

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

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member  
CCP No. 182 of 2021**

**Mr. Alla. Sudhakar** ..... **Complainant**

**Vs.**

**M/s. Sterling Estates & Properties Limited** ..... **Respondent**

**Complainant** : M/s. T. Raghavan, Advocates

**Respondent** : Exparte

**Heard on : 28/03/2023**

**Delivered on : 31/03/2023**

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of a plot with interest, and costs 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:**

The complainant has been allotted flat no. 308 in Block B of the respondent projects by name "**Lake Sterling**" later changed to "**Hill View**". The agreement for the said flat was made on 25/06/2012 to complete the project in 18 months from the date of the registration viz 22/01/2013, projecting the completion by October 2014 which includes the agreed 3 months of grace period. The complainant avers that the respondent has failed to complete the project even after 9 years. The allotment of flat no. 308 in Block B was later changed to flat no. 104 in Block A and again registration was done on 21/08/2017. The complainant avers that he had agreed to the change of the flat only because he could see some construction work making progress in the

A Block. The complainant avers that he has paid a sum of Rs. 28,00,000/- to the complainant and still has not been handed over his flat. Aggrieved, the complainant seeks for refund of the amount paid by him with interest along with compensation and litigation cost.

3. In spite of service of notice, the respondent remained absent all through the proceedings despite opportunities given to him.

4. In evidence to prove their claim, the complainant has filed proof affidavit with documents.

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

(i) Is the complainant entitled to refund with interest and the relief sought by him due to delayed delivery of the flat?

(ii) What are the reliefs made out?

**6. Answer to Point No. (i)**

(a) The complainant was allotted flat no. 308 in Block B of the respondent and the sale agreement was the same was entered on 25/06/2012 (EX-A1). This flat has changed to flat no. 104 in Block A and a fresh agreement was entered between the two parties on 21/07/2017 (EX-A2).

The sale deed was registered on 22/01/2013 (EX-A3). However vide the supplementary agreement dated 21/07/2017; it was changed to flat no. A-104. The supplementary agreement clearly mentions that the new allotment and the agreement was only a continuation of the earlier allotment which is clear from the mention of the following statement in the supplementary agreement in the complainant typeset page at 14.

***“Whereas, other terms except the terms modified vide this supplemental agreement are “mutatis-mutandis” of the Agreement dated***

*June 25, 2012 and Sale Deed executed on January 22, 2013 remains as it was executed.*

*Now this agreement witnessed as follows:*

*1. The Promoter hereby allots flat bearing no. A 104 in First Floor with super built up area of 1022sq. ft. to the allottee in the residential project constructed in Schedule "A" mentioned property instead of the flat allotted vide agreement dated June 25, 2012.*

*2. The other terms of the agreement dated June 25, 2012 remains the same".*

(b) Clause (8) of the agreement dated 25/06/2012, projects the delivery date to be within 18 months from the date of registration. The date of registration was 22/01/2013 (EX-A3). The completion was projected by October 2014 accordingly. However, the respondent has not been able to deliver the flat by this time. The complainant had shifted to flat no. A-104 as there was no construction in the B Block where the complainant was allotted a flat earlier. Construction work had started in Block B; hence he shifted to B-308 hoping for delivery of the completed flat. The agreement for this new allotment was entered in the form of an supplemental agreement on 21/07/2017.

(c) The complainant has paid a total sum of Rs.28,00,000/- (EX-A5). The photographs attached as exhibit A7 clearly indicates that on the day of taking photograph which is shown 26/03/2021, the flat remains incomplete. The respondent has therefore failed to deliver the complainant's flat on the promised date.

(d) Since, the change of allotment of the flat no. A-104 to no. B-308 followed with the supplementary agreement dated October 2014 which provides for the same terms and conditions and the date of delivery

continues to remain as October 2014, and hence the delay in delivery would start from October 2014 and thus the 1<sup>st</sup> point is answered.

**7. Answer for the Point No.(ii):-**

(a) Therefore, the complainant is entitled for refund amount of Rs. 28,00,000/- from the respondent's jointly or severally.

(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 complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

**8. In the result, the respondents are directed as follows:-**

- (i) The respondent shall pay the entire amount at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 7 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, if any, 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 respondents.

*Sd/- 31/3/2023*  
SUNIL KUMAR, I.P.S (Retd.)  
SINGLE MEMBER,  
TNRERA, CHENNAI.

**LIST OF WITNESSES**

CW-1 --- Alla Sudhakar

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	25.06.2012	Sale Agreement
Ex.A2	21.07.2017	Supplemental Agreement
Ex.A3	22.01.2013	Sale Deed
Ex.A4	---	General Power Attorney
Ex.A5	22.01.2013	Renewal of Credit Facilities
Ex.A6	---	Project Details
Ex.A7	---	Photographs

**LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL**

*Sd/- 31/3/23.*  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

