

**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. 254 of 2021**

Mukhtar Parvez

..... Complainant

Vs.

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

..... Respondent

Complainant : Party – In - Person

Respondent : Ex-parte.

Heard on : 27.09.2022

Delivered on : 12.01.2023

ORDER

The above complaint by the complainant seeking refund with interest from the respondent towards purchase of the plot 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:

The complainant agreed to purchase a Plot bearing No.71 in the project, "**SHAR**", of the respondent. The complainant has paid sum of Rs.1,00,000/- as a token advance on 25.04.2012. The respondent even after receiving the part payment for the plot number 71 in the project of the respondent **SHAR** encumbered it to a 3rd party. In between after having received payment nothing was done on the part of the Respondent to complete the agreement rather the respondent encumbered the plot to a 3rd party. The complainant thus pleads for refund of the money to the tune of

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Rs.1,00,000/- as per Section 12(1) of the Real Estate (Regulation and Development) Act along with compensation and cost for legal expenses.

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

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

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

(i) Is the complainant entitled to refund of the money paid by him without any follow up for transferring the plot to the complainant?

(ii) What are reliefs made out?

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

(a) The respondent had started the project by name **SHAR**. The complainant had paid a sum of Rs.1,00,000/- (Ex.A1) on 25.04.2012 and booked a plot in the respondent's project (Ex.A2). The complainant had made several correspondences with the respondent to register the plot No. 71 allotted to him (Ex.A5 series). However the same was not carried out.

(b) There is a clear allottee- promoter relationship created between the complainant and the respondent. The complainant has paid the consideration to the respondent who had undertaken to develop land into a project for the purpose of selling to the complainant after receiving the considerations for allotting the referred plot had thereafter taken no steps to transfer the plot. The respondent has after getting the consideration encumbered the said plot in the name of a 3rd party (Ex.A4). The complainant is therefore in his right to get refund of money of Rs.1,00,000/- 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.1,00,000/- 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 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 from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.20,000/- 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:-

1. The respondent shall pay the amount 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 complainant.

Sd/- 12.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- Mukhtar Parvez

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	25.04.2012	Payment proof
Ex.A2	---	Brochure of the project
Ex.A3	---	Copy of SHAR layout
Ex.A4	16.11.2018	Proof of encumbrance
Ex.A5	---	Request to register plot along with reminder letters and delivery proof

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 12.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

