

**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. 89 of 2020**

V. Vijayaprakash ..... **Complainant**

**Vs.**

1. M/s. Kgeyes Residency Pvt Ltd.,  
Rep by its Managing Director,  
Mr. P.V. Sanmugam and Joint Managing Director,  
Mr. S. Venkatasubramanian

2. S. Pradeep ..... **Respondents**

**Complainant** : Party-In-Person

**1<sup>st</sup> Respondent** : Rep by M/s. Anirudh A Sriram, Advocates.

**2<sup>nd</sup> Respondent** : Rep by Mr. R. Venkatachalapathy, Advocate.

**Heard on** : 26.04.2022

**Delivered on** : 20.05.2022

**ORDER**

The above complaint filed 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 on seeing the advertisement on 30.07.2019 about the project namely, "Kgeyes", New Launch at Ramapuram contacting the mentioned phone number and was led to the sales person. The said sales person informed him that the Ramapuram project was to take off soon and also shared the floor plan etc as well. However, there was an another project by the name, "Padmalayam", at Ekkattuthangal constructed by the same promoter which was ready to occupy.

(b) However subsequently, the complainant received a whatsapp message wherein he was allotted to become a part of the project at Ramapuram for

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which he was informed that all the necessary approvals have been completed and that the project would be started in October 2019 and completed within 18 to 20 months from the date of starting of the project. The complainant was allured to pay an advance of Rs.25,00,000/- to get an advantage of Rs.7500/- per sq.ft instead of Rs.8,500/- per sq.ft otherwise in the Ramapuram project. The total cost of the project was Rs.1,18,99,000/-.

(c) The complainant was assured of executing a construction agreement in October, 2019 the complainant paid an advance of Rs.25,00,000/- for the Ramapuram project on 03.09.2019, for which a signed receipt was issued on 03.09.2019. It was after paying the advance of Rs.25,00,000/- that on 10.09.2019, the complainant was informed that the project was still at the stage of CMDA approval. Thus, he was wrongly made to believe that the project had already got the required approvals.

(d) The complainant further claims that on 10.09.2019, the complainant received a document signed by the respondent mentioning that the booking advance amount of Rs.25,00,000/- has been received as mortgage money against the undivided share of land of the apartment booked by the complainant. The efforts of the complainant to enter into a construction and sale agreement did not heed any result. The bhoomi pooja was finally conducted on 11.11.2019 on the Ramapuram project but still efforts of the complainant to get an agreement signed did not materialize and he was informed that the building permission were yet to be obtained. When pressed about the details of the project, the respondent informed the complainant that the amount of Rs.25,00,000/- obtained from the complainant is actually a loan which is meant to be used as fund flow for

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over business and does not wish to start Ramapuram project as promised in October, 2019.

(e) Thereafter, the complainant decided to withdraw from the project and sought refund of amount. The complainant repeatedly mentions that he had no intention of giving loan whatsoever. He seeks refund of the amount paid by him towards the project besides action on violation of the RERA Act.

**3. Counter averments by the 1<sup>st</sup> respondent, in brief, as follows:**

(a) The respondent blames it on the complainant who wanted to buy an apartment in Ramapuram village and had enquired for the same with the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent wants to come out clear by mentioning that he had intimated the complainant that the project is still not approved by the TNRERA and also claims that he had not received any advance payments. He specifically mentions that he had not advertised anywhere about the upcoming project at Ramapuram. He further goes on to submit that the complainant was in greed of buying property in the prime area and insisted on the 1<sup>st</sup> respondent that he will lend a sum of Rs.25,00,000/- as a loan and to convert the same as a consideration of the flat when the project starts.

(b) Thus, the 1<sup>st</sup> respondent states that the complainant came to him in the capacity of money lender and not a buyer. The 1<sup>st</sup> respondent further submits that the matter was complained at the Abiramapuram Police Station wherein the 1<sup>st</sup> respondent had agreed to return back a sum of Rs.25,00,000/- with 6 cheque and has thus settled the issue.

**4. Counter averments by the 2<sup>nd</sup> respondent, in brief, as follows:**

(a) The 2<sup>nd</sup> respondent pleads that he is an unnecessary party in the complaint, especially no prayer, whatsoever has been made against him.

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He informs that the lands are owned by him, and that he had entered into a Joint Development Agreement with the 1<sup>st</sup> respondent on 13.06.2017 and General Power of Attorney was also executed on the same day but for over a period of 2 years, the 1<sup>st</sup> respondent had taken no efforts to start the construction and the 1<sup>st</sup> respondent kept misleading the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent also alleges that the 1<sup>st</sup> respondent had even forged signature of the 2<sup>nd</sup> respondent and that the 1<sup>st</sup> respondent had also misused the power given to the 1<sup>st</sup> respondent.

(b) He also says that the 1<sup>st</sup> respondent had created a mortgage for a huge sum of Rs.2 Crores. In all the 2<sup>nd</sup> respondent makes himself to be more a victim mostly corroborating the complainant at the hands of the 1<sup>st</sup> Respondent.

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

6. Both the parties have filed their respective evidence on affidavit with documents.

7. On the basis of the rival contentions of the parties, the following points arise for determination:

(i) Whether there is a builder/promoter relationship between the 1<sup>st</sup> respondent and the complainant and liability of the 2<sup>nd</sup> respondent in the issue?

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

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

(a) The relationship between the 2<sup>nd</sup> respondent and the complainant is not made out as a promoter and the builder as no money had been given ever by the complainant to the 2<sup>nd</sup> respondent and at no stage in the proceedings of the case, the 2<sup>nd</sup> respondent has been shown as a promoter. However,

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the consideration of Rs.25,00,000/- was paid by the complainant to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent has claimed to have obtained it as a loan from the complainant. The complainant holds that it was for advance of the apartment he was booking. That the money was for the apartment is reinforced in favour of the complainant by the whatsapp message (Ex.A3), possession of the site plan (Ex.A5) which would only go to show that the money was paid to the promoter for the project. Even, the tentative receipt produced as Ex.A7 by the complainant indicates the payment of Rs.25,00,000/- for Flat No. 1A, 1<sup>st</sup> Floor in "Kgeyes", at Ramapuram.

(b) It clearly indicates that there was a promoter/home buyer relationship between the 1<sup>st</sup> respondent and the complainant. It also makes it clear that the money of Rs.25,00,000/- was paid as a consideration for apartment and not as a loan as claimed by the 1<sup>st</sup> respondent. The receipt of Rs.20/- stamp paper to show Rs.25,00,000/- as a loan marked in Ex.A10 is only a unilateral document which appears to have been created by the 1<sup>st</sup> respondent as it has no signature of the complainant. Hence, it is clear that the 1<sup>st</sup> respondent has to refund the money of Rs.25,00,000/- to the complainant.

(c) Further, written argument of the complainant indicates that the police complaint filed by the complainant against the respondent through which Rs.25,00,000/- obtained was refunded by way of cheque payments in six installments. Since, the principle amount of Rs.25,00,000/- has already been obtained, the liability of the 1<sup>st</sup> respondent remains restricted to pay the interest to the complainant and thus, the point is answered accordingly.

9. **Answer for Point No (ii):**

(a) As discussed above, the complainant is entitled for refund from the 1<sup>st</sup> respondent since the refund of the principle amount of Rs.25,00,000/- has already been obtained he is entitled for interest of the principle amount.

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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 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 1<sup>st</sup> respondent is directed as follows:-**

- (i) The 1<sup>st</sup> respondent shall pay the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 9 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.
- (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/- 20.05.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH

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**LIST OF WITNESSES**

CW-1 --- V. Vijaya Prakash

RW-1 --- P.V. Shanmugam

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

| Ex.Nos | Date       | Documents Name                        |
|--------|------------|---------------------------------------|
| Ex.A1  | ---        | Photographs                           |
| Ex.A2  | 17.08.2018 | Whatsapp profile of respondent        |
| Ex.A3  | 04.08.2019 | Whatsapp message from respondent      |
| Ex.A4  | 30.08.2019 | Price sheet issued by respondent      |
| Ex.A5  | ---        | Brochure of kgeyes, Ramapuram project |
| Ex.A6  | 06.09.2019 | Copy of the cheque by complainant     |
| Ex.A7  | 03.09.2019 | Payment receipt                       |
| Ex.A8  | 05.09.2019 | Drawing issued by respondent          |
| Ex.A9  | 10.09.2019 | Letter from respondent                |
| Ex.A10 | 10.09.2019 | False stamp paper by respondent       |
| Ex.A11 | ---        | Photograph of bhoomi pooja            |
| Ex.A12 | 18.03.2019 | General power of attorney             |
| Ex.A13 | 17.02.2020 | Cancellation letter by complainant    |
| Ex.A14 | ---        | E-mail communications                 |

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

| Ex.Nos | Date       | Documents Name                                     |
|--------|------------|--|
| Ex.B1  | 10.09.2019 | Loan receipt issued by R1                          |
| Ex.B2  | 31.07.2020 | Letter from complainant to the inspector of police |



Sd/- 20.05.2022  
**Mr. SUNIL KUMAR, I.P.S (Retd)**  
**SINGLE MEMBER BENCH**  
**TNRERA, CHENNAI**