

**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. 114 of 2021**

(i) P. Easwari
(ii) B. Padmanabhan

.... **Complainants**

Vs.

1. M/s. K.P. Developers
2. M/s. K.P. Estates
3. M/s. Rudradev Aviation Pvt Ltd
4. M/s. N.H.D. Developers
5. M/s. K.P. Homes
6. M/s. Adinath Infrastructure
R1 to R6 rep. by their POA Agent, the 7th respondent
7. M/s. Amar Prakaash Developers Pvt Ltd
Rep. by its Authorized Signatory, S.V. Chidambaram

.... **Respondents**

Complainants : Rep. by Mr. G. Poonkundran, Advocate.

Respondents : Ex-Parte.

Heard on : 24.06.2022
Delivered on : 11.11.2022

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondents towards purchase of an apartment with interest, and costs. The complaint 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 purchased an apartment in the project namely, "**Palm Riviera**", developed by the respondents in the month of June 2013 with a promise to complete the construction before 2016. The complainants entered into the construction agreement for the project on 29.09.2013 with the respondents. The total consideration for the apartment was Rs.53,66,141/- which was later revised to Rs.67,69,173/-.

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All the amount has been paid by the complainants to the respondents. The UDS was registered by absolute sale deed executed on 29.05.2015 at the Sub Registrar Office, Padappai.

(b) The construction agreement stipulates the completion of the construction of the apartment by 28.09.2016 failing, which according to the construction agreement, an interest of 12% p.a towards damages on the total amount paid by complainants was agreed. The complainants were not able to get their apartment even after a delay of nearly 51 months. The complainants further submits that even the construction of the remaining portion including the club amenities etc., are still pending and yet to be started.

(c) No electricity connection or proper sewage treatment plant had been provided. The complainants further avers that even till date the apartment is yet to be completed. Due to which the complainants seeks refund of Rs.71,45,764/-. The complainants also seek interest at the rate of 12% p.a on the amount paid besides seeks compensation and litigation cost.

3. Since the respondents have failed to attend hearing dates they were treated as Ex-Parte.

4. The chance for filing proof affidavit of the complainants is closed since he failed to submit the same even after being given enough opportunity for the same.

5. On the basis of the contentions of the complainants, the following points arise for determination.

(i) Whether the complainants are entitled for refund of the amount paid to the respondents with interest on the ground of failure on the part of the respondents to complete the construction and handover possession as per the terms and conditions of the agreement?

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(ii) Whether the complainants are entitled for all the reliefs as prayed for?

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

(a) The complainants were allotted an apartment in the respondents project, namely, "**Palm Riviera**", in the month of June 2013. The complainants have paid a sum of Rs.71,45,764/- in 11 installments starting from 26.09.2013 to 25.09.2019. The construction agreement was entered on 29.09.2013 originally. The Joint Development Agreement projected the cost of the apartment to Rs.53,66,141/- which was subsequently revised to a sum of Rs.67,69,173/-. The absolute sale deed was executed on 29.05.2015 vide Document No. 4601 of 2015 at the Sub Registrar Office, at Padappai.

(b) The UDS of land was registered for Rs.4,72,000/-. The respondents have promised to complete and deliver the apartment by 28.09.2016 failing which he had committed to pay an interest at the rate of 12% p.a towards damages on the total amount paid by them. The respondents failed to keep up their promise and have not delivered the apartment even till the filing of the complaint.

(c) It is therefore clearly shown that the respondents have failed to keep up the delivery committed thus entitling the complainants to refund of the amount paid by them. 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 for a sum of Rs.71,45,764/- paid to the respondents.

(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 complainants are entitled for the interest at the rate of 7.30% per annum which was the

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marginal cost of lending rate of interest of SBI at the time of filing the complaint 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 complainants are 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 jointly / severally shall pay the amounts at the interest rate, 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 complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
3. The charge of the aforesaid amount as encumbrance if any 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 if any created by charge in the order to the Sub-Registrar concerned.
4. 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 respondents.

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Sd/- 11.11.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

NIL

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

Sd/- 11.11.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

