

**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. 160 of 2020**

1. A.J. Paul Prathaban
2. J.S. Niveditha

..... **Complainants**

**Vs.**

1. M/s. Pacifica (Chennai Project) Infrastructure Company Limited,  
Rep by its Managing Director,
2. M/s. Premier Chennai Properties Pvt Ltd.,  
Rep by its Managing Director
3. K.C. Pallanishamy
4. K.C.P. Shivaram

..... **Respondents**

**Complainants** : Rep. by Mr. D. Madhusudanan, Advocate.

**Respondents** : Rep by M/s. Stephen C Kumar, Advocates.

**Heard on** : 25.03.2022

**Delivered on** : 10.08.2022

**ORDER**

The above complaint by the complainants 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 complainants, in brief, as follows:**

(a) The complainants have booked an apartment in the project, namely, "Pride Towers", Phase – II in Pacifica Aurum, at Padur Village. While the 1<sup>st</sup> respondent is the developer of the project, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are the owners of about 81 Acres and 44 cents of land in various survey numbers. The sale agreement and construction agreement were entered between the complainants and the respondents on 16.08.2013.

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(b) The 1<sup>st</sup> respondent is an agent and power of attorney of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents and all the respondents have jointly decided to develop, build and promote flats/apartments and decided to sell the available flat along with UDS. As per the construction agreement, the apartment is to be constructed and delivered to the complainants before 30.06.2015 with a grace period of 6 months. Thereby, making the final date of delivery on 31.12.2015.

(c) The total cost of the apartment was fixed at Rs.49,66,076/-. The cost of the UDS was agreed at Rs.11,31,000/- making the total to be paid to Rs.60,97,076/- which was to be paid in installments. The complainants have paid a sum of Rs.54,79,731/- to the respondents in several installments. The apartment was not delivered as promised. The respondents did not respond to the request of the complainants and kept giving some excuses for the delay and even after 5 years the respondents failed to hand over of the apartment to the complainants.

(d) Hence, the complainants have filed this complaint seeking refund of amount paid by them with interest along with compensation and litigation expenses.

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

(a) The respondents concur with the complainants regarding entering into the sale and construction agreement for Block 1204 on the 12<sup>th</sup> Floor in the company project as "Pride Towers", Phase II in Pacifica Aurum. However, the respondents refutes the claim of the complainants with regard to delay in delivery blaming it on rains and floods which occurred in the year 2016 and thus submits the delay was due to force majeure events. The respondents submit that in accordance with the terms of the agreement they were ready for

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paying the damages after the expiry of the grace period of 6 months as per Clause 6 of the agreement.

(b) The respondents have agreed to pay 1% of the amount received per month for such a delay subject to maximum of 3% of the total amount received. The respondents submit that they are not liable to pay interest from the date of booking and can claim interest only after the extended period whereby the date of interest would begin from the expiry of grace period of 6 months.

(c) The respondents further submitted that they willingness to offer an alternate flat from the other phase. The project was subsequently registered with TNRERA wherein the date of completion has been stipulated at 31.10.2021. The respondents also blame it on COVID – 19 which hit the business and submit that the claim of the complainants is exorbitant.

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 apartment and if so the reliefs there for?

(ii) What are the reliefs made out?

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

(a) The sale and the construction agreement were both entered on 16.08.2013 (Ex.A1 & Ex.A2). The UDS of the registered sale deed dated 03.07.2014 as Ex.A3. Vide Clause 6 of the construction agreement, the respondents have undertaken to complete the construction of the apartment by 30.06.2015 with a grace period of 6 months. The construction agreement further contemplate

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that in the event of the premises not being completed in accordance with the provisions of this agreement after the expiry of the grace period the respondents would pay to the complainants an amount of 1% of the amount received per month for such a delay subject to maximum of 3% of the total amount received and that the complainants shall not be entitled to any other relief whatsoever.

(b) The delay in delivery is never disputed by the respondents and even in the proof affidavit submitted by the respondents, they agree to the delayed delivery but submit that in accordance with the construction agreement he may be made to pay only 1% of the amount received per month for such a delay subject to maximum of 3% of the total amount received. It is also clear that the apartment was not completed even on 31.12.2021 (Ex.B2) and not 31.10.2021 as claimed by the respondents as the registration of the project done under TNRERA (Ex.B2) in Registration No. TN/01/Building/0181/2019 dated 30.10.2019.

(c) Thus, the respondents do not dispute the delay in delivery as agreed in the construction agreement. However, they resort to refer to the construction agreement with regard to the refund claim by the complainants. They submit that the construction agreement provided for the respondents to pay to the complainants 1% of the amount received per month for such a delay subject to maximum of 3% of the total amount received. In this regard, the direction of the Hon'ble Supreme Court in the M/s. Newtech Promoters and Developers Pvt. Ltd., Vs. State of Uttar Pradesh and others etc., becomes applicable which held that the Act 2016

***“ its application is retroactive in character and it can safely be observed that the projects already completed or to which***

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***completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016"***

(d) Thus, repeated fall back of the respondents to the contractual terms of the construction agreement would only need to be rejected and provisions of the Act applied. The respondents having failed to honor the construction agreement for delivery of the completed apartment on or before 31.12.2015 including with the grace period of 6 months. However, even at the stage of argument, the respondents submits that the apartment is still left with pending flooring works to be completed. Hence, it is clear that there is been a delay in handing over the apartment to the complainants. Thus, the point is answered accordingly.

**8. 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.54,79,931/- paid to 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 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 respondents.

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(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 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.8 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 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 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 agreement and sale deed, as the case may be, at the expense of the respondents.

Sd/- 10.08.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH

**LIST OF WITNESSES**

CW-1 --- A.J. Paul Prathaban  
RW-1 --- S. Vijayaraghavan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	16.08.2013	Agreement for sale
Ex.A2	16.08.2013	Construction agreement

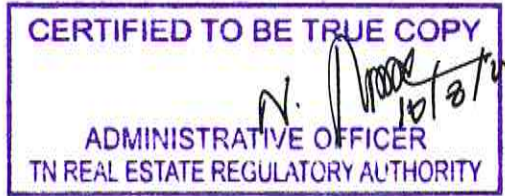
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Ex.A3	03.07.2014	Sale deed
Ex.A4	---	E-mail communications
Ex.A5	---	Letter correspondence between the complainants and the respondents
Ex.A6	---	Legal notice and returned postal cover

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2020	Copy of the board resolution
Ex.B2	12.04.2021	Project registration certificate by TNRERA



Sd/- 10.08.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH  
TNRERA, CHENNAI