

**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. 157 of 2021

Alauddhin

..... Complainant

Vs.

M/s. Amar Prakaash Developers Pvt Limited,
Rep. by its Authorised Signatory,
A.R. Babu Prakash

..... Respondent

Complainant : Rep. by M/s. S. Anil Sandeep, Advocates.

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

Heard on : 11.05.2022
Delivered on : 12.12.2022

ORDER

The above complaint by the complainant is for seeking refund with interest from the respondent towards purchase of the flat 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 in pursuant to an advertisement applied for allotment of an apartment in project namely, "**Temple Waves**", in Kundrathur. The respondent had committed an assurance to hand over the apartment within 12 months from date of booking. The complainant was allotted 2 BHK flat bearing No. H-621 in the 6th floor, 'H' block in the said flat for the total sale consideration of Rs.34,89,132/-. The sale deed was registered on 12.07.2019 vide document no. 13253 of 2019, while the construction agreement dated 16.05.2019 was also registered on 12.07.2019.

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(b) The respondent has undertaken to handover the flat to the complainant in the month of June, 2020. The complainant has paid a total sum of Rs.23,50,424/-. The complainant visited the site of construction during the 1st week of March, 2020 and was shocked to see the project at the same stage as at the time of booking. The complainant issued a legal notice dated 22.12.2020 calling upon the respondent to handover the flat within a month. Despite such efforts the handing over of the apartments still eludes him. The complainant therefore requests refund of a amount of Rs.23,50,424/- paid by him with interest, compensation and cost.

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

(a) The respondent denied all averments made in the complainant put to strict proof of the same except those specifically admitted. The respondent avers that the complaint has been filed before the Adjudicating Officer. The respondent submits that has the Adjudicating Officer has jurisdiction only to adjudge the quantum of compensation while the adjudication of refund and interest etc are vested with the Authority and thus the complainant is not maintainable.

(b) The respondent concurs with the complainant on basic facts such as allotment of the flat to the complainant in the respondent's project, sale and construction agreement and also to complete the construction on or before June, 2020 or within 12 months from the date of finalizing the apartments whichever is later. The respondent further avers that this duration would be subject to force majeure effects.

(c) It is thus clear, submits the respondent that the project got delayed only on account of force majeure event which got further complicated due to Covid-19 pandemic since March, 2020 resulting in severe financial hardships to the respondent. Even the projects validity got extended by 6 months due to the pandemic and thus no fault can be attributed to the respondent for the delay and thus no refund may be allowed. The respondent further submits that even UDS for the apartment stands in the name of complainant. The respondent blames the

complainant for not including the financial institution in the proceedings which was *M/s. ECL Finance Limited*, hence, pleads for dismissing 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:

(ii) Whether there was a delay in handing over of the apartment by the respondent to the complainant?

(ii) What are the reliefs made out?

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

(a) The facts of the CCP would indicate that the sale deed was entered on 10.07.2019 (Ex.A4) and the construction agreement on 16.05.2019 (Ex.A5). Both the documents were registered on 12.07.2019. The complainant has paid a sum of Rs.23,50,424/- supported by receipts at Ex.A2 and Ex.A3 for the flat for which the complainant had made payment of a total of Rs.34,89,132/- (Ex.A1). The committed date of delivery was laid down in the construction agreement at Clause 4 (a) of the construction agreement stipulating the delivery of the flat on or before June, 2020 or within 12 months from the date of finalisation of alteration for the apartment whichever is later. The construction agreement as stated was registered on 12.07.2019 projecting the completion date to 16.05.2020 or June, 2020 at the most. The respondent has not been able to give any evidence to contradict the claim of the complainant of non-delivery of the apartment even till date. Hence, it is clearly held that there is delay in handing over the apartment from the agreed date by the respondent.

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(b) The respondent has made a plea of force majeure condition as a reason for delay. Though the respondent has used force majeure as a reason for delay he has not been able to show any substantial situation which could be considered to provide relief to the respondent on the ground. The Covid-19 conditions started only from March 2020 for which he was allowed an extension of time by 6 months by the RERA postponing the delivery to the end of the year 2020. However, the date of delivery stipulated in the construction agreement was 16.05.2020 by which time major construction should have been over. But, as put forth by the complainant he did not find much construction activity and the project remained at the stage as it was at the time of booking. The apartment has still not been handed over, thus no relief has the court can be claimed and thus a clear delay in delivery is made out.

(c) The non inclusion of the financier *M/s. ECL Finance Limited* has no bearing on the validity of the agreement between the two parties where the financier was not a party in the construction agreement or sale deed and hence non-inclusion of the financier who had no role for the delay in delivery of the flat will not come to the rescue of the respondent.

(d) The respondent has submitted that the jurisdiction to decide the entitlement of the refund and compensation vests only with the Authority and not with the Adjudicating Officer. This claim of the respondent does not give him relief from his commitment. It was in compliance of Hon'ble Supreme Court Judgement in *M/s. New Tech Promoters and Developers Pvt Ltd., Vs. State of UP & Ors. etc* that the issue of the refund with interest etc is being handled by the Authority and not the Adjudicating Officer as in the present CCP.

(e) Hence, the complaint lies within the scope of jurisdiction of RERA and as shown above the delay in delivery is clearly made out in handing over of the apartment to the complainant and thus the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.23,50,424/- from the respondent.

(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 respondent.

(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 respondent is directed as follows:-

- (i) The respondent shall 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.
- (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/- 12.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

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LIST OF WITNESSES

CW-1 --- Alauddhin

RW-1 ---- G. Dinesh Kumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	18.03.2019	Quotation given by respondent
Ex.A2	18.03.2019	Payment receipt
Ex.A3	---	Payment receipts
Ex.A4	10.07.2019	Sale deed
Ex.A5	16.05.2019	Construction agreement
Ex.A6	23.12.2020	Legal notice

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	16.05.2019	Construction agreement
Ex.B2	27.04.2022	Payment ledger statement

Sd/- 12.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

