

**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. 251 of 2021

(i) Chitra Chellapandian
(ii) T. Chellapandian
Both Rep. by Power of Attorney,
M.Madhavakarunakaran **Complainants**

Vs.

M/s. Fortune Infra & Constructions Pvt Ltd.,
Rep. by its Directors,
S. Sundhan & G.Jayaraman **Respondent**

Complainants : Rep by M/s. M. Balakrishnan, Advocates.

Respondent : Rep by Mr. S. Balaji, Advocate.

Heard on : 27.09.2022

Delivered on : 30.01.2023

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of a villa 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 villa in the respondent's project by name, "**Territory**", at Padur Village, Thiruporur Taluk, Kancheepuram District by paying a sum of Rs.1,50,000/- on 12.10.2015. The total consideration for the project was agreed at Rs.1,25,58,750/- and was allotted a Plot No. G-3. The sale and the construction agreement were both entered on 12.01.2016. In stages, the complainants have paid a total of Rs.80,00,000/- to the respondent.

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(b) The UDS was registered on 19.08.2016. The date of delivery for the villa was agreed to be delivered within 8 months plus 2 months of grace period from the date of sanction of the building plan by the local authority. Despite having received Rs.80,00,000/- in stages, the respondent expressed his inability to complete the construction as the plan was not approved. The respondent is said to have got required permission and the meeting held with both the parties on 17.07.2018. The respondent promised to resume the construction of the villa by September 2018 failing which the respondent assured to compensate the complainants.

(c) Following notice was issued by the complainants to the respondent on 31.07.2018, on which the respondent requested to extend the delivery time prescribed in the construction agreement. Following this, a supplementary agreement between the two parties was entered on 14.02.2019 wherein the respondent agreed to pay a sum of Rs.40,000/- per month to the complainants from 01.10.2018 till the respondent was able to commence the construction work and it was also assured that the construction work will complete in 10 months including the grace period of 2 months.

(d) It was also agreed between the two parties that in case, the construction agreement and the supplementary agreement will be cancelled, the complainants would be entitled to the settlement of Rs.80,00,000/- along with bank interest from the date of construction till the entire amount was settled and in that event, the complainants were to reconvey the property already registered. The construction work was not restarted by the respondent even thereafter due to which, the complainants sent a legal notice dated 05.10.2019 seeking return of Rs.80,00,000/- with 12% per annum within a period of 15 days.

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(e) The complainant further avers that the respondent had not registered the project under the provisions of the RERA Act. Hence, the complainants seeks refund of Rs.80,00,000/- paid by them with interest, compensation and litigation costs.

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

(a) The respondent begins his submission by denying all allegations. The respondent avers that the property in which the respondent had to develop the land belongs to the 3rd party by name *S. Chandramohan and M/s. Knitfab International Pvt Ltd*. There was a Joint Development agreement dated 06.05.2013 for an amount of Rs.80,00,000/-. The owner had executed a General Power of Attorney to register the Document No. 6101 of 2013. While the respondent agreed to develop the project at this cost. The project fell into trouble due to layout sanction not being approved by the appropriate Authority.

(b) The supplementary agreement was entered between the land owners and the respondent and the General Power of Attorney was executed on 26.11.2015 which was in addition to the earlier agreement dated 06.05.2013. The local body thereafter had approved the project and the respondent had commenced work by spending huge money.

(c) With regard to the complainants in CCP No. 251 of 2021, the respondent agrees to the basic facts as also the allotment of Plot No. G-3 and stage wise payment. The respondent further avers that the period of construction was to be about 36 months from the date of obtaining sanction approvals or from the date of signing the agreement, which ever was later and that the villa would be handed over to the complainants within 36 months. The respondent avers that he had got the necessary approvals from the Authority but the Hon'ble High Court had set aside the

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plan approval already granted by the local authority. The respondent avers it was agreed that in case of any dispute, the matter would be referred to the sole arbitrator appointed by the complainants, the respondent continues to aver that the land owners had revoked the POA executed in their favour on 06.05.2013 and 26.11.2015 and blames the land owners not only for this as well as for mortgaging the said property on 01.10.2018.

(d) The respondent further submits that the issue cannot be sorted out with the land owners due to the Covid – Pandemic 19 and the matter is still pending in District Court and submits that the respondent had not delayed the project wontedly. The respondent goes on to blames the complainant for not come in clean hands before this Forum and pleads for dismissing the CCP.

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) Is the complainants are entitled for seeking refund due to non delivery of their villa in time as promised in the agreement?

(ii) What are the reliefs made out?

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

(a) The complainants have entered into a construction and the sale agreement dated 12.01.2016. The complainants have paid a sum of Rs.80,00,000/- (Ex.A8 at Page No. 58) out of the total consideration of Rs.1,25,58,750/- and was allotted a Plot No. G-3. The respondent had

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agreed to these details including to the payment of Rs.80,00,000/- in stages by the complainants. The respondent had nowhere submitted or claimed to have delivered the project and rather agrees to the delay for which he blames the land owners where the project was to come up. The respondent had a GPOA dated 06.05.2013 and the supplementary agreement between the respondent and the land owners dated 26.11.2015.

(b) The respondent had promised to deliver the villa to the complainants within 10 months from the date of agreement or the date of approval of the plan which however later. The project fell into hot water when finally the respondent was not able to get the plan approval and also finally what he got from the local authority was disallowed by the Hon'ble High Court. The issue between the respondent and the land owners cannot be finally settled as now the land owners had even cancelled the POA. With this development, the project cannot be initiated and thus the delivery of the villa has neither been made nor can be made even in this situation at hand.

(c) The agreement for delivery was 10 months including 2 months of grace period from the date of signing of the construction agreement or approval of the plan whichever was later. The condition of approval of plan was not a definite date at the time of having the agreement but the burden of getting the approval lies only in the hands of the respondent. The facts of the CCP also shows that the plan was not finally approved. The complainants cannot be held liable for this act of not getting approval which lies solely on the respondent and thus the delay in delivery is made out and the date of delivery shall be taken to be the date on which the agreement was signed which is the definite date which would project to 12.11.2016 (10 months including 2 months of grace period).

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(d) The respondent continued to receive money from the complainants which was made in stages even when he knew that he was not able to get the plan approval and could not give delivery in the agreed time. The complainants are thus entitled to seek and get the refund of the amount of Rs.80,00,000/- paid by them with interest under Section 18 (1) (b) of the RERA Act. Thus the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainants are entitled for refund amount of Rs.80,00,000/- 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 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 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 pay the amount 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 complainants.
- (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/- 30.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- Chitra Chellapandian
RW-1 --- S. Sundhan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	01.12.2020	General power of attorney
Ex.A2	---	Brochure of territory project
Ex.A3	12.10.2015	Payment receipt for Rs.1,50,000/-
Ex.A4	16.12.2015	Payment receipt for Rs.16,00,000/-
Ex.A5	17.12.2015	E-mail acknowledgment for Rs.16,00,000/-
Ex.A6	24.02.2016	Payment receipt for Rs.37,68,000/-
Ex.A7	31.07.2018	Notice to respondent
Ex.A8	04.02.2019	Supplementary agreement
Ex.A9	05.10.2019	Legal notice to respondent

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	19.08.2016	Sale deed
Ex.B2	19.08.2016	Sale deed
Ex.B3	12.01.2016	Construction agreement
Ex.B4	07.04.2022	TNRERA registration certificate
Ex.B5	05.03.2022 & 08.03.2022	BDO fees and approval
Ex.B6	---	DTCP approval
Ex.B7	16.10.2020	Plaint filed in O.S. No. 125 of 2020
Ex.B8	---	Photographs

Sd/- 30.01.2023
SUNIL KUMAR, I.P.S (Retd)
 SINGLE MEMBER
 TNRERA, CHENNAI

