

**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. 166 of 2021**

N. Prabakaran

.... Complainant

Vs.

M/s. Rajeswari Infrastructure Limited,
Rep. by its managing Director,
G. Ramamurthy

..... Respondent

Complainant : Rep. by M/s. S. Venkatesh, Advocates.

Respondent : Rep. by M/s. K. Govi Ganesan, Advocates

Heard on : 12.07.2022

Delivered on : 19.12.2022

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 entered into a sale agreement on 18.07.2012 and registered the same in sale deed No. 8476 of 2012 at SRO, Guduvanchery. The builder agreement was entered on 25.05.2012 for the Flat allotted to the complainant in No.C1F1 of the respondent's project. The amount of Rs.22,51,000/- was fixed as a consideration for the flat. The stipulated date of delivery was 12 months from the date of agreement viz. 25.05.2012. The schedule of payments and the specification of the material to be used was agreed upon between the complainant and the respondent, the complainant

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has accordingly paid a sum of Rs.20,25,900/- from his own savings as also from the bank loan which he had obtained.

(b) The completion certificate as required to be handed over to the bank as per Clause 32 of the agreement, submits that the complainant, has not been handed over by the respondent to the bank due to which a sum of Rs.2,25,000/- has not been disbursed. Thus, the complainant submits that he has deposited an amount of Rs.20,25,900/- leaving the remaining of Rs.2,25,000/- which has not been released by the bank. The complainant has taken loan from the same bank where the respondent has an account and the bank has already seized the documents of the present project done by the builder and even his project loan has been termed as NPA.

(c) Thus, the complainant submits that he is not responsible for the last non payment of the amount to the respondent. The complainant had approached the Hon'ble Forum in C No. 73 of 2020 where orders were passed directing the respondent to rectify all the deficiencies in the project, if any, as per the construction agreement and hand over the apartment to the complainant before 28.02.2021 after collecting the balance cost of construction as per the construction agreement.

(d) The referred order also provided for the respondent to make his claim regarding interest on the delayed payment if any by the complainant. The complainant submits that he was ready to pay the balance payment as directed by the Hon'ble Forum and even made efforts by visiting along with his Engineer to his allotted flat on 10.02.2021 to fix shortcoming but the respondent or his representatives failed to turn up. However, the defect found by the complainant's Engineer was listed out both in the complainant's flat as well as in the common area. These were intimated to the respondent vide notice dated 16.02.2021 requesting for the defects to be rectified, where after the balance amount would be made by the complainant to the respondent.

(e) The respondent on other hand insisted on the balance payment to be made and did not undertake to rectify the defects pointed out by the complainant. Vide letter dated 25.02.2021 to the complainant, the respondent informed him of his proposed appeal against the said order before the TNREAT. Aggrieved, the complainant seeks refund of the amount paid by him with interest and compensation as his flat has not been handed over to him by the respondent as incomplete and the poor construction quality of the flat. The complainant also submits that the respondent had not obtained any planning permission from the concerned plan approval Authority besides being full of short comings. The complainant further pleads for refund of amount paid by him to a tune of Rs.21,39,852/- with interest.

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

(a) The respondent avers that the complaint filed by the complainant is false, frivolous, vexations and is not sustainable either in law or on facts. The respondent avers that the complainant had already approached the Hon'ble District Consumer Disputes Redressal Forum, Chennai (South) in CC No. 137 of 2014 on the same set of allegations against the respondent. The Hon'ble Fourm dismissed the complaint filed by the complainant on 11.06.2019 where the Consumer Forum had observed that the balance amount of Rs.2,59,568/- is due from the complainant to the respondent.

(b) As regard, the defects in construction, the Hon'ble Consumer Forum observed that there was no documentary proof to show that there were defects in the work and that the complainant had made any expenses to rectify the same and thus the respondent submits that the issue has already been handled and settled by the Hon'ble Consumer Forum. The respondent submits that vide communication dated 19.02.2020, the complainant had threatened to enter the flat as even after making 90% of the payment by 2013 he had fail to get possession of his apartment, the respondent replied referring in CC No.

137 of 2014 that the handing over can be made only after payment of balance outstanding amount dues. This is also an admission that the monies due to the respondent has not been paid till as late as 19.02.2020. The complainant again approached the Hon'ble TNRERA in CC No. 73 of 2020 on the same set of allegations as in the Hon'ble Consumer Forum.

(c) The respondent submits that he had, at that time, replied stating that the flat had been completed in all respect despite the outstanding amount and even when the complainant had failed to pay the dues. The Hon'ble Forum in the Order in CC No. 73 of 2020 had ordered that the respondent to handover the apartment to the complainant by completing the same in all aspects and rectify the defects if any, as per the construction agreement before 28.02.2021 after collecting the balance cost of construction. The respondent further avers that he had sent his reply dated 08.02.2021 in compliance in CC No. 73 of 2020 informed the complainant that the property was ready for possession for more than 7 years and very minor works were left like sanitary fittings and painting works. Even after that the complainant failed to pay the outstanding dues, the respondent admits that he had filed Appeal before the Appellate Tribunal in Appeal No. 35 of 2021 where after the Hon'ble Appellate Tribunal had modified the order passed in CC No. 73 of 2020, the order passed as follows;

“the promoter is directed to inform the home buyer and as well as the Regulatory Authority within 2 weeks from the date of this order, regarding the completion of plastering and painting of flat and the home buyer is directed to deposit the balance sale consideration before the Regulatory Authority within 2 weeks from the date of receipt of information from the promoter”

(d) As directed by the Hon'ble Appellate Tribunal all the works are completed and thus he had completed his part of performance. The respondent pleads

that since the complaint made before this Forum is on the same ground as already made in the Hon'ble Consumer Forum Chennai (South) in CC No. 137 of 2014 as also by Hon'ble Court in CC No. 73 of 2020 and in Appeal No. 35 of 2021, the complaint needs to be dismissed.

ORDER

The respondent has categorically stated that the same issue which the complainant pleads in CCP No. 166 of 2021 was raised in the Hon'ble Consumer Forum in CC No. 73 of 2020. In absence of any rejoinder or contradiction of the same, the statement so made is considered as true. Further, on a similar issue in CC No. 73 of 2020 was also filed which also pertains to shortcomings and handing over of the same property in dispute. The respondent went on Appeal No. 35 of 2021 by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal (TNREAT) where too order was passed. The issue prayed for in this CCP No. 166 of 2021 has already been addressed by the Hon'ble Consumer Forum and also by the Hon'ble TNRERA. The matter has also reached and ordered by the TNREAT. Hence, I refuse to interfere in the orders already passed and close the complaint. The complainant is at liberty to move the Hon'ble Forum for enforcement of orders in CC No. 73 of 2020 modified by TNREAT in Appeal No. 35 of 2021 or / and the Adjudicating Officer for any compensation. Hence, refund is not made out.

Sd/- 19.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

NIL

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

RW- 1 – G. Ramamurthy

Ex.Nos	Date	Documents Name
Ex.B1	19.02.2020	Letter by complainant
Ex.B2	20.02.2020	Reply by respondent
Ex.B3	06.07.2020	Respondent communication
Ex.B4	02.02.2021	1 st legal notice by complainant
Ex.B5	08.02.2021	Reply by respondent
Ex.B6	16.02.2021	2 nd legal notice by complainant
Ex.B7	10.11.2021	Order in Appeal No. 35 of 2021, TNRERA
Ex.B8	24.11.2021	Intimation by respondent to complainant
Ex.B9	---	Acknowledgement

Sd/- 19.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

