

**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. 159 of 2020**

1. V.J. Mohan Kumar Reddy (Deceased)
 2. V. Bhargavi
 3. V. Kavitha
 4. V. Aruna
- **Complainants**

Vs.

M/s. Sare Reality Projects Pvt Ltd.,
Rep by its Directors,
Chokkalingam Saravanan & 3 Others

.... **Respondent**

(Project not Registered)

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

Respondent : Respondent remained absent.

Heard on : 11.02.2022
Delivered on : 21.06.2022

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of a villa 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 were allotted a Villa No. H24- 01 with 1100 sq.ft UDS and a covered area of 1913 sq.ft at a project, namely, "Meadow Ville", at Kolathur, Chennai.

(b) The construction agreement was entered between the complainants and the respondent on 15.05.2014 for a total consideration of Rs.62,91,087/-. The complainants submit that he had paid a sum of Rs.13,01,268/- towards booking advance and various installments. The complainants submit that the builder has not raised the construction of the

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flat so far. The complainants submit that as per the construction agreement the date of delivery was scheduled to be 31.12.2014 with a grace period of 6 months and even as on October, 2020 the building structure was not raised.

(c) On repeated efforts to get to know the progress met with no result till, finally in 2017 the respondent offered to swap this project to Plot 565 which too the complainants agreed and informed the same to the respondent vide e-mail dated 28.02.2017 which was acknowledged by the respondent by e-mail dated 20.07.2017. Subsequently, even on that the respondent did not make any head way.

(d) Thereafter, they once again raised request for refund and since the same did not met with any favorable response, the complainants was filed the present CCP before the RERA. The complainants seeks refund of amount to the tune of Rs.13,01,268/- paid by him with interest, due to delayed delivery besides seeking legal expenses and compensation. The complainants finally submit that this complaint is not pending before any Court of 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 complainants filed proof affidavit with documents.

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

(i) Whether the complainants are entitled for refund of the amount paid to the respondent with interest on the ground of failure on the part of the respondent to complete the construction and handover possession as per the terms and conditions of the agreement?

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(ii) Whether the complainants are entitled for all the reliefs as prayed for?

6. Answer for Point No (i):

(a) The complainants had booked a Villa No. H24- 01 in the project, namely, "Meadow Ville", at Kolathur, Chennai. The construction agreement was entered between the complainants and the respondent on 15.05.2014 for a total consideration of Rs.62,91,087/- (Ex.A1). The complainants have paid a sum of Rs.13,01,268/- on various dates i.e. Rs.50,000/- on 21.11.2013, Rs.7,90,000/- on 23.12.2014 and Rs.4,61,268/- on 11.04.2014 (Ex.A2) making a total sum of Rs.13,01,268/-. The construction agreement shows the delivery date as 31st December, 2014 with a grace period of 6 months at page 19 of the typed set making the delivery including the grace period i.e. 30.06.2015.

(b) Since, the apartment allotted to the complainants was getting delayed in construction, the respondent offered him a alternate Plot No. 565 vide e-mail dated 28.02.2017 at Page No. 65 of typed set and on the same page of the type set acceptance of the complainants responding to the offer mail is also seen. However, even the new offer was not respected falling much beyond the delivery date agreed upon in the construction agreement.

(c) Since, the respondent is not been able to honor the commitment in the construction agreement the complainants have moved for refund of the amount paid by him due to delayed delivery. So, the complainants are entitled for refund of amount paid to the respondent. Thus, the point is answered accordingly.

7. Answer for Point No. (ii)

(a) In view of the answer for Point No.(i), the complainants are entitled for refund of amount for a sum of Rs.13,01,268/- paid to the respondent.

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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 complainants are 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 respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- 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:-

1. The respondent shall pay the amounts 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 complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
3. The charge of the aforesaid amount as encumbrance if any shall be on the flat booked by the complainants till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance if any created by charge in the order to the Sub-Registrar concerned.
4. On repayment of the claim as per the order, the complainants shall execute the cancellation of the construction

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agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 21.06.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1--- V.J.Mohan Kumar Reddy

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

| Ex.Nos | Date | Documents Name |
|--------|------------|---------------------------------------|
| Ex.A1 | 15.05.2014 | Construction agreement |
| Ex.A2 | --- | Payment receipts & demand letter |
| Ex.A3 | --- | E-mail communications from respondent |

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 21.06.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

