

**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. 99 of 2020

1. Lawrence Gunasekar
2. Pani Lalitha **Complainants**

Vs.

M/s. Marg Properties Limited.,
Rep by its Director, Mr. G.R.K. Reddy **Respondent**

Complainants : Rep by Mr. V. Jai Bharath, Advocate.

Respondent : Rep by Dr. S. Padma, Advocate.

Heard on : 23.03.2022

Delivered on : 23.05.2022

ORDER

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

(a) The complainants booked an apartment in L Block, 2nd Floor with the respondent in their project, namely, "Marg Utsav", situated at Seekinakuppam Village, Kancheepuram District. The complainants paid an advance amount of Rs.50,000/- and Rs.1,49,665/-. The total cost of the apartment was Rs.15,21,100/- and the lease agreement was executed on 17.01.2011.

(b) Since, the respondent was unable to handover the apartment. On the request of the respondent the complainants transferred the amount paid and got booking in "Brindavan ", project at Pondur Village and agreed to book apartment 308 in Block E in 2nd Floor. Thereafter, the complainants

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has paid Rs.2,00,000/- on 26.07.2011, and Rs.50,000/- on 09.07.2011. The complainant has paid a total amount of Rs.4,49,665/-

(c) The complainants pleads that the respondent had still not started construction in Block E where the apartment allotted to them is located. Hence, the complainants wish to withdraw from the project.

3. Counter averments of the respondent, in brief, as follows:

The respondent denies all the allegations except those specifically admitted. The respondent put the blame on the complainants for not having made payments stage wise as demanded by the respondent and plead not to allow any interest and compensation. The respondent blames the delay on natural calamities, getting approvals, labor issues, material issues etc. He further, goes on to say that the natural disaster alone caused the delay of the project. The respondent contends that the complainants had changed the project of the own will and that he failed to pay installments as made out for the new apartment that he had got.

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

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

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

- i. Whether the complainants are entitled for refund of the amount paid to the respondent?
- ii. What are the reliefs made out?

7. Answer for Point No (i):-

(a) It is the clear fact that the complainants have booked an apartment in the scheme of the respondent (Ex.A1) and paid an advance amount of Rs.50,000/- and Rs.1,49,665/- (Ex.A2). The respondent also executed a

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lease in the name of the complainants on 27.01.2011 (Ex.A3). However, the same was transferred to another project of the respondent in the name, "Brindavan", and an amount of Rs.1,99,665/- was transferred from "Marg Utsav" to "Brindavan" scheme (Ex.A4). The total amount paid by the complainants to the respondent is Rs.4,49,665/-.

(b) The respondent by his own admission has clearly stated that the project could not be completed due to various reasons including delay in natural calamities, getting approvals, labor issues, material issues etc., and blames that the project got delayed so there is no dispute with regard to the not handing over of the project. The respondent blames non-payment of the installment stage wise by the complainants as the reasons for not being allowed any interest on the refund. The lease agreement clearly provides that in case the lessee fails to make payments as agreed, that agreement shall cease and stand terminated.

(c) However, the same agreement also provides a notice to be served as the lessee by the lessor where he would have to give a 30 days notice before any such cancellation of lease is done (Ex.A3). The lessor at no stage has given any such notice whereby allowing the lessee to continue. The Respondent has argued that the complaint is barred due to limitation. Since the project is an ongoing project as per Rule 3 of the RERA Act limitation would not apply in this situation This being so the Respondent by his own admission has agreed to the delayed delivery beyond the projected date and thereby . Thus, the point is answered accordingly making the claim of refund by the complainants a justifiable one.

8. Answer for Point No (ii):-

(a) Having thus arrived at the conclusion that the respondent has to refund the amount paid by the complainants to the tune of Rs.4,49,665/-.

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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 8.20% 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:-

- (i) The respondent shall pay the amounts at 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 complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
- (iii) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainants 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 complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

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Sd/- 23.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

CCP.No. 99/2020**LIST OF WITNESSES**

CW-1--- M. Lawrence Gunasekar

RW-1--- K.S. Gajendra Babu

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	30.10.2010	Booking Form
Ex.A2	---	Payment receipts
Ex.A3	27.01.2011	Agreement of lease
Ex.A4	08.10.2011	Letter by respondent regarding transferring the flat

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	23.08.2018	Board resolution copy
Ex.B2	---	TNRERA Order (Paper cutting)

Sd/- 23.05.2022

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

