

**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. 231 of 2021**

1. Selvi Arvind
2. Arvind

..... Complainants

Vs.

M/s. Marg Properties Ltd.,
Rep by its Director,
Thiru. G.R.K. Reddy

..... Respondent

Complainants : Rep. by Mr. T.G. Jeevarathanam, Advocate.

Respondent : Rep by M/s. A.C. Kumaragurubaran, Advocates.

Heard on : 28.04.2022

Delivered on : 16.05.2022

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of an apartment 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 complainants, in brief, as follows:

(a) The complainants booked a flat with the respondent in their project, namely, "Pushkara Lake View Home", at Kazhipattur on 06.03.2013. The construction and the sale agreements were both executed on 20.04.2013 between the complainants and the authorized agent of Marg Properties. The complainants have paid a total sum of Rs.74,45,235/- as follows:-

Date of payment	Amount in Rs.
05.03.2013	2,00,000/-
14.03.2013	27,00,000/-
14.03.2013	45,45,235/-
TOTAL	74,45,235/-

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The delivery of the possession was scheduled to be given within 30 months. The builder had promised to pay Rs.5/- per sq.ft per month in case of delay until possession is given. The UDS was registered on 12.06.2013 for value of Rs.18,21,600/-.

(b) On enquiry through email from the respondent, the reply was received on 05.08.2015 indicating the completion tentatively by December, 2015. On enquiry again on 06.06.2017 for the status of the project, reply from the respondent on 07.06.2017 assured that the project would be completed and the flat would be delivered possession by October, 2018 and even this did not materialize. The complainants have sought refund of amount along with the other compensation.

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

(a) The respondent through his authorized representative has put forth his contentions and denied all allegations except those specifically admitted. The respondent alleges that the complainant has not paid the stage dues as per the terms of the agreement. The respondent refers to MAHA RERA judgment, wherein 40% of works completed refund is not possible. The respondent informs that the booking of the project was stopped as it was not getting enough response and that it would be started soon and also that it was not registered in TNRERA and thus beyond its jurisdiction. The respondent was ready to offer alternate option to other same Pushkara Project in Phase –II or in other project namely, "Savithanjali" which was nearing completion.

(b) The respondent further avers that they had informed the customers about halting of the completion of Phase – I and had offered the customers to move to Phase – II or any other project, which some of the customers had availed. The respondent also blames the poor state of Real Estate

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industry due to scarcity of river sand, Indian economy slow down, demonization, GST etc., are the reasons for delay of the project.

(c) The respondent blames the complainants for having suppressed the facts of the complainants approaching the Hon'ble NCLT.

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 rival contentions of the parties, the following points arise for determination.

(i) Whether there was delay in handing over of the apartment as per the terms and conditions laid down in the agreement?

(ii) If so, what are the reliefs made out?

7. Answer for Point No (i):

(a) The complainants have allotted an apartment in Flat No. 304, at Block 'B', (Ex.A1). The complainants had paid a sum of Rs.74,45,235/- (Ex.A2 & Ex.A4). The sale agreement was executed on 20.04.2013 (Ex.A10) and the construction agreement was executed on the same date as Ex.A11. The complainants have paid entire money in the month of March, 2013 itself. The respondent vide Para 7.1 of construction agreement had promised delivery within 30 months from the building plan sanctioned by the Local Authority with a grace period of 3 months. The respondent has failed to respect the commitment of handing over the project as promised and thus delay in handing over of the apartment is clearly exhibited as well as failure to deliver the apartment as agreed in the construction agreement.

(b) The project falls within the jurisdiction of RERA as it would be considered as ongoing project on the date of commencement of the Act and for which the completion certificate has not been issued as stipulated in Section 3 of the RERA Act.

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(c) The offer made by the respondent to the complainants to move over to another project of the same respondent will be at the complainants liberty to avail of the same or otherwise and cannot be in any way considered to be the fulfillment of the terms and conditions of the agreement. The respondent has therefore failed to deliver the project as per the terms and conditions of the construction agreement clearly exhibited failure in handing over the project. Thus, the project is answered accordingly.

8. Answer for Point No. (ii)

(a) Therefore, the complainant is entitled for refund amount of Rs.74,45,235/-.

(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 and refunded 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 amounts 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.

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- (ii) The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (iii) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainants 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 complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 16.05.2022
 Mr. SUNIL KUMAR, I.P.S (Retd)
 SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1--- Selvi Arvind & Arvind
 RW-1---K.S. Gajendra Babu

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	06.03.2013	Booking form
Ex.A2	05.03.2013	Cheque
Ex.A3	14.03.2013	Payment receipt
Ex.A4	---	Cheques
Ex.A5	14.03.2013	Payment receipt
Ex.A6	14.03.2013	Payment receipt
Ex.A7	---	Provisional payment schedule
Ex.A8	14.03.2013	Welcome and allotment letter
Ex.A9	05.04.2013	E-mail communication
Ex.A10	20.04.2013	Agreement for sale
Ex.A11	20.04.2013	Construction agreement
Ex.A12	12.06.2013	Registered UDS sale deed

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	23.08.2018	Board resolution



Sd/- 16.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI