

**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. 267 of 2021**

1) V.S. Vijay Raj
2) S.Swarna

..... **Complainants**

Vs.

M/s.Pacifica (Chennai Project) Infrastructure
Company Private Limited

..... **Respondent**

Complainant : Rep by Mr. S. Namasivayam, Advocate.
Respondent : Rep by M/s K.S. Srinivasan, Advocate.

Heard on : 09.12.2022
Delivered on : 28.03.2023

ORDER

The above complaints by the complainant seeking refund of amount paid to the respondent towards purchase of a plot 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 complainant, in brief, as follows:

(a) The complainants has been allotted Flat no. 610 in the D-Block – PRIDE TOWERS a project promoted by the respondent. The respondent was earlier known as Pacifica (Chennai Project) Infrastructure Company Private Limited and presently known as M/s. Pacifica Builders Private Limited and is the Power Agent for the owners of the land.

(b) The complainants joined the project on 07/01/2013 on payment of Rs.1,00,000/- advance. The sale agreement was entered on 07/03/2013 followed by the construction agreement on 07/06/2013. The complainant avers that the construction/development charges were fixed at Rs.41,48,662/- and sum of Rs.50,895/- was also demanded towards TDS. The sale deed for the UDS was registered on 18/12/2014.

(c) The delivery of the flat was promised to the complainant before 31/12/2015. The complainants avers that he had paid a sum of Rs.47,40,992/- against the total payment of Rs.51,56,662/-. However, this was increased to Rs.54,98,703/-, vide respondents mail dated 07/01/2014. The complainants thereafter kept following up with the respondent but the respondent failed to deliver the flat even despite the complainants serving legal notice on the respondent. The respondent failed to give any reply to the complainant. Aggrieved the complainant requested to cancel the booking and sought refund the money paid by him. The respondent has been demanding cancellation charges of 20% to cancel the booking. The complainant therefore seeks refund of the amount paid by him with interest, compensation and cost.

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

(a) The respondent submits to the correctness of basic facts of having entered into sale and construction agreement with the complainant. The respondent further agrees to have received money from the complainant but denies that they had not handed over the possession to the complainant within time. With regard to the completion and handing over of the flat, the respondent avers that he had promised to complete the construction of the villa within 24 months from the day of construction with a 6 months grace period. The respondent avers that he has already completed the project

before the RERA Act came into being leaving only the podium which connected to the main building left to be completed. The project was subsequently registered with the authority vide TN/01/Building/0181/2019 dated 30/10/2019 where in the project completion date has been scheduled to 31/12/2022.

(b) The respondent blames the Covid-19, situation for the delay. The respondent goes on to submit that if any direction to refund the amount was orders at this stage, the project will suffer as it will open gates for litigation. The respondent pleads that the complainant should wait till the completion of the project for hand over and pleads to dismiss the complaint.

4. The respondents remained absent at the argument stage and hence was treated as ex-parte. However, the respondent had filed the counter and the proof affidavit.

5. Complainant filed their respective evidence on affidavit with documents.

6. On the basis of the rival contentions of the complainants, the following points arise for determination.

(i) Is the complainant eligible to claim reliefs as pleaded by them of getting refund with interest due to delayed delivery?

(ii) What are reliefs made out?

7. Answer for Point No (i):

(a) The sale agreement between the complainant and the respondent was entered on 07/03/2013 (EX-A1). The sale consideration was for Rs.9,40,800/- (Annexure B of the sale agreement). The construction agreement which was entered on 07/06/2013 (EX-A2) laid down the cost of construction to be Rs.33,44,726/-. The Complainant has however projected the total cost of Rs.51,56,662/- which was later enhanced Rs.54,98,703/-

vide mail from the complainant dated 07/01/2014 (EX-A3). The complainant claims to have paid a total sum of Rs.47,40,992/- which has not been disputed by the respondent. The due date of delivery was December 2015, as per clause (6) of the construction agreement.

(b) The respondent has submitted that he had completed the construction before the RERA Act came into being but simultaneously he has also conceded that the podium which connected to the main building has not been completed. The respondent has also submitted that he had registered the project with the TNRERA vide registration no. TN/01/Building/0181/2019 dated 30/10/2019 where in the projected date of completion was set at 31/12/2022. The agreed date of delivery was 31/12/2015 as per the construction agreement. The very fact that the project was registered as an ongoing project goes to strengthen the contention made by the complainant regarding the project being delayed in delivery even as on 30/10/2019. The complainant is therefore entitled to refund of money paid by them to the tune of Rs.47,40,992/- with interest.

8. Answer to Point No. (ii):

(a) In view of the answer to the point no. (i), the respondent are entitled for refund of sum of Rs.47,40,992/- with interest from the respondent. As per the Rule (18) TNRERA Rules, the interest payable shall be the highest marginal cost of lending rate of interest of State Bank of India (SBI), +2% per annum. Hence, the complainant are entitled for the interest at the rate of 7.30% per annum which was marginal cost of lending rate of interest of SBI at the time of filing the complaint +2% per annum i.e., 9.30% per annum for an amount of Rs.47,40,992/- paid from the date of respective payment till repayment by the respondent.

(b) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

9. In the result, the respondents are directed as follows:

(i) The respondents shall pay the amount at the interest rate, as per the findings in answer for Point No. (ii), 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 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 created by charge in the order to the Sub-Registrar concerned.

(iv) 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 respondents.

Sd/- 28.03.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

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LIST OF WITNESSES

CW-1 ---- V.S. Vijay Raj

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	07/03/2013	Agreement For Sale
Ex.A2	07/06/2013	Construction Agreement
Ex.A3	07/01/2014	Mail
Ex.A4	18/12/2014	Sale Deed
Ex.A5	----	Receipts
Ex.A6	----	Mail
Ex.A7	25/07/2019	Legal Notice
Ex.A8	07/11/2019	Second Legal Notice

LIST OF DOCUMENTS FILED BY THE RESPONDENT - NIL

Sdt- 28.03.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI



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Correction ordered on 02/06/2023

AMENDMENT

The following typographical error is ordered to be rectified in the existing portion and read as follows:-

Amendment in CCP 267/2021

Correction is ordered in page 4, Para (8), answer for point (ii) (a) of the order as "In view of the answer to the point no. (i), **the complainant** are entitled for refund of sum of Rs.47,40,992/- with interest from the respondent. As per the Rule (18) TNRERA Rules, the interest payable shall be the highest marginal cost of lending rate of interest of State Bank of India (SBI), +2% per annum."

Instead of "In view of the answer to the point no. (i), **the respondent** are entitled for refund of sum of Rs.47,40,992/- with interest from the respondent. As

AS
2/6/23

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per the Rule (18) TNRERA Rules, the interest payable shall be the highest marginal cost of lending rate of interest of State Bank of India (SBI), +2% per annum.”

Sd/- 02/06/2023
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA,CHENNAI

CERTIFIED TO BE TRUE COPY
N. [Signature] 2/6/2023
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY