

**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. 232 of 2021**

S. Varadharajan

..... Complainant

Vs.

M/s. RVS Developers Private Limited,
Represented by its Director,
S. Senthil Azhagan

..... Respondent

Complainant : Party in person

Respondent : Ex-parte.

Heard on : 16.08.2022

Delivered on : 24.11.2022

ORDER

The above complaint by the complainant seeks refund with interest from the respondent towards purchase of the apartments 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 booked a flat with the Respondent in the project "**RVSD MONTANA**", lying in the village Ninnkarai Village, Chengalpattu Taluk, Kanchipuram District. The complainant was allotted Flat No. 105 on the 1st Floor of the block **COLOMBIA**. The complaint entered into an agreement for sale on 27.08.2014 and paid a total sum of Rs. 10,00,000/- (Rs. Ten Lakhs only) out of the total sale consideration of Rs. 17,02,840/- (Rupees Seventeen lakhs two thousand eight hundred and forty only) .

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(b) The complainant submits that he was not given any copy of the agreement. The Respondent had orally assured the complainant to complete and handover the flat within 24 months plus 6 months grace period which stipulates the final date of delivery to 26.02.2017. The complainant submits that the flat was not handed over despite the payment of Rs.10,00,000/- (Rupees Ten lakhs only). The Complainant further avers that the Respondent has not even started the construction of the apartment. The complainant therefore seeks refund with interest along with compensation.

3. In spite of service of notice, the respondent remained absent and hence treated as ex-parte.

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

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

(i) Is there any delay in handing over the apartments by the Respondent to the complainant warranting refund of the money paid by him?

(ii) What are the reliefs made out?

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

(a) The complainant has advertised the project by name, "***RVSD MONTANA***" (Ex.A1). The complainant was allotted a flat no. 105 in the block COLOMBIA on payment of an amount of Rs.1,00,000/- (Rupees One Lakh) (Ex A2). The complainant has made further payments as detailed below.

Sl. No	Date	Payment (in Rs.)
1	28.08.2014	1,00,000/- Advance
2	11.09.2014	2,00,000/-

3	13.09.2014	2,00,000/-
4	28.10.2014	5,00,000/-
Total		Rs.10,00,000/- (Ex.A2)

(b) The sale agreement was entered on 27.08.2014. However as submitted by the complainant, the copy of the agreement was not given to him and in the absence of any counter to the same, it is assumed as such. The assumption is further based on the established fact of a buyer promoter relationship between the complainant and the respondent exhibited more clearly from the perusal of the receipts given by the respondent for the money received from the complainant.

(c) It would also be clear from the letter from the Respondent to the complainant (Page No.8 of the complainant typeset) where the Respondent confesses to the delays and attributes it to be due to various reasons including banking procedures transactions and Government formalities. The Respondent had even agreed to cancel and repay the amounts to the complainant (Ex. A3).

(d) It is therefore clear that the Respondent has failed to give the delivery of the apartment in 24 months along with grace period of 6 months that is by 26.02.2017. This clearly entitles the complainant to refund of the money paid by him along with interest. Thus, the point is answered accordingly.

7. **Answer for Point No. (ii)**

(a) In view of the answer for Point No.(i), the complainants are entitled for refund of amount for a sum of Rs.10,00,000/- paid to 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 complainants are 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 respondents. 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:-

1. The respondent shall pay the amounts at the interest rate, as per the findings in answer for Point No.(ii), Para No.7 of this order within 30 days of issue of this order.
2. The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
3. 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 if any created by charge in the order to the Sub-Registrar concerned.
4. 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/- 24.11.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

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LIST OF WITNESSES
CW-1 --- S. varadharajan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Cost estimated booking acceptance
Ex.A2	---	Payment receipts
Ex.A3	---	Letters
Ex.A4	---	Brochure of the project

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 24.11.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

