

**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. 128 of 2021**

S. Rajagopal

..... Complainant

**Vs.**

1. M/s. Pacifica (Chennai Project) Infrastructure  
Company Pvt Ltd.,  
Rep. by its Managing Director, Rakesh Motilal Israni
2. M/s. VIP Housing & Properties  
Rep. by its Chairman, Dhanapal

..... Respondents

**Complainant** : Rep by M/s. S.R. Sumathy, Advocates.

**1<sup>st</sup> Respondent** : Rep by M/s. Stephen C. Kumar, Advocates.

**2<sup>nd</sup> Respondent** : Remained absent.

**Heard on** : 23.09.2022

**Delivered on** : 24.01.2023

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondents towards purchase of a Flat 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 has booked a Flat No. A809 in the "**Pacifica AURUM**" Phase-II, situated at Rajiv Gandhi Salai (OMR), Padur, Chennai promoted by the 1<sup>st</sup> respondent on 21.07.2013 by paying an advance of Rs.1,00,000/- (receipt dated 25.07.2013). The complainant avers that this money of Rs.1,00,000/- was received by the 2<sup>nd</sup> respondent being the agent of the 1<sup>st</sup> respondent.

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*(Signature)*  
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(b) The sale and the construction agreement were both executed on 02.09.2013. The promised date of delivery was 30.06.2015 with a grace period of 6 months. The complainant has paid a total sum of Rs.43,91,550/- as on 05.08.2020. The complainant avers that despite the date of delivery being 30.06.2015 which extends by another 6 months grace period putting the date to 31.12.2015. The flat has still not been handed over to the complainant hence he prays to withdraw and seeks refund of the amount paid by him with interest, compensation and litigation cost.

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

(a) The respondent agrees to the basic facts regarding the sale and construction agreement, allotment of the flat in the respondent's project. The respondent continues to submit that the project construction was completed much before the Act came into being but however, the respondent submits that the podium was connected with the main building and since that could not be completed the project was registered, being an ongoing project, with the RERA in the Registration No. TN/01/Building/0181/2019 dated 30.10.2019 wherein it has been submitted that the project will be completed by 31.12.2021. The same has got further delayed due to the COVID-19 pandemic.

(b) The respondent submits that he has made substantial investment in the project and any direction to pay refund will cause immense suffering besides open gate for litigations and thus pleads that the complainant should wait till the completion of the project. The respondent finally submits that the claims made by the complainant are exorbitant and thus pleads for dismissing the CCP.

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

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5. The 1<sup>st</sup> respondent has filed their respective evidence on affidavit with documents. The 2<sup>nd</sup> respondent remained absent all through the proceedings.

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

- (i) Whether there has been a delay in handing over the flat to the complainant warranting refund?
- (ii) What are the reliefs made out?

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

(a) The construction agreement (Ex.A22) was entered on 02.09.2013. The sale agreement (Ex.A21) was also entered on the same date viz. 02.09.2013. The amount of Rs.43,91,550/- was paid to the 1<sup>st</sup> respondent besides an expenditure of Rs.72,000/- made by the complainant towards registration charges (Ex.A1 to Ex.A14). The agreed date of delivery was 30.06.2015 with a grace period of 6 months projecting the final date of delivery to 31.12.2015 (Para 6 of the construction agreement).

(b) Since, the project was an ongoing project when the TNRERA came into being, and the respondent admits that the project was registered in Registration No. TN/01/Building/0181/2019 dated 30.10.2019. This would clearly amount to the respondent admitting that the flat was not handed over till the date of registration of the project viz. 30.10.2019. The complainant therefore become entitled for refund of amount under Section 18 (1) (b) where being a delayed delivery and the complainant wanting to withdraw and seeks refund giving the respondent no other choice. Thus, the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.43,91,550/- from 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 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 plus 2% per annum, i.e., 9.30% p.a for the entire amount paid from the date of respective payment till repayment by the respondents.

(c) Considering the facts and circumstances of the case, a sum of Rs.20,000/- 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:-**

- (i) The respondents are jointly / severally shall pay the amount 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 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.

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- (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 respondents.

Sd/- 24.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- S. Rajagopal

RW-1 --- S. Vijayaraghavan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	21.07.2013	Acknowledgment receipt
Ex.A2	25.07.2013	Receipt
Ex.A3	17.08.2013	Receipt
Ex.A4	20.08.2013	Receipt
Ex.A5	19.09.2013	Receipt
Ex.A6	04.04.2014	Receipt
Ex.A7	07.04.2014	Receipt
Ex.A8	26.06.2014	D.D. No. 711053 to M/s. Pacifica
Ex.A9	04.10.2014	Receipt
Ex.A10	28.01.2015	Receipt
Ex.A11	23.04.2015	Receipt
Ex.A12	16.06.2015	DD copy
Ex.A13	16.06.2015	DD copy
Ex.A14	16.06.2015	DD copy
Ex.A15	31.10.2017	Letter
Ex.A16	---	Postal cover copy
Ex.A17	January	E-mail
Ex.A18	06.08.2020	Receipt
Ex.A19	---	Calculation sheet
Ex.A20	---	Paper cutting

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Ex.A21	02.09.2013	Agreement for sale
Ex.A22	02.09.2013	Construction agreement
Ex.A23	18.06.2015	Deed of sale

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2020	Authorization letter
Ex.B2	12.04.2021	Permission granted to the company by TNRERA

Sd/- 24.01.2023  
**SUNIL KUMAR, I.P.S (Retd)**  
**SINGLE MEMBER**  
**TNRERA, CHENNAI**

