

**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. 183 of 2021**

G. Sukumari

..... Complainant

**Vs.**

M/s. Amar Prakash Developers Pvt Limited,  
Rep. by its managing Director

..... Respondent

**Complainant** : Rep. by M/s. G. Krishnakumar, Advocates.

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

**Heard on** : 15.07.2022

**Delivered on** : 01.12.2022

**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 following an advertisement applied for the allotment of an apartment in the respondent's project namely, "**Temple Waves**" at Kundrathur Village, Pallavaram Taluk, Kancheepuram District and was allotted a flat bearing number B-120. The total project cost was agreed for Rs. 44,00,000/-. The sale and construction agreement were entered on 27.07.2019. However a copy of the same was not given to the complainant on an assurance that the same would be given after registration.

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(b) As on August, 2019, the complainant has paid a sum of Rs. 19,48,731/-. The promised date of delivery was by February, 2020 whereas in the construction agreement it was mentioned that the apartment shall be completed on or before June, 2020 or within 12 months from the date of finalisation of alterations for the apartment whichever is later.

(c) Subsequently, in one of her visits to the project site in October, 2019 the complainant found that the project was not making much progress. The complainant also got a copy of the sale and construction agreement vide email dated 10.10.2020. Thereafter taking the pretext of the Covid-19 pandemic the complainant was informed that the delivery would start from August, 2021 much after the promised date of delivery. Aggrieved the complainant wants to cancel the allotment and seeks refund of the amount paid by her to the tune of Rs. 19,48,731/- with interest besides relief compensation and cost of litigation.

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

(a) The respondent questions the maintainability of the complaint stating that it is only the Authority which is vested with the powers to grant the reliefs sought by the complainant and not the Adjudicating Officer.

(b) With regard to the basic facts such as allotment of the flat to the complainant in the respondent's project, sale and construction agreements as also the commitment of the handing over of the apartment on or before June, 2020 or within 12 months from the date of finalisation of alterations for the apartment, whichever is later are all agreed by the respondent. The respondent further avers that there was a clear mention in the construction agreement that the date of delivery could get delayed due to Force Majeure conditions in which case the respondent shall be entitled to the extension of

time for delivery. The respondent submits that Force Majeure conditions did exist and cites the pandemic as one such cause which entitled the respondent for the extension of time delivery beyond the agreed date. The situation became further complicated due to Covid-19 pandemic, since March, 2020, resulting in severe hardships to the respondent. Due to the Force Majeure clause there has been no default on the part of respondent. The UDS remains in the name of the complainant.

(c) The respondent blames the complainant for not including the financial institution in the proceedings, which was *M/s. ECL Finance Private Limited*. Hence pleads for dismissing the compliant. The respondent further avers that the complainant has not made timely payments due to which the respondent submits he is entitled to interest for the default and claims interest to the tune of Rs.12,62,332/- and principal to the tune of Rs. 4,34,418/- totally a sum of Rs. 16,83,014/- which the complainant needs to pay to the respondent based on the grounds stated above, the respondent, therefore, pleads for 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) Whether there was a delay in handing over of the apartment by the respondent to the complainant?

(ii) What are the reliefs made out?

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7. Answer for Point No (i):-

(a) The facts of the CCP would indicate that the construction agreement was entered on 27.07.2019 (Ex.A4) and the sale agreement was also entered on 27.07.2019 (Ex.A3) respectively. The complainant has paid a total sum of Rs.19,48,731/- out of the total agreed amount of Rs.44,00,000/-. The committed date of delivery has been laid down in the construction agreement which stipulated the delivery of the flat on or before June 2020 or within 12 months from the date of finalization of alteration for the apartment whichever is later. The respondent had not been able to give any evidence to contradictory to the claim of the complainant for non-delivery of the apartment till date. Hence, delay in handing over of the apartment by the respondent to the complainant is claimed.

(b) The respondent has denied the delay and pleads that due to the existence of force majeure conditions he was allowed, as per the agreement, to delay the delivery. Despite having taken the shield of force majeure conditions, the respondent has failed to give any substantial condition warranting consideration which could be even observed as any condition warranting it to be considered as force majeure. The respondent mentions Covid-19 as such a condition which could allow it to be considered as force majeure and provide relief to him. It may be seen that the promised date of delivery as per the agreement would extent to not beyond June 2020. The Covid-19 conditions existed only from March 2020 and even the Authority allowed an extension of time by 6 months postponing the delivery at most to the end of the year i.e. December 2020. The apartment has still not been handed over, thus no relief on this count could be allowed to be claimed by the respondent.

(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 more so as the financier was not a party in the construction agreement or sale agreement and non-inclusion of the financier, who had no role for the delay in delivery of the flat and thus such a non inclusion 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 any relief. 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*, now claims, as the one made in this CCP, by the complainant, are being handled by the Authority and not the Adjudicating Officer as also in the present case.

(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.19,48,731/- 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, 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 respondent.

Sd/- 01.12.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

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**LIST OF WITNESSES**

CW-1 --- Sukumari

RW-1 ---- G. Dinesh Kumar

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	12.05.2019	Quotation of the apartment
Ex.A2	19.07.2019	Sanction letter from YES Bank
Ex.A3	27.07.2019	Sale agreement
Ex.A4	27.07.2019	Construction agreement
Ex.A5	23.09.2019	Death certificate
Ex.A6	---	E-mails
Ex.A7	15.02.2020	Receipt
Ex.A8	10.10.2020	E-mail
Ex.A9	12.11.2020	E-mail
Ex.A10	26.12.2020	E-mail
Ex.A11	29.01.2021	Legal notice
Ex.A12	30.01.2021	Track consignment
Ex.A13	---	Returned cover
Ex.A14	31.07.2019 to 22.04.2021	Account statement

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	27.07.2019	Construction agreement
Ex.B2	16.05.2022	Payment ledger statement
Ex.B3	12.04.2018	RERA certificate



Sd/- 01.12.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI