

**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. 161 of 2020**

M/s. P S Blue Metals
Rep by its Proprietor, P. Subramani **Complainant**

Vs.

1. M/s. Real Value Promoters Pvt Ltd.,
Rep by its Authorized Signatory, K. Vasuki
2. M/s. Star Ready Mix Pvt Ltd.,
Rep by its Director, Syed Hameed Siddique **Respondents**

Complainant : Rep. by M/s. B. Manoharan, Advocates.

Respondents : Respondents remained absent

Heard on : 16.02.2022
Delivered on : 27.07.2022

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 complainant states that he had supplied material to the 2nd respondent which was not paid and involved payment to the tune of Rs.48,26,498/- . The 2nd respondent had business relationship with the 1st respondent where the 1st respondent owed Rs.48,26,498/- to the 2nd respondent. The 2nd respondent had not settled the amount to the complainant and agreed by way of a tripartite agreement that the amount

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due to the complainant from the 2nd respondent would be settled by the 1st respondent by way of allotting an apartment in the project developed by the 1st respondent. This was formalized in the form of a tripartite agreement dated 03.08.2018 between the complainant, 1st respondent and the 2nd respondent.

(b) The complainant was allotted an apartment Unit No.10 A, in 10th Floor of Block 'B' in the project namely, "Padmasri", being constructed by the 1st respondent. The total cost for the same was Rs.50,08,630/- of which Rs.48,26,498/- was the outstanding due from the 2nd respondent which had been agreed to be adjusted in the sale consideration by the 1st respondent for the apartment allotted by the 1st respondent. This was in pursuance of the tripartite agreement dated 03.08.2018 between the complainant and the 1st and 2nd respondents. The construction agreement was signed on 16.05.2019 and the sale deed in respect of UDS was also done on 16.05.2019.

(c) The complainant submits that the project was to be developed on or before July, 2020 with a grace period of 6 months. In any event, the project was to be completed with all other facilities before January, 2021. However, despite agreement the 1st respondent has not kept up the commitment and only put part structural work for ground plus eight floors. The complainant thus seeks refund for sum of Rs.48,26,498/- along with interest, compensation and legal cost.

3. In spite of service of notice, the respondents remained absent all through the proceedings and hence treated as ex-parte.

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4. In evidence to prove their 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) In the given circumstances will there be a promoter/home buyer relationship between the complainant and the respondents jointly or severally and if so is there a delay in handing over the apartment entitling the complainant to the reliefs sought by him?

(ii) What are the reliefs made out?

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

(a) The 1st respondent is the promoter who had sought to develop the project namely, "Padmasri". He had obtained the required planning permissions in Planning Permit No. PP 42/2013 dated 27.06.2013 issued by Mamallapuram Local Planning Authority and Building Permit No. 1449/2017/B1 dated 12.01.2018 issued by the Pudupakkam Village Panchayat. This establishes that the 1st respondent is a promoter within the meaning of Section 2(zk)(i). The fact of the case will indicate that the 2nd respondent owes approximately a sum of Rs.48,26,498/- to the complainant. The 1st respondent owes the same amount of money to the 2nd respondent.

(b) The 2nd respondent wants to settle the money owed by him to the complainant by passing it on to the 1st respondent who owes a similar amount. This has been formalised and agreed up on by the three concerned parties (1st, 2nd respondent and the complainant) by way of a

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tripartite agreement (Ex.A1) between the three. The tripartite agreement clearly laid down that the 2nd respondent had supplied raw materials for construction to the 1st respondent. The tripartite agreement goes on to elaborate that the 2nd respondent owes Rs.48,26,498/- to the complainant. In the tripartite agreement, the 1st respondent takes up the liability of clearing the amount owed by the 2nd respondent to the complainant and considers it as amount paid by the complainant to the 1st respondent for the flat allotted to the complainant in his project "Padmasri".

(c) The 2nd respondent according to the tripartite agreement agreed to discharge full payment of Rs.48,26,498/- excluding registration and legal charges to the complainant. This being so, the 2nd respondent would be seen to be discharging the liability of the complainant to the 1st respondent. This would be construed to imply that the complainant has paid a sum of Rs.48,26,498/- being part of the payment for the apartment allotted excluding registration and legal charges.

(d) The complainant was allotted an apartment Unit No. 10-A in 10th Floor of Block 'B' in the project named as "Padmasri", being promoted by the 1st respondent. The total cost of the apartment was fixed at Rs.50,08,630/- (Ex.A2). The construction agreement (Ex.A3) clearly brings out the promoter allottee relationship between the complainant and the 1st respondent. The construction agreement projects the completion date to be July 2020 with a grace period of 6 months to cover any delay due to force majeure.

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(e) Since, the 1st respondent has failed to deliver the project as committed on July 2020 with a grace period of 6 months. The complainant is entitled for refund of amount.

(f) The question now arises with regard to the payment made for the apartment allotted for the complainant from the 1st respondent. The tripartite agreement which was executed on 03.08.2018 is prior to the allotment of the apartment Unit No. 10-A to the complainant. The tripartite agreement clearly brings out the acceptance of the 2nd respondent as well as the 1st respondent to settle the dues between them as deemed payment by the complainant to the 1st respondent to the tune of Rs. 48,26,498/- as payment. The tripartite agreement also mentions of the allotment of flat bearing Unit No. 10-A in the residential apartment complex known as "Padmasri". The 1st respondent clearly accepts to take up the liability of the 2nd respondent amounting to Rs.48,26,498/- which can be taken as the consideration amount paid by the complainant to the 1st respondent for the apartment. This becomes the amount paid as consideration for the apartment by the complainant to the 1st respondent. So, there is a promoter allottee relationship between the 1st respondent and the complainant and the amount for refund is Rs.48,26,498/-. 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.48,26,498/- considered to have been paid to the 1st respondent being the amount which actually the 2nd respondent owed to the complainant.

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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 8.05% 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., 10.05% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the 1st 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 respondents are directed as follows:-

1. The 1st respondent and the 2nd respondent jointly or severally shall pay the amount 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

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sale deed, as the case may be, at the expense of the 1st respondent and the 2nd respondent jointly or severally.

Sd/- 27.07.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1 --- P. Subramani

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	03.08.2018	Tripartite agreement
Ex.A2	---	Flat booking and allotment letter
Ex.A3	May 2019	Construction agreement
Ex.A4	16.05.2019	Agreement for sale
Ex.A5	16.05.2019	Sale deed

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

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Administrative Officer

Sd/- 27.07.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI