

**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. 109 of 2021**

S.V. Soundararajan

.... Complainant

**Vs.**

1. M/s. Grove OMR Properties Pvt Ltd.,  
(A unit of Vision India Real Estate Pvt Ltd)  
Rep by its Authorized Signatory
2. M/s. Gem Granites,  
Rep by its Authorized Signatory

.... Respondents

Complainant : Rep. by Mr. K. Sevugan, Advocate.

1<sup>st</sup> Respondent : Rep. by M/s. K. Sathish, Advocates.

2<sup>nd</sup> Respondent : Ex-Parte

Heard on : 14.06.2022

Delivered on : 30.06.2022

**ORDER**

The above complaint 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 brought a property in the project, namely, "**The Gem Grove**", at Padur, OMR, Chengalpattu Taluk, Kancheepuram District developed by the 1<sup>st</sup> respondent in the property owned by the 2<sup>nd</sup> respondent. The complainant entered into a construction agreement with the 1<sup>st</sup> respondent on 29.06.2012 with a promise to deliver the apartment Unit No. GL17 within 30 months with a grace period of 4 months viz. by 30.04.2015.

(b) The sale agreement entered on 29.06.2012 whereby the 2<sup>nd</sup> respondent has agreed to sell an UDS for a consideration of Rs.6,05,000/-. The

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installments where required to be paid by the complainant as per various milestone in the construction process according to which the complainant has made payments. The complainant was to pay the final installments only at the time of handing over possession which included the payments for EB and water charges. The complainant has paid all the installments except the final installment totaling a sum of Rs.39,07,487.37/-.

(c) While the possession was to be handed over by 30.04.2015. The complainant got a letter from the 1<sup>st</sup> respondent dated 02.06.2015 indicating that they were facing a challenge, due to which there would be delay in handing over the apartment and a further period of 1 year was requested giving a fresh date of delivery to June, 2016. The 1<sup>st</sup> respondent had also agreed to pay the compensation as spelt out in the construction agreement. The June, 2016 deadline was extended to December, 2016. It was only on 23.01.2016 and subsequently reiterated on 10.11.2016 that the complainant expressed his desire to withdraw from the project and sought refund with interest.

(d) The 1<sup>st</sup> respondent again vide letter dated 09.12.2016 was informed that from January, 2017 the construction would begin at great speed and acknowledged the payment of Rs.39,07,487.37/- paid by the complainant despite all efforts the complainant submits that even after 8 years he is not been able to get the apartment. The complainant has also not got any compensation as per the construction agreement so far. It is only on 03.08.2020 that the complainant got intimation from the respondents that the apartment is ready for handing over but on enquiry the complainant found that even the basic structure of the club house has not been started. The complainant submits that the UDS has not been registered despite having received payment for the same.

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(e) The complainant seeks refund of entire amount with interest along with compensation. The complainant further submits that the 2<sup>nd</sup> respondent is a formal party and claim no reliefs from him.

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

(a) The respondent begins by contesting the jurisdiction of the RERA since the project started well before the RERA came into existence. The respondent agrees to the complainant having booked a flat in June, 2012 costing to Rs.43,79,193.57/- of which the complainant has paid a total amount of Rs.39,07,387.37/- . The respondent avers that the construction is now over and ready to hand over as soon as the electricity connection is obtained from EB Department.

(b) The respondent further avers that the project was voluminous one and could not be completed as per the schedule beyond their control and the delay was due to force majeure conditions caused due to unexpected rains and floods. The respondent further submits that the complainant was well aware of this fact and had accept to take possession of the apartment but on ill advice was seeking refund. The respondent submits that he had not sought any money for registration and till date despite his repeated communication to the complainant to register the UDS he has not done it so far.

(c) The respondent further submits that there is still Rs.4,53,643.20/- pending to be paid by the complainant. The respondent submits that the complainant all along had been asking to take the delivery of the project but suddenly refused to do so and demanding refund when he was ready to compensate for delay as per the construction agreement.

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

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

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

- i. Whether the complainant is entitled for refund of the amount paid to the respondents?
- ii. Whether it falls in the jurisdiction of the RERA and liable to be register under TNRERA?
- iii. What are the reliefs made out?

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

(a) The complainant had been allotted a Flat No. GL17 in the project, namely, "**The Gem Grove**", and paid a token advance of Rs.2,00,000/- to the 1<sup>st</sup> respondent (Ex.A1). The complainant subsequently entered into a construction agreement with the 1<sup>st</sup> respondent on 29.06.2012 wherein it was agreed that the promoter shall complete the development of the building project on or before completion of 30 months from the date of this agreement or from the commencement of construction, whichever is later, as far as possible with grace period of 4 months. The delivery of the project was to be on April, 2015 (Ex.A2). The failure to deliver had stipulated payment of a sum of Rs.5/- per sq.ft per month for delay till the handing over of the project.

(b) The construction agreement had clearly laid down details about the common area, club house etc. The complainant had paid a sum of Rs.39,07,487.37/- as per schedule laid down in the construction agreement and has paid up to the last installment leaving a balance of amount to be paid at the stage of handing over to the complainant (Ex.A2) at page 20 of the typed set. The complainant argued that even till date the completion certificate had not been obtained.

(c) Since, the completion certificate had not been obtained even though the project started in 2012 it will continue to be an ongoing project as per

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Section 3 of the RERA Act and thus would fall within the jurisdiction of the TNRERA. Thus, dispelling the contentions of the respondent that it does not fall in the jurisdiction of the RERA with this the project also needs to be registered.

(d) The respondents only put forth the force majeure as a cause for delay along with volume of the project which could not be taken as any justifiable explanation for the delay in handing over. There has been a delay in handing over of the project which is also made out by letter dated 03.08.2020 from the respondents to the complainant inviting him to take the possession of the apartment at Page 70 of the complainant typed set. It is a fact therefore, that the project has been delayed much beyond the agreed date as also that the project was an ongoing project at the time of RERA coming into effect in Tamil Nadu. The complainant claim for refund is justifiable. Thus, the point is answered accordingly.

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

As already been discussed above, the project is an ongoing one at the time of formation of the RERA and thus would not get exemption from registration and would have to therefore register. Thus, the point is answered accordingly.

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

(a) In view of the answer for Point No.(i), (ii), the complainant is entitled for refund of amount for a sum of Rs.39,07,487.37/- to be paid by the respondents jointly or severally.

(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

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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 respondents.

(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 respondents are directed as follows:-**

1. The respondents shall pay the amounts jointly or severally at the interest rate, as per the findings in answer for Point No.(iii), Para No.9 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.
4. 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 created if any by charge in the order to the Sub-Registrar concerned.
5. 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 respondents.

Sd/- 30.06.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH

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**LIST OF WITNESSES**

CW-1--- S.V. Soundararajan

RW-1--- Subramani Ganesan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	25.06.2012	Welcome letter
Ex.A2	29.06.2012	Construction agreement
Ex.A3	29.06.2012	Agreement for sale
Ex.A4	---	Demand letters by 1 <sup>st</sup> respondent
Ex.A5	---	Payment receipts
Ex.A6	24.07.2012	Allotment letter by 1 <sup>st</sup> respondent
Ex.A7	---	Letter correspondence between complainant and respondents
Ex.A8	---	Copy of the complaint in C.C.No. 40/2019
Ex.A9	---	Written statement by R1 in C.C.No. 40/2019
Ex.A10	04.12.2020	Memo to withdraw the complaint in C.C. No. 40/2019
Ex.A11	---	Photographs

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	29.06.2012	Agreement for sale
Ex.B2	29.06.2012	Construction agreement
Ex.B3	---	Photographs



Sd/- 30.06.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH  
TNRERA, CHENNAI