

**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. 236 of 2021

- (i) Shanthi Ramachandran
(ii) R. Ramachandran

..... **Complainants**

Vs.

1. M/s. Pacifica (Chennai Project) Infrastructure Co Pvt Ltd.,
2. M/s. Pacifica Builders Pvt Ltd

Both Rep. by Managing Director, Rakesh Israni **Respondents**

Complainants : Rep by M/s. Sudha Ramalingam, Advocates.

Respondents : Rep by M/s. Stephen C Kumar, Advocates

Heard on : 01.12.2022

Delivered on : 27.02.2023

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondents towards purchase of an flat 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 an apartment in the respondent's project, "***Pacifica Aurum Pride Towers***", on 06.08.2014. The project was later renamed as *Pacifica Builders Pvt Ltd* is the promoter of the Pacifica Aurum Pride Towers project registered in TN/01/Building/0181/2019 dated 30.10.2019. The completion and date of delivery was 30.06.2015 with a grace period of 6 months projecting the final delivery date to December 2015.

(b) The complainants have opted a 3BHK apartment and agreements for the same were shared by the respondents on 18.09.2014 but was not executed. Since, the complainants were not able to get the housing loan they opted for a 2BHK and were allotted a Unit No. A-508 in the said

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project. The complainants have sent an e-mail dated 30.04.2015, intimating the respondents about their intension to opt for 2BHK or else they had requested for refund of Rs.42,93,204/- paid by them.

(c) The respondents obliged to the request for swapping the apartments but no agreements have been signed by them and intimated the change of flat to the complainants vide e-mail dated 09.06.2015. The complainants were required to return the original payment receipt were promised to be replaced by a fresh receipt for the new apartment. The complainants obliged and returned the original receipt vide their covering letter dated 10.06.2015 and even resent by e-mail dated 12.06.2015.

(d) Thereafter, the complainants made several request for being issued with the receipt for the payment done by them but was not obliged by the respondents and it was only on 05.02.2016 that the revised construction and sale agreement were mailed to the complainants. In a situation, where the agreements were still not signed, the complainants visited the site in the 3rd week of April 2017 and were not satisfied with the progress made in the project and remained the respondents to take the project forward.

(e) They had already paid a sum of Rs.42,93,204/- to the respondents. The complainants further avers that the respondents have informed orally that they shall pay an amount of Rs.8,000/- to Rs.12,000/- per month for delay in delivery if it was due to respondent's failure. However, even this was not honoured and no money was paid. On 05.03.2020, the complainants sent repeated e-mails and reminders seeking withdrawal which again was not honoured. Aggrieved, the complainants seek refund of Rs.42,93,204/- paid by them with interest, compensation and litigation costs.

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

(a) The respondents begin with a submission that they were not responsible for the unresponsiveness of which he is blamed. The

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respondents also denies that it was due to this unresponsiveness of the respondents that the complainants could not raise the loan and consequently had to swap to a 2 BHK apartment from the already allotted 3 BHK. The respondents also denies any delay in delivery. The respondents, however, concurs with the complainants with regard to the payment of the amount for the apartment as also the filing of the C. No. 156/19 and also for the shifting the flat from 3 BHK to a 2 BHK and finally for filing the withdrawal petition and for seeking refund. However, the respondents denies that he had not handed over possession of the apartment to their complainants in time.

(b) The respondents however avers that the project construction has been completed before the RERA Act came into being and that it was only the podium which connected the main building to the apartment which was yet to be completed, due to which this project became an ongoing project and consequently was registered with the TNRERA vide registration no TN/01/Building/0181/2019 dated 30.10.2019 with the projected completion date as 31.12.2021 and that further delay occurred due to COVID-19 pandemic.

(c) The respondents submits that he had completed and handed over the possession to so many other buyers many of whom had raised loans from various banks. The respondents finally submits that any order to refund the amount to the complainant at this stage would cause suffering to the project and will also open gate for litigations. The respondents submits that the complainants should wait for the completion of the project until the time the complainants unit is ready for possession. The respondents also object to the high interest rates sought by the complainant and thus pleads to dismiss the CCP.

4. An attempt to settle the matter amicably has failed.

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5. The complainants 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) Is there is a delay in delivery entitling the complainant to be allowed refund?

(ii) What are the reliefs made out?

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

(a) The complainants have booked an apartment in the respondent's project and made first payment of Rs.11000/- (Ex.A2). The respondents had sent draft agreement copies vide e-mail dated 18.09.2014 (Ex-A4). The draft construction agreement and the sale agreements were enclosed in the said mail (Ex-A3 and Ex.A4). However, no sale and construction agreement was signed either at that time or anytime thereafter or even till date. The contention has not been objected by the respondent at any stage. The complainant has so far paid a total sum of Rs.42,93,203.28/- (Ex-A5 series).

(b) The agreed date of delivery was December 2015 (including 6 months of grace period) and in the absence of any agreement being executed reliance has been made on the e-mail dated 16/27th June 2017 (at page 122 of the complainant's type set). The complainants swapped flat from 3 BHK to flat 2 BHK (Ex-A1 series). The complainants had sent back the original receipts of the payments made by the complainant for the earlier allotment as required by the respondent vide e-mail dated 12.06.2015. The respondent failed to get the Sale and the construction agreements executed even for the swapped allotment which was sent to the complainant but was never signed.

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(c) It is clear therefore, that the apartment was not handed over to the complainants on or before the due date entitling them to refund of the money paid by them with interest and again in the absence of any of the documents, the date of delivery is taken as 30.06.2016 the date of handing over mentioned in the revised construction agreement sent by the respondents. This is so, as firstly there is no other signed document available and secondly being a mail sent by the respondents this can be taken as his commitment. The respondents shall apply for registration of the project within 30 days of the issue of this order and is imposed with a penalty of Rs.50,000/- for violation of Section 3 of the RERA Act.

8. Answer for Point No (ii):-

(a) Therefore, the complainants are entitled for refund amount of Rs.42,93,204/- from the respondents.

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

In the result, the respondents are directed as follows:-

- (i) The respondents jointly / severally shall pay the amount at interest rate and cost as per the findings in

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answer for Point No. (ii) in Para No. 8 of this order within 30 days of issue of this order.

- (ii) The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
- (iii) The respondents shall apply for registration of the project within 30 days of the issue of this order and is imposed with a penalty of Rs.50,000/- for violation of Section 3 of the RERA Act.

Sd/- 27.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- R. Ramahandran

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	-	Email Communications
Ex.A2	06.08.2014	Copy of the cheque.
Ex.A3	18.09.2014	Construction agreement.
Ex.A4	18.09.2014	Copy of draft agreement for Sale.
Ex.A5	-	Payment Receipts
Ex.A6	28.12.2014	Demand Letters
Ex.A7	-	Letter Communications.

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Nil



Sd/- 27.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI