

**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. 182 of 2020

Zaheer Ahmed

..... **Complainant**

Vs.

M/s. Real Value Promoters (P) Ltd.,
Rep by its Director,
Mr. Vellore Subramaniyan Suresh

..... **Respondent**

Complainant : Rep by Mr. Karthik Sundaram, Advocate.

Respondent : Rep by Mr. P. Vinoth Kumar, Advocate.

Heard on : 26.04.2022

Delivered on : 16.05.2022

ORDER

The above complaint by the complainant 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 complainant, in brief, as follows:

(a) The complainant brought an apartment in the project, namely, "Neel Kamal", at OMR, opposite to SIPCOT IT part, Kazhipattur Village, Chennai. The construction agreement was signed on 30.08.2013 for a total sum of Rs.56,58,488/-. In addition, money has been paid to the respondent for infrastructure developments. The apartment was to be handed over on or before December 2014 as per the agreement. The sale deed was executed on 19.09.2014 and accordingly the complainant made payment from time to time making the total payment to Rs.49,47,595/- which is about 88% of the total sale consideration payable for the apartment. The payment receipts issued by the respondent to the complainant are shown below:-

TRUE COPY

TRUE COPY

16/5/22

Receipt No. /Payment details	Receipt/Payment Date	Amount (Rs.)
35/14-15	25.08.2014	15,000/-
738/14-15	25.08.2014	85,000/-
737/14-15	25.08.2014	5,00,000/-
Cheque No. 612985 drawn on Citibank, Chennai	24.08.2014	3,04,500/-
/14-15	18.09.2014	40,43,095/-
	TOTAL PAID TO RESPONDENT	49,47,595/-

The complainant was informed by the respondent vide email dated 28.11.2016 that the apartment would commence by January 2017, and handed over by July, 2017 but there was no progress in the project construction even thereafter. The complainant demanded refund of the amount paid by him vide his legal notice dated 15.07.2017.

(b) The complainant subsequently, came to know that there was no clear title for the project and that the project land belonged to the Government which was allegedly known by the respondent but never shared with the complainant. Due to defect in the title of the land it was not possible to complete the project and the same was at no stage shared by the respondent to the complainant. This came to the knowledge of the complainant at the stage when the case came up for hearing before the Hon'ble National Consumer Disputes Redressal Commission, at Delhi. The complainant seeks refund of the amount paid by him to the tune of Rs.49,47,595/- with interest.

TRUE COPY

16/5/22

3. The respondent did not file any counter, proof affidavit from beginning of the case till the last stage. On 22.04.2022 the respondent wanted a change of counsel but the change of vakalat was not filed despite giving opportunity on 26.04.2022, and no change of vakalat or arguments was conducted by the respondent.

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

5. On the side of the complainant they 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 complainant is entitled to refund of the amount paid by him to the respondent?

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

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

(a) The complainant had entered into a construction agreement on 30.08.2014 and not 30.08.2013 as mentioned in the complaint, where the projected date of delivery was schedule on or before December, 2014 (Ex.A2). The complainant has paid a sum of Rs.49,47,595/- (Ex.A5). The respondent has not handed over the apartment till date much beyond the promised date of delivery. Hence, the complainant is entitled for the refund of amount paid to the respondent by him.

(b) The project was registered in TNRERA No. TN/01/Building/0157/2018 dated 14.05.2018 (Ex.A11) and thus all the provisions of the Act are applicable on the issue. There is violation of Section 12 which reads as follows:-

"If the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the

TRUE COPY

16/5/22

model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act"

The Section 12 clearly says in case of incorrect or false statement he shall be refunded along with the interest at such rate as may be prescribed and the compensation in the manner provided under the fact.

(c) It is clear that the respondent does not have clear title as the notice issued under Section 6 of the Chennapattanam Act 3 of 1905 (Ex.A8) which reads as follows:-

"In such circumstances, you are hereby order to evict from the land within seven (7) days from the date of service of this notice, failing which please note that you will not only evicted from the property but also consider that the entire yielding of the agricultural produces cultivated in the land, value of the crops, any of the constructions raised or any other buildings and every article and the assets kept in the buildings will seized"

The respondent has not availed of any opportunity he had to make representation and present his point of view and arguments. The absence of title over the land is violation of Section 18(2) of the RERA Act.

"The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be be barred by limitation provided under any law for the time being in force"

TRUE COPY

16/5/22

Hence for reasons cited above, delay in handing over of the apartment is clearly exhibited making the respondent liable to make refund. Thus, the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.49,47,595/-.

(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 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.

TRUE COPY!

16/5/22

- (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/- 16.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1 --- Zaheer Ahmed

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Brochure of the project
Ex.A2	30.08.2014	Agreement for project promotion and construction
Ex.A3	---	Document related to home loan and personal loan
Ex.A4	19.09.2014	Sale deed
Ex.A5	---	Payment receipts
Ex.A6	28.11.2016 & 14.11.2017	E-mail correspondences between the complainant and respondent
Ex.A7	15.07.2017	Legal notice
Ex.A8	---	Notice of eviction and take over issued by the Tahsildar, Thiruporur Taluk
Ex.A9	03.03.2020	Final order of NCDRC
Ex.A10	---	Copy of complaint CC.No. 68/2018
Ex.A11	---	Latest project status by TNRERA
Ex.A12	03.10.2020	Photographs
Ex.A13	07.02.2019	Final order by TNRERA

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 16.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI