

**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. 50 of 2020**

P. Rajasekhar Complainant
Vs.
M/s. Provident Housing Limited,
Rep by its MD, V. Madhu Respondent
(Project not Registered)

Complainant : Rep. by M/s. A. Kripakaran, Advocates.

Respondent : Respondent remained absent.

Heard on : 28.06.2022
Delivered on : 11.11.2022

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 booked a one bed room apartment bearing the Flat No. PGP-H1-004 and entered into a construction agreement with the respondent on 27.05.2014 which was registered as Document No. 2977 of 2014. As per the terms and conditions of the construction agreement the respondent ought to have completed the handover of the apartment on or before 31.08.2016 with a grace period of 6 months i.e. 28.02.2017.

(b) The UDS was registered by sale deed dated 14.11.2014 bearing the Document No. 6308 of 2014. The cost of the apartment was agreed at Rs.12,73,480/- and all put together the cost of the apartment was Rs.13,55,560/-. The complainant had to pay a sum of Rs.5,71,160/- for the UDS of land. On receipt of e-mail from the respondent dated 09.12.2016 demanding a sum of Rs.96,327/-, the complainant sent an e-mail dated

TRUE COPY

11/11/22

18.12.2016 to their loaner Canara Bank asking them to release the payment as per the demand letter.

(c) However, since the respondent failed to co-operate in organizing the site inspection, the said amount was not released to the respondent. The complainant in total has paid a sum of Rs.18,06,447/- between October 2013 to September 2017 which amount to 88% of the total cost. Despite this, the apartment had not been handed over on or before 31.08.2016 including the grace period of 6 months.

(d) On enquiry, on 26.01.2019 the complainant was informed by the respondent that Rs.44,016/- was to be paid at the time of delivery of the apartment. The complainant subsequently received an e-mail dated 24.06.2019 from the respondent demanding a sum of Rs.2,99,401/- in which a sum of Rs.74,144/- was shown as interest for delay in payments. Aggrieved at not getting the apartment as promised the complainant categorically denies the demand made by the respondent as false and cooked up. The complainant seeks refund of Rs.18,06,447/- with interest as also refund of Rs.39,990/- which was the cost of UDS registration. He also seeks compensation and cost of litigation.

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

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 respondent with interest on the ground of failure on the part of the respondent to complete the

TRUE COPY

11/11/24

construction and 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 construction agreement was entered on 27.05.2014 (Ex.A1) which was registered as Document No. 2977 of 2014. The sale deed was registered on 14.11.2014 (Ex.A2) and registered as Document No. 6308 of 2014. The complainant has made a total payment of Rs.18,06,447/-. The complainant further claims to have paid a total sum of Rs.18,06,447/- including the amount paid as per the construction and the sale deed. A sum of Rs.96,327/- was claimed by the respondent to be paid by the complainant which was duly authorized by the complainant to the Canara Bank from the loan account of the complainant but the respondent did not co-operate with the bank authorities in completing the inspection.

(b) However, due to the respondent not co-operating with the bank in organizing the site inspection this part of the amount was not transferred by the bank to the respondent. Subsequently, the respondent had demanded the payment of Rs.2,99,401/- which lies in the e-mail dated 24.06.2019 (Ex.A8) at Page No. 73 of the complainant's typed set. The complainant thereby has paid a total sum of Rs.18,06,447/- and despite the date of delivery which lay on 31.08.2016 with a grace period of 6 months thereby extending the date to 28.02.2017, the respondent has failed to deliver the apartment as promised. The complainant apartment is still not ready. Hence, the respondent is liable to refund the amount paid by the complainant as claimed by him. Thus, the point is answered accordingly.

TRUE COPY

11/11/22

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.18,06,447/- paid to the respondent.
- (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 8.20% 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., 10.20% 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:-

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 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 if any 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 if any created by charge in the order to the Sub-Registrar concerned.

TRUE COPY

11/11/22

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 respondent.

Sd/- 11.11.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES
CW-1--- P. Rajasekhar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	27.05.2014	Construction agreement
Ex.A2	14.11.2014	Sale deed
Ex.A3	---	Payment receipts
Ex.A4	08.01.2016	Statement of account by respondent
Ex.A5	30.01.2015	Memorandum of deposit of title deeds
Ex.A6	09.12.2016	E-mail communication regarding demand letter
Ex.A7	---	E-mail communications
Ex.A8	---	E-mail communications
Ex.A9	17.07.2019	Notice by complainant
Ex.A10	---	Interest working sheet

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 11.11.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI