

**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. 187 of 2021**

Sujatha Arputham

..... Complainant

**Vs.**

M/s. IVR Hotels and Resorts Ltd.,  
Rep. by its Director,  
Edward Solomon

..... Respondent

**Complainant** : Rep by Mr. Yusuf S Q, Advocate.

**Respondent** : Rep by M/s. Thriyambak J Kannan, Advocates.

**Heard on** : 08.11.2022

**Delivered on** : 06.02.2023

**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:**

(a) The complainant was allotted Plot No. 222 in the respondent's layout situated at Santhavellur Village, Kancheepuram District. The complainant avers that she was allured by the amenities which included 18 hole golf course and world class club house among others. The agreement for sale was executed on 02.02.2011 and the total consideration was fixed as Rs.16,83,000/- which was paid in full by the complainant in 3 installments on 19.01.2011, 15.03.2011 and 16.02.2011 and the sale deed was registered in Document No. 366 of 2011.

(b) The complainant further avers that none of the promised facilities were created by the respondent and avers that the plot has become a waste in the absence of the facilities. The complainant also avers that instead of

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providing the promised facilities land meant for the same was also sold out. The complainant seeks refund of the amount paid by her along with interest, compensation and litigation expenses.

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

(a) The respondent submits that it is true that he had developed the project in which the complainant had been allotted a plot. The respondent also avers that his intentions were good and as required he had even gifted certain portion of the land as gift deed on 31.08.2010. The respondent concurs with the complainant with regard to the allotment of Plot No. 222 as also signing of the sale agreement on 02.02.2011 and subsequent registration of the land vide Document No. 366 of 2011.

(b) The respondent firstly objects to the maintainability of the complaint on ground that it is filed beyond the limitations. The sale agreement was made on 02.02.2011 and the complaint is being filed in the year 2019 thus it is barred by limitations. With regard to amenities which had apparently allured the complainant such as golf course and the club house were specifically explained and it was mentioned in the Clause 8 of the agreement that the golf course being developed in the adjacent land area is a separate entity and the purchaser had no right, claim or interest over the said golf course.

(c) Similar was the condition agreed upon in the sale agreement with regard to the club house as well. It was clearly mentioned that the membership of the club house would be based on the allotment by the respondent as also on basis of usage requisite fees. Accordingly, the membership cannot be claimed as a matter of right would be subject to the payment of requisite fee and the golf course being a separate entity, the complainant cannot have any claim over the same and pleads to dismiss the CCP.

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4. An attempt to settle the matter amicably has failed.
5. To prove the claims, the complainant has filed the respective evidence on affidavit with documents.
6. On the basis of the rival contentions of the parties, the following points arise for determination:

- (i) Is the complainant entitled to withdraw from the project and seek refund due to non provision of the promised facilities?
- (ii) What are the reliefs made out?

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

(a) The facts of the CCP No. 187 of 2021 will indicate that the complainant had joined the project of the respondent by name, "**Samten – B**" and the sale agreement was signed on 02.02.2011 (Ex.A1). The complainant has paid a agreed sum of Rs.16,83,000/- (Ex.A3) in three installments as follows:-

S.No	Amount paid in Rs.	Cheque No.	Date
1	3,56,400/-	757167	19.01.2011
2	11,00,000/-	002550	15.03.2011
3	2,26,600/-	769039	16.02.2011

The sale deed was registered in Document No. 366 of 2011 on 16.03.2011. The first contention between the parties, which is even more strongly held by the respondent is that the complaint is time barred and has been filed beyond the period of limitations.

(b) The facts of the case would indicate that the sale agreement entered on 02.02.2011 and sale deed was executed on 16.03.2011. It would clearly

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indicate that even though not written in the agreement but the said facilities particularly with regard to the club house and golf course were not complete at the time of registration. This would thus imply that this was a provisions of the additional facilities was a continuous process and was to be provided prospectively since no date for this prospective completion is laid down.

(c) It can only be presumed to be a continuous process something which is yet to be completed. Thus, the contention of the respondent that the complaint is time barred does not hold good in view of the facts discussed as it would amount to an ongoing project since not completed. Coming to the basic facts which would help to decide the contention of the rival parties with regard to the facilities in dispute and the reason why the complainant wants to withdraw from the project.

(d) The sale agreement was signed on 02.02.2011. The sale agreement clearly stated that the complainant transaction with the respondent was restricted to the plot alone and that the construction there upon was not agreed upon by the complainant either with the respondent or with any 3<sup>rd</sup> party. This would therefore restrict the claim of the complainant to the plot alone.

(e) The complainant may have presumed the amenities such as golf course and club house in particular but the same did not find reflection in the sale deed. The promised amenities particularly the two mentioned by the complainant would appear to be almost there but stop short of being a reality in view of the sale deed which binds the two parties and these two facilities finding a place in the same. The sale agreement restricts the rights of the complainant to the schedule 'B' property on payment of sale consideration of Rs.16,83,000/- which in this case had been already paid. The schedule 'B' of the sale agreement laid down as follows:-

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*"All that piece and parcel of vacant bearing Plot No. 222 (House No. 59) in DTCP Approved Layout MA.VA/NA.VU.E No. 68/2010 vide letter no. NA.KA.No. 12502/2010 AL 2 dated 12.08.2010 (named as "Samten-B") marked RED in the plan appended to this deed as admeasuring an extent of 1980 sq.ft. comprised in 425/1B (As per new sub-division, out of both 425/1B and 425/1D, only 425/1B laid in this plot) forming part of Schedule 'A' property situated at Santhavelore Village, Sriperumbudur Taluk, Kancheepuram District bounded*

*NORTH BY: Plot No. 223*

*SOUTH BY: Plot No. 221*

*EAST BY: 40 feed road*

*WEST BY: Plot No. 207*

*Measuring about 66 feet on the Northern side, 66 feet on the southern side, 30 feet on the eastern side and 30 feet on the western side totaling an extent of 1980 sq.ft (184.01 square meters) situated within the Office of the Sub-Registration District of Wallajabad and Registration District of Kancheepuram"*

(f) The respondent however promises the facilities of the club house on payment basis as fixed by the vendor/ developer wherein the purchaser of the plot entitles him for membership usage of the club house but, it is repeated on payment basis alone and thus the respondent would offer the facilities of membership to the complainant. The complainant would be entitled for the same on the payment basis.

(g) With regard to the golf course, the agreement at Clause 9 clearly indicates it to be a separate entity and lays down that the complainant shall not have any claim, right, title or interest over the said golf course. This

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forms part of the sale agreement to which the complainant is a signatory and thus at this stage cannot claim automatic right to the golf course.

(h) The complainant has not made any mention with regard to the club house being complete or not. She has also not mentioned with regard to the other amenities promised being provided or not. In the event of these facilities is not been provided the complainant is at liberty to move the Authority for relief there for. The complainant's plea, therefore, for seeking refund on the ground cited is not allowed and the complaint is disposed off with the direction to the respondent to offer club facilities to the complainant on payment basis as agreed in the sale agreement. Thus, the point is answered accordingly.

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

Therefore, the complainant is not entitled for refund amount of Rs.16,83,000/- from the respondent. Thus, the point is answered accordingly.

**In the result, the complaint is disposed off.**

Sd/- 06.02.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- Sujatha Arputham

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	02.02.2011	Agreement for sale
Ex.A2	16.03.2011	Sale deed
Ex.A3	---	Payment receipts
Ex.A4	---	Screenshot of amenities
Ex.A5	---	Identity proof of the complainant
Ex.A6	---	Interest sheet

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**

Sd/- 06.02.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

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*N. P. Kumar 6/2/2023*  
ADMINISTRATIVE OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY