

**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. 129 of 2021**

Devi PP Complainant

Vs.

M/s. Amar Prakaash Developers Pvt Ltd.,
Rep by its Director, Mr. Aadarsh Surana, Respondent

Complainant : Party-In-Person

Respondent : Rep by M/s. D. Ravichander, Advocates.

Heard on: 19.04.2022

Delivered on: 22.04.2022

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 had purchased a flat in the project, namely, "**Temple Waves**", and was allotted a Flat No. J733 with a built up area of 626 sq.ft in the Seventh Floor of J Block. The UDS was 235 sq.ft situated at Kundrathur Village, Sriperumbudur Taluk, Kancheepuram District. The total sale consideration of the flat was Rs.26,08,815/-.

(b) The complainant subsequently stated that she had dropped out from the said project and also informed the same to the concerned marketing people. However, the marketing people of the respondent convinced the complainant's father by giving false commitment and due to which the complainant's father made a payment of Rs.1,00,000/- through credit card on 01.03.2019.

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(c) Subsequently, on 20.03.2019 the complainant withdrew from the project and asked to refund the deposited amount paid by her.

3. The respondent failed to avail any opportunity to defend himself and did not file counter, proof affidavit or written arguments.

4. In evidence to prove her claim, the complainant filed proof affidavit with documents.

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

(i) Whether the complainant is entitled for refund of amount paid to the respondent?

(ii) What are the reliefs made out?

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

It is clear from the above Rs.1,00,000/- has been paid by the complainant which was apparently made by giving false commitment. The complainant while arguing the case in person also made oral argument that the apartment is not still ready to occupy and no demand for any further payment has been raised. Since, the respondent has not availed any opportunity to defend himself it would only amount to acceptance of the claims made by the complainant. Hence, refund claim by the respondent is made out. Thus, the point is answered accordingly.

7. **Answer for Point No. (ii)**

(a) Therefore, the complainant is entitled for refund amount of Rs.1,00,000/-.

(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 respondent.

(d) 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. 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 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 construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 22.04.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

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LIST OF WITNESSES

CW-1—Devi PP

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Payment receipts
Ex.A2	20.03.2019	Letter from complainant regarding refund of deposit amount
Ex.A3	---	Identity proof of the complainant

LIST OF DOCUMENTS FILED BY THE RESPONDENTNIL

Sd/- 22.04.2022

Mr. SUNIL KUMAR, I.P.S (Retd)

SINGLE MEMBER BENCH

TNRERA, CHENNAI



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