

**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. 83 of 2020

18th February, 2022

K. Pichamuthu **Complainant**
Vs.

M/s. Abi Constructions.,
Rep by its Proprietor, R.Giritharan **Respondent**

Complainant : Rep. by Mr. R. Karthikeyan, Advocate.

Respondent : Respondent remained absent.

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 residing at House No.575-B/1, 8th Main Road, Ram Nagar South, Madipakkam, Chennai booked a house with the respondent at Chengalpattu Taluk, Kayarambedu Village, Kancheepuram District and paid a amount of Rs.7,50,000/- as follows:-

Date	Amount in Rs.
29.05.2011	10,000/-
02.06.2011	1,70,000/-
22.06.2011	3,70,000/-
23.02.2013	1,00,000/-
04.04.2013	1,00,000/-

(b) The complainant and the respondent entered into a sale deed agreement dated 30.06.2011 at Chengalpattu Sub Registrar Office (Undivided Share) 290 Square feet in total area of 3488 sq.ft. The

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construction agreement was entered on 16.02.2012. The respondent undertook to complete the house within 6 months i.e. before 31.08.2012.

(c) The complainant claims to have paid total a sum of Rs.7,80,000/- including UDS cost of Rs.1,16,000/-. The respondent has failed to hand over the possession of the said house as per the terms of the agreement.

(d) The complainant seeks return of amount for a sum of Rs.6,64,000/- paid by him towards construction of an apartment and for a sum of Rs.1,16,000/- for the UDS with interest of 10.75% interest on the total amount paid for the delay of 103.9 months in handing over the possession of the apartment.

3. In spite of service of notice, the respondent remained absent.

4. In evidence to prove his claim, the complainant filed proof affidavit with documents.

The complainant has paid a sum of Rs.7,80,000/- including Rs.1,16,000/- as UDS.

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, compensation 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?

(ii) Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The complainant was examined as CW1. He says that he booked a house in the project of the respondent for a total sale consideration of Rs.10,00,000/-. He had paid a sum of Rs.1,16,000/- for the UDS which was

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registered on 30.06.2011 (Ex.A1) at Chengalpattu Sub Registrar Office. In addition to this, the complainant has paid a sum of Rs.6,34,000/- as part of the construction cost (Ex.A5).

(b) The complainant has paid the following consideration to the respondent as mentioned in the below table:-

Date	Amount in Rs.
29.05.2011	10,000/-
02.06.2011	1,70,000/-
22.06.2011	3,70,000/-
23.02.2013	1,00,000/-
04.04.2013	1,00,000/-
TOTAL	7,50,000/-

(c) The complainant has put up evidence for having paid Rs.7,50,000/- (Ex.A5) and not Rs.7,80,000/- as there is no evidence for the remaining Rs.30,000/-. The effort made by the complainant to get possession is indicated in the legal notice issued to the respondent at Ex.A7 on 30.01.2020.

(d) Considering the facts and circumstances of the case, it is held that the complainant is entitled for refund of the amount paid to the respondent with interest. The complainant paid a total sum of Rs.7,50,000/- which has to be refunded.

(e) Therefore, the complainant is entitled for refund an amount of Rs.7,50,000/- . 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 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 complainant is entitled for the interest at the rate of 8.15% 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., 10.15% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondent.

In the result, the respondent is directed as follows:

1. The respondent shall pay the amounts at the interest rate, compensation and cost 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 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.
3. 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.

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

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18/2/22

LIST OF WITNESSES

CW-1--- K. Pichamuthu

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	30.06.2011	Sale deed
Ex.A2	16.02.2012	Construction agreement
Ex.A3	29.08.2015	Assurance letter issued by respondent
Ex.A4	12.03.2018	Complaint filed by respondent
Ex.A5	---	Payment receipts
Ex.A6	11.12.2019	Letter to grievance officer
Ex.A7	30.01.2020	Legal notice issued to respondent
Ex.A8	15.09.2014	Encumbrance certificate

LIST OF DOCUMENTS FILED BY THE RESPONDENT**NIL**

Sd/- 18.02.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

