 sq.ft and on the same day the sale deed was

TRUE COPY

KAP
17/6/22

registered for the sale consideration of Rs.2,52,000/- towards purchase of land at the Office of SRO, Thiruporur.

(c) The construction agreement was entered on 11.03.2013 for a sum of Rs.24,76,580/- as a construction cost for a super built up area measuring an extent of 925 sq.ft. The period of completion was stipulated as 24 months with a grace period of 3 months from the date of obtaining all statutory approvals. The complainant submits that this handing over period expired on 11.06.2015. The complainant further submits that she was not aware of the statutory approvals obtained by the respondents. The 1st respondent informs the complainant vide unsigned letter dated 27.04.2017 informing that DTCP had issued a notice dated 02.09.2015 stating that the project requires DTCP approvals and thus the project was getting delayed due to Government process being involved and also informs that the approval process was nearing finishing stage.

(d) The site was locked and sealed on 22.04.2016 due to unwanted intruders creating some problems. The DTCP had issued a letter dated 23.09.2015 and had directed the 1st respondent to stop construction as he had not obtained the proper approvals. The complainant had received a legal notice dated 14.12.2015 from one S.S.R. Lakshmi, Daughter of S.S. Rajendran claiming that the land was sold to the 3rd respondent for which the 1st, 2nd and 3rd respondents had not paid the sale consideration. Thus, the land ownership came under dispute.

(e) The construction agreement vide Clause 12 provides that in case of delay in handing over the apartment the 2nd respondent undertakes to pay a sum of Rs.1,000/- per month or part thereof for such delay. The complainant and her husband had obtained the housing loan for a sum of Rs.13,00,000/- from LIC

TRUE COPY

17/6/22

Housing Finance Ltd., paying EMI of Rs.20,386/-. The complainant further submits that she had paid a total sum of Rs.21,92,825/- as detailed below:-

SL. No.	Receipt Nos.	Date of Payment	Amount in Rs.	Bank Name	Branch
1	1506/12-13	26.01.2013	2,00,000/-	Indian	-
2	1535/12-13	08.03.2013	4,00,000/-	Cash	-
3	1542/13-14	08.04.2013	2,00,000/-	Cash	-
4	1334/13-14	05.07.2013	2,00,000/-	Cash	-
5	3355/13-14	08.01.2014	2,00,000/-	Cash	-
6	-	20.05.2013	7,00,000/-	LIC HFL	Housing Loan
7	-	12.01.2015	2,92,825/-	LIC HFL	Housing Loan
		TOTAL	21,92,825/-		

(f) The complainant submits that she was willing to re-convey the UDS back to the respondents and claim refund of the amount paid by her along with interest and compensation. The complainant further submits that the claim made here is not pending before any Court or Law or any other Authority or any other Tribunal.

3. In spite of service of notice, the respondent remained absent and hence treated as ex-party.

4. In evidence to prove her 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 for refund of the amount paid to the respondents with interest on the ground of failure on the part of the respondents to complete the construction and

TRUE COPY

TRUE COPY

17/6/22

handover possession 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 complainant had entered into a construction agreement with the 1st respondent represented by its Director and its Authorized Signatory on 11.03.2013 (Ex.A2) and agreement for sale also on the same date (Ex.A1). The sale deed was registered also on 11.03.2013 (Ex.A3). The complainant was promised delivery of the apartment within 24 months with a grace period of 3 months from the date of statutory approvals. The construction agreement was signed on a mentioned date however, the statutory approvals was not a certain date and was prospective in nature with no certainty. This also implies that the respondents had not obtained the required planning permissions and they used their dominant position making the complainant sign the construction agreement on a purely one-sided basis.

(b) It becomes clear that the respondents had not taken the required permissions and done due diligence before starting the project and without even getting the permission had even taken money from the complainant. The respondents had started the project on a land for which the title was not clear. Thereby, violating the Section 18(2) of the RERA Act entitling the complaint for relief on grounds defective title. However, since the jurisdiction of this Bench is restricted to refund the aspect of compensation due to defective title is not deliberated any further. The notice received from the DTCP on 02.09.2015 (Ex.A5) and also a final notice issued by Town Panchayat

TRUE COPY

17/6/22

(Ex.A6) dated 23.09.2015 would all indicate that the project is not likely to take off due to defective title.

(c) In such a situation, there is no chance for the complainant to get her apartment as promised in the construction agreement. The one-sided agreement cannot be taken in his support by the respondents as it violates Section 18(2) for defective title as also Section 19(4) which entitles the complainant to receive the refund along with interest as the respondents is unable to give possession of the apartment to the complainant in accordance with the terms of agreement. Thus, the point is answered accordingly.

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

(a) In view of the answer for Point No.(i), the complainant is entitled for refund of amount for a sum of Rs.21,92,825/- paid to the complainant by the respondents.

(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 and refunded from the date of respective payment till repayment by the respondents.

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

TRUE COPY

17/6/22

TRUE COPY

In the result, the respondents are directed as follows:-

1. The respondents shall pay the amounts jointly or severally at the interest rate, as per the findings in answer for Point No.(ii), Para No.7 of this order within 30 days of issue of this order.
2. The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
3. 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.
4. 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 respondents.

Sd/- 17.06.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1--- R. Lakshmi Devi

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	11.03.2013	Agreement for sale
Ex.A2	11.03.2013	Construction agreement
Ex.A3	11.03.2013	Sale deed
Ex.A4	---	Payment series
Ex.A5	27.04.2017	Letter by RRP Housing
Ex.A6	23.09.2015	Final notice by Town Panchayat
Ex.A7	14.12.2015	Legal notice to respondents
Ex.A8	09.03.2020	Statement of loan account

TRUE COPY

17/6/22

LIST OF DOCUMENTS FILED BY THE RESPONDENT
NIL

Sd/- 17.06.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY
[Handwritten Signature]
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY
17.6.2022