

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

**Quorum : Thiru. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
CCP No. 139 of 2021**

- (i) A. Kantharuby
(ii) K. Ayyanarappan

..... **Complainants**

Vs.

1. M/s. Sylvanus Builders & Developers Ltd.,
Rep. by its Director, Sanjil Ramesh Chandani
2. M/s. Pacifica (Chennai project) Infrastructure Co.Pvt. Ltd.
Rep. by its Managing Director, Rocky Israni

..... **Respondents**

Complainants : Rep. by M/s T. Raghavan, Advocates.

Respondents : Ex-Parte

Heard on : 13.01.2023

Delivered on : 20.01.2023

ORDER

The above complaint by the complainants seeking refund with interest from the respondents towards purchase of the villa with interest, and costs and 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 have booked and were allotted Villa No. 208 in the Respondents project by name, "**PACIFIA AURUM**". The construction and sale agreement were both made available on 31.05.2013. But the complainants aver that entering into agreement itself was delayed on the Respondents side who was deviating from the original booking schedule and condition as per the construction agreement dated 31.12.2015. The date of delivery was scheduled by 31.12.2015 including the 6 months grace

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period. The Respondent handed over the villa only on 22.05.2019 and that too with defects.

(b) The complainants have paid a total sum of Rs. 1,06,65,635/- by December, 2014 itself thus completing the complainant's part of contract. The complainants avers that he had paid the last instalment of Rs.1,62,641/- on 28.01.2019, whereas the villa was handed over only on 22.05.2019. Even while handing over the villa, the Respondent has taken time till November/December, 2019 to bring the villa to a living condition.

(c) The complainants further submits that they were made to pay an additional amount of Rs.3,59,915/- as interest and penalties. Further, the Respondents have collected Rs.1,01,328/- as maintenance charges for 2 years in December, 2014 itself much before the villa was handed over and have even demanded further maintenance charges in June, 2020 for the period beyond July, 2020 holding that the previous amount of maintenance charges for the period from July 2018 to June 2020.

(d) The complainants submit that the maintenance charges can only be collected from July, 2019 from the apartment was handed over. The complainants submit that a sum of Rs.1,50,000/- was collected towards the club house, which was also not ready. The complainants therefore pleads interest for the delayed delivery and refund of Rs.3,59,915/- charges as interest and penalties, Rs.15,000/- charge for E.B metre and interest of Rs.1,50,000/- collected for the club house, which is non-existence. The complainants further pleads for Rs.30,000/- towards the cost.

3. Counter averments of the respondents, in brief, as follows:-

The Respondents submits to that basic fact regarding the construction and sale agreement and date of delivery. The Respondents avers that he had handed over the apartment on time. This is being the so the

Respondents avers that the issue of delivery in handing over as claimed by the complainants would only falls in the realm of civil issue as no agreements were executed, hence, the complaint cannot be taken up by this Forum. The Respondents avers that once the complainant had taken over the possession, he is estopped from making any more pleas on the issue and hence pleads for dismissing the complaint.

4. The respondents remained absent at the argument stage and hence treated as ex-parte.

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

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

(i) Is the complainant eligible to claims pleaded by them?

(ii) What are reliefs made out?

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

(a) The sale agreement between the complainants and the Respondents was entered on 31.05.2013 (Ex. A3). The construction agreement was entered on 31.05.2013 (Ex.A4). As per the sale and construction agreement the date of delivery of the villa was agreed to be on or before 31.12.2015 including 6 months of grace period. The Respondents have paid a sum of Rs. 1,06,65,635/- paying the last instalment of Rs.1,62,641/- on 28.01.2019. The villa was finally handed over on 22.05.2019 instead of the agreed 31.12.2015. There is a delay in handing over the villa from 31.12.2015 to 22.05.2019, which entitles the complainants to interest for the above said period.

(b) The complainants pleads for refund of Rs.3,59,915/- which was charged as interest and penalties on various occasions. The construction agreement lays down the stage-wise payments. Perusal of the receipts of the payments made by the complainants (Ex.A10) shows that the payments

have not been made as per the payment schedule mentioned in Ex.A1. Hence, there is no intervention on the issue of interest charged.

(c) The complainants submits that he had paid a sum of Rs.1,01,328/- for maintenance of 2 years, which could become chargeable only from the date of handing over, hence the 2 year period for maintenance charge would start only from the date of handing over which is 22.05.2019. The complainant had been charged Rs.1,50,000/- for club house which is still not existence. The complainants shall be paid interest at the rate stipulated below from the date of payment till the club house comes into being. Thus, the point is answered accordingly.

8. Answer for Point No (ii):

(a) In view of the answer for Point No.(i) the complainants are not entitled for refund of amount for a sum of Rs.3,59,915/- from the respondents charged as interest and penalties with the given evidence the same cannot be calculated with accuracy and also that delays in payment are observed.

(b) The complainants shall also be paid interest on Rs.1,50,000/-, the club house charges, till the club comes into existence.

(c) 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 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 an amount of Rs.1,50,000/- paid from the date of respective payment till the respondents build and handover the club house.

(d) 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 shall jointly / severally pay the amount at the interest rate, as per the findings in answer for Point No.(ii), Para No.8 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.

Sd/- 20.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- K. Ayyanarappan

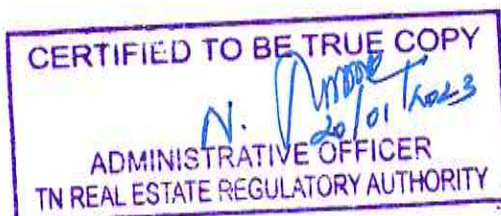
RW-1 --- S. Vijayaraghavan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

| EX.NO | DATE | DOCUMENTS NAME |
|--------|------------|------------------------------|
| Ex.A1 | --- | Allotment letter |
| Ex.A2 | --- | Pricing details |
| Ex.A3 | 31.05.2013 | Agreement for sale |
| Ex.A4 | 31.05.2013 | Construction agreement |
| Ex.A5 | 27.11.2014 | Sale deed |
| Ex.A6 | --- | No due certificate |
| Ex.A7 | 22.05.2019 | Possession letter |
| Ex.A8 | 23.07.2019 | Letter for handing over keys |
| Ex.A9 | --- | Communication exchanges |
| Ex.A10 | --- | Details of payment |
| Ex.A11 | --- | Receipts |

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

| EX.NO | DATE | DOCUMENTS NAME |
|-------|------------|------------------|
| Ex.B1 | 07.09.2020 | Board resolution |



Sd/- 20.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI