

**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. 180 of 2021**

D. Sridhar  
Rep. by his Daughter, S. Anuja ..... Complainant

**Vs.**

M/s. Pacifica (Chennai Project) Infrastructure  
Company Pvt Ltd.,  
Rep. by Vikram Agnihotri, Director ..... Respondent

**Complainant** : Rep. by M/s. S. Sabari Sundar, Advocates.

**Respondent** : Ex-Parte

**Heard on** : 20.09.2022  
**Delivered on** : 30.12.2022

**ORDER**

The above complaint by the complainant is for seeking refund with interest from the respondent towards purchase of the residential apartment 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 had booked a residential apartment bearing No. 112 in the building name, "**Pride Tower**", in the respondent's project "**Pacifica Auram**" on 25.01.2013. The agreed cost for the apartment was Rs.52,07,895/-. The sale agreement was entered on 29.03.2013 for UDS at a consideration of Rs.9,24,000/- and on 29.11.2013 the UDS was registered in the name of the complainant. On 29.03.2013, the construction agreement was also signed. The complainant has so far paid a sum of Rs.45,09,699/-.

(b) As per the construction agreement, the respondent had committed to deliver the constructed apartment by 30.06.2015. The respondent has also

agreed that on failure to handover the apartment on the due date, the complainant was eligible for damages and amount of 1% of the amount received per month for such delay, subject to maximum of 3% the total amount received. The respondent on the first occasion requested for extension of the completion of the project by 12 months and even with that the flat has not been delivered at that stage too.

(c) The respondent had even failed to pay the agreed damages as per the construction agreement. The part of the consideration paid by the complainant to the respondent was raised through a bank loan. Since the complainant was not able to pay the EMI, possession notice was put up on the unfinished apartment by the bank. Subsequently, the complainant avers that the delay was attributed to the floods of 2015 by the respondent and a promise was made for completion of the project within the next 9 to 12 months which too was not kept up. Aggrieved, the complainant seeks to cancel the agreement and pleads for refund paid by him with interest along with costs.

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

(a) The respondent concurs with the complainant regarding with the basic facts including entering into the sale and construction agreement on 29.03.2013. Subsequently it was executed on 29.11.2013. The respondent also concurs with his promise to deliver the apartment in 30 months including the 6 months of grace period. The respondent submits that the project construction was already completed before the Act came into force. But, since the podium was connected with the main building he could not complete the complainant apartment. The project was registered with the TNRERA vide No. TN/01/Building/0181/2019 dated 30.10.2019 and had committed for a projected completion by 31.12.2022.



(b) The respondent submits that the refund claimed by the complainant is not made out and that any refund made would only affect the project adversely and it would open gate for litigations and thus pleads for dismissing the complaint for being devoid of merits. Despite getting opportunity that the respondent failed to submit the proof affidavit of the submission made by him.

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

5. To prove their claims the complainant has filed his evidence on affidavit with documents while the respondent has not filed any evidence despite being given opportunities for the same.

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

(i) 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 complainant had booked a residential apartment bearing No. 112 in the building name, "**Pride Tower**", in the respondent's project "**Pacifica Auram**" on 25.01.2013 (Ex.A1). The complainant has paid a sum of Rs.1,00,000/- as advance amount. The construction agreement and the sale agreement were both signed on 29.03.2013 (Ex.A3 & Ex.A2) following which the UDS was registered on 29.11.2013 (Ex.A4). As per the construction agreement, the total cost of the apartment was stipulated at Rs.52,07,895/- of which the complainant has paid a sum of Rs.45,09,699.85/-.

(b) The project was to be completed and handed over by the respondent to the complainant by 30.06.2015 as per the construction agreement. The respondent failed to deliver the apartment as committed and requested for an extension. Even after which the project was not completed despite promise

had been made. The respondent on the other hand has submitted the counter but remained absent thereafter and was hence treated as Ex-Parte.

(c) The construction agreement clearly stipulates the apartment to be handed over by 30.06.2015. It would be clear that the respondent has still not handed over the apartment even after the complainant has paid so much of money i.e Rs.45,09,699.85/- out of the total amount of Rs.52,07,895/-. Thereby, delay in delivery is clearly made out entitling the complainant for getting refund of money paid by him along with interest as pleaded. Thus, the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.45,09,699.85/- 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 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 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 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.

- (iii) 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/- 30.12.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- S. Anuja

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Copy of payment schedule by respondent on booking the said apartment
Ex.A2	29.03.2013	Agreement for sale
Ex.A3	29.03.2013	Construction agreement
Ex.A4	29.11.2013	Sale deed
Ex.A5	06.06.2014	Copy of housing loan sanction letter
Ex.A6	18.06.2014	Copy of memorandum of deposit of title deeds
Ex.A7	---	E-mail correspondences
Ex.A8	---	Copy of party statement of complainant
Ex.A9	---	Copy of bank statement
Ex.A10	12.06.2014	Copy of bank certificate
Ex.A11	12.01.2020	Copy of possession notice
Ex.A12	04.02.2021	Copy of medical certificate
Ex.A13	03.02.2021	Photographs

**TRUE COPY**

30/12/22

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 30.12.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

 30/x11  
Secretary (Finance & Admn.)  
TNRERA, Chennai - 8.