

**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. 112 of 2021**

D. Jeethanya Bhavani,
Rep. by her Power Agent, B. Sujatha **Complainant**
Vs.

M/s. Real Value Promoters Pvt Ltd.,
Rep. by its Authorized Signatory,
Kolappan Thanu Achari **Respondent**

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

Respondent : Ex-Parte.

Heard on : 23.02.2023
Delivered on : 27.02.2023

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 purchased an apartment No. 1-D, in the first floor of Block 'Q' in the respondent's project, namely, "*Padmalaya*" and subsequently renamed as by the respondent as "*Padmasri*", at Pudupakkam Village, Thiruporur Taluk, Kancheepuram District with a super built up area of 993 sq.ft together with 300 sq.ft of UDS for a total consideration of Rs.36,25,907/-. The construction agreement was signed on 16.05.2014 and the sale agreement was also signed on the same date.
- (b) The complainant also has to pay a sum of Rs.92,028/- in addition as infrastructure and basic amenities charges and advance maintenance charges for 12 months. The complainant paid a sum of Rs.12,87,684/- in 5 installments starting from 17.02.2014 to 28.07.2014. The agreed date of delivery was within 3 years from the date of obtaining statutory approvals

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or from 14.01.2014 whichever is later with a grace period 6 months. The complainant had obtained the house loan for Rs.29,10,000/- and a quadripartite agreement dated 31.05.2014 was entered between the complainant, the respondent, a partnership firm with a owner of the bank and lender bank.

(c) The respondent avers that under Section 5 of this document, it was laid down that in the event of failure of the respondent to complete the project, the respondent have pay to the lender bank the entire money so received by it from the complainant along with the interest payable. This was followed by a Memorandum of Understanding (MOU) dated 31.05.2014 between the parties whereby the respondent had agreed that they shall pay interest for the amount disbursed by the complainant bank for the home loan availed by the complainant for a period of 30 months from the date of receipt of payment advice for the project from the Authority till the date of written intimation from the respondent to the complainant intimating the apartment is ready to be occupied.

(d) Accordingly, the lender bank released a payment of Rs.8,24,824/- to the respondent on 31.05.2014. Thereafter, despite having obtained a sum of Rs.12,87,684/-, the respondent had not taken any steps to construct the construction in Block 'Q' nor was the agreed 300 sq.ft of UDS registered, instead a sum of Rs.97,509/- was made to be paid by the complainant towards interest which was agreed to be paid by the respondent. The complainant on his visit to the site in January 2017 observed that even basic construction work is not commenced. All the efforts to contact the respondent were in vain.

(e) Thereafter, the complainant moved for cancellation and sought refund along with a sum of Rs.97,509/- incurred as interest for the home loan availed by the complainant which the respondent had failed to honour

even after more than 4 years. The complainant accordingly seek refund under Section 18(1)(a) and Section 19(4) of the RERA Act along with compensation and litigation costs.

3. The respondent remained absent and hence treated as ex-party.
4. In evidence to prove his claim, the complainant has filed proof affidavit with documents.
5. On the basis of the contentions of the complainant, the following points arise for determination.

(i) Is there is a delay in delivery warranting refund to the complainant?

(ii) What are the reliefs made out?

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

(a) The construction agreement was entered on 16.05.2014 (Ex.A2) and the sale agreement was also entered on the same date (Ex.A3). As per Clause 2 of the construction agreement, the construction cost was agreed at Rs.30,25,907/- while the cost of UDS was agreed at Rs.6,00,000/-. The respondent had agreed to hand over the completed unit within 36 months with a grace period of 6 months from the date of obtaining all statutory approvals or from the date 14.01.2014 whichever is later as per Section 4(a) of the construction agreement.

(b) The first issue to be determined here is, the date on which the 36 plus 6 months grace period starts. The Clause 4(a) laid down that the period of start from the date of getting statutory approvals or from 14.01.2014 whichever is later. The submission of the complainant clearly indicates that the same has still not been started. Therefore, the consideration date would be taken as 14.01.2014 as the date of obtaining all statutory approvals is abstract more to as the respondent has already obtained a sum of Rs.12,87,684/- from the complainant. This being so, the

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due date starts from 14.01.2014 and the delivery projects to 14.07.2017. The unit is still not been handed over to the complainant thereby entitling him to claim refund as per Section 18(1) and Section 19(4) of the RERA Act.

(c) The complainant had obtained the bank loan (Ex.A4) and entered into a quadripartite agreement between the complainant, the respondent, the owner and the financing bank. The provisions of the MOU clearly laid down that the respondent shall pay interest for the amount disbursed as per the stage by the financing bank to be availed by the complainant and paid to the financing bank for a period of 30 months. This being so, the amount of Rs.97,509/- incurred by the complainant towards payment of interest for the home loan availed shall be also refunded to the complainant.

7. Answer for Point No. (ii)

(a) In view of the answer for Point No.(i), the complainant is entitled for a sum of Rs.12,87,684/-. The amount of Rs.97,509/- paid by the complainant as interest shall also be refunded without interest.

(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 are 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 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.

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In the result, the respondent is directed as follows:-

- (i) The respondent shall pay the amounts and cost as per the findings in answer for Point No. (ii) in Para No. 7 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, 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 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 agreement.

Sd/- 27.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1--- B. Sujatha

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	19.08.2019	Deed of special power of attorney
Ex.A2	16.05.2014	Construction agreement
Ex.A3	16.05.2014	Agreement for sale
Ex.A4	29.05.2014	Arrangement letter
Ex.A5	31.05.2014	Memorandum of understanding
Ex.A6	31.05.2014	Quadripartite agreement
Ex.A7	---	Payment receipts

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Ex.A8	---	Statement of accounts
Ex.A9	14.07.2016	Loan closure certificate

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 27.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

