

**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. 140 of 2021**

G.K. Vijay

..... Complainant

**Vs.**

1. M/s. M.S. Builders,  
Rep by its Director

2. M/s. MS Foundations Pvt Ltd.,  
(Formerly known as MS Land Promoters Pvt Ltd)  
Rep. by its Directors

..... Respondents

**Complainant** : Rep. by Mr. M.R. Gokul Krishnan, Advocate.

**Respondents** : Rep. by Mr. S. Chakravarthy, Advocate.

**Heard on** : 12.08.2022

**Delivered on** : 03.01.2023

**ORDER**

The above complaint by the complainant is for seeking refund with interest from the respondents towards purchase of the plot 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 complainant, in brief, as follows:-**

(a) The complainant has booked a plot and was allotted a Plot No. 10 in the respondent's project and had paid a sum of Rs.10,000/- on 28.02.2014. Subsequently, the complainant had paid a sum of Rs.4,90,000/- on 04.04.2014 and Rs.5,00,000/- on 22.09.2014. Thereby, the complainant has paid a total sum of Rs.10,00,000/- for the plot allotted to him. At the time of this allotment, the respondents had not obtained the CMDA approval but had assured the complainant that he would be able to get it soon.

**TRUE COPY**  
3/1/23

(b) No sale deed or any other agreement was entered between the two parties despite having paid more than 10% of the total price. Since, the project was not making much headway and the respondents were not responding properly to the complainant, the complainant had stopped making any more payments. Subsequently, the project was approved by the CMDA at which time the complainant came to know that the Plot No. 10 allotted to him was shown as a OSR Park. The complainant also pleads that since the regularization was obtained on 04.11.2019, the project needs to be register under Section 3 of the RERA Act. The complainant seeks to get a refund of the amount paid by him to a tune of Rs.10,00,000/- along with compensation and litigation costs.

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

(a) The respondents denies all averments and allegations made by the complainant except those specifically admitted. He agrees to the basic facts including the allotment of Plot No. 10 and subsequent approval by the CMDA. The respondents however submits that after paying the initial amount of Rs.10,00,000/- between 28.02.2014 and 22.09.2014, the complainant did not come forward to pay the remaining consideration.

(b) Subsequently, when the complainant sought refund he was assured that the same would be repaid in a short time and a security cheque was also issued and given to the complainant. The respondents further avers that it was not his fault that the Plot No. 10 i.e. the complainant's plot came under the OSR when the CMDA approved the project much later than the plot was allotted to the complainant. The respondents submits that the complainant had misused the security cheque issued by him and on bouncing of the cheque had even issued a frivolous notice under Section 138 of the Negotiable Instruments Act.

(c) The respondents further submits that now the complainant was seeking refund as the prices have gone up, now in 2021 as compared to when he had

booked the plot in the year 2014. The respondents submits that the complainant has cooked up a story with false averments to shift the blame on the respondents. Hence, pleads for the dismissal of the complaint.

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

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

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

(i) Is the complainant liable to get refund due to non-delivery of the plot, and does the project require registration under Section 3 of the RERA Act?

(ii) What are the reliefs made out?

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

(a) The complainant had booked the plot and was allotted Plot No. 10 in the respondent's project and had paid a sum of Rs.10,000/- on 28.02.2014. Subsequently, the complainant has paid a sum of Rs.4,90,000/- on 04.04.2014 and Rs.5,00,000/- on 22.09.2014 (Ex.A1 series of payments). In all, the complainant has paid a sum of Rs.10,00,000/- to the respondents. The respondents agrees to the basic facts including the allotment of Plot No. 10 and receiving Rs.10,00,000/- in 3 installments.

(b) While the complainant alleges that the respondent had taken Rs.10,00,000/- for a project which did not have the approval of CMDA at the time of allotment but had assured to get the same soon. The respondents agrees to the claims of the complainant and submits that he had got the approval from the CMDA for the project on 04.11.2019 (Ex.A2). The complainant at this stage submits that the Plot No. 10 allotted to him fell in the approved plan as a OSR Park (Ex.A2).

(c) The complainant thereby kept pursuing to get the plot but on the other hand the respondents submits that the complainant did not proceed to pay the balance amount and take possession. Two points now arises:-

(i) Firstly, there is no communication to show as evidence that the respondents had continued to pressurize the complainant to pay the balance amount and that the same was not paid by the complainant.

(ii) Secondly, the question of payment does not arise as the plot allotted had been converted into a park in the approved plan 5 years after when the respondents had obtained the approval of the layout after receiving the money from the complainant and alternate plot was not allotted to the complainant.

This would exhibit the intention of the respondents not to take any steps to address the requirement of the complainant. The complainant could not have been expected to make payments for the allotted plot which was a park and no evidence has been adduced by the respondents to show allotment of any alternate plot to the complainant so as to put the ball in the complainant court after having completed his part of the liability.

(d) However, it is clearly made out that the respondents had received money from the complainant (Ex.A1 series) and had not honoured his commitment for buying a plot of land from the respondent who even after a lapse of such a long time for which refund of money is made out. The complainant had alleged that despite obtaining approval from the CMDA for his project on 04.11.2019, he had failed to register the project with the TNRERA. The respondent has neither countered this allegations nor has he submitted any evidence to show otherwise.

TRUE COPY  
3/1/23

(e) In this situation, the respondents have violated Section 3 of the RERA Act and appropriate penalty as per Section 59 of the RERA Act is to be imposed on the respondents and thus the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.10,00,000/- 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.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:-**

- (i) The respondents shall pay jointly / severally 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) A penalty of Rs.1,00,000/- is imposed on the respondents for non-registration of the project as stipulated in Section 3 of the RERA Act.

**TRUE COPY**

3/1/23

- (iv) Direction to register the project by applying to the Authority within 30 days from the issue of this order.

Sd/- 03.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- G.K. Vijay  
RW-1 --- Ganesan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Payment receipts
Ex.A2	04.11.2019	Regularization of layout framework
Ex.A3	---	Brochure of the respondents
Ex.A4	---	Website of the respondents

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	07.01.2021	Legal notice
Ex.B2	09.02.2017	Statement of account
Ex.B3	04.05.2017	G.O.Ms. No. 78 (Housing and Urban Development Department)

Copy to:  
The Additional Director,  
(TNRERA)

Sd/- 03.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

