

**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. 273 of 2021**

P.G. Rajendran Complainant

Vs.

M/s. Artha Real Estate Corporation Limited Respondent

Complainant : Mr. P.G. Rajendran (Party-in-person)

Respondent : Rep by M/s. Tatva Legal Chennai,(Advocates).

Heard on : 15/12/2022

Delivered on : 20/04/2023

ORDER

The above complaint 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:

The complainant was allotted Plot no. 65 in the respondent project by name M/s. Artha Real Estate Corporation Limited in the Blue Mountain project in Nilgiris. The complainant has paid a sum of Rs.4.95 Lakhs. The complainant comes up with the grievances in the complaint as below:

- (i) The respondent has collected Rs. 10,000/- - Rs.13,000/- amount in excess towards the registration charges from the complainant. The respondent had collected Rs.50,000/- cash for registration charges

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while only Rs.37,200 was actually spent. Hence the respondent has charged extra amount from the complainant.

(ii) False and misleading advertisement:

The complainant refers to the brochure dated 02/07/2010 and quotes the following from the brochure to show the misleading advertisement of the project.

“Should you decide to sell your plot at a project, you can always do so. Get in touch for more details”

The complainant avers that the respondent had offered to help the complainant sell the plot for profit. However, when the complainant wanted to utilize this option the same was being denied.

(iii) Prices doubling by the company:

The complainant avers that during the course of correspondence for sale, the respondents had offered the plot at the rate of Rs.90 per sq.ft., but increased the price to Rs.99 then to 150 per sq.ft. and finally Rs.200 per sq.ft.

(iv) The respondent had promised 50% share in the profit from the produce generated from plots, but the same had not been fulfilled even after 9 years of sale.

(v) The promised amenities have not been provided.

(vi) The project does not have the approval of the DTCP.

(vii) Denial of free cottage stay by the respondent. The complainant avers that his family members were entitled to 14 days free stay in the cottage every year for their life time. The complainant further avers that even though the cottages became operational, he had stayed there only for 2 days in 2015. The accommodation at other times was denied under some pretext or the other.

(viii) The renting out Plot Owners unused cottages. The complainant avers that their cottages were being rented to outsiders on high rentals, but were not being allowed to be enjoyed by the complainant. The complainant prays to address the grievances as also.

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

- (a) The Learned counsel for the respondent denied all the allegations of the complainant. The respondent begins by questioning the maintainability of the complaint. The respondent avers that this project is prior to RERA came into being and that the provisions of RERA Act are prospective in nature. The respondent submits that the association between the complainant and the 1st respondent came to an end on 07/10/2010 on registration of the plot at the Sub Registrar office and that the provisions of the act are not applicable to the complainant's complaint thereafter. The respondent then goes on to question the maintainability on grounds of limitation as the issue is more than 12 years old.
- (b) The respondent submits that it is to true that the complainant entered into a contract with the respondent for the sale of 19500 Sq.ft, of the plot for an amount of Rs.4,09,500/-. The plot was registered vide sale deed bearing Document No. 946 of 2010 on 07/10/2010 and pleads that the complainant is nothing but an instance of "Buyer's remorse"
- (c) The respondent further avers that the complainant's claim of the entitled for 14 days free stay in a cottage is incorrect. The respondent submits that the complainant had relied on the mention of the following statement of one of the respondent's employee.

"I heard from Jitendra that your eligibility for number of holidays for a year is 14 days, this has to be utilized in the same year and cannot be accumulated or carried forward to the next year".

The respondent with regard to the stay at the resort reveals that it is only indicated that owners of plot of land would be entitled to free stay of 3 nights and a maximum of 14 nights (depending on the size of the plot) and pleads that it is not an explicit promise of free stay. The respondent further submits that the provision of free stay if at all could only be availed by a person who owns half an acre in the project. The respondent avers that half acre converts to 21,780 Sq.ft, while, the complainant had purchased only 19,500 Sq.ft, thus making him ineligible for any free stay. Further, the respondent avers that the complainant has not added any evidence to show that he ever requested to avail the free stay facility ever.

(c) The respondent goes on to submit that the sale deed which is already registered cannot be cancelled unilaterally and the same, if at all, could be done through another instrument of sale and re-conveyance and with the agreement of both the parties. The respondent avers that the allegation relating to "Buy-Back" at fancy price, as put forth by the complainant, is not incorporated in the agreement between the two parties. The respondent further avers that the issue if at all, has to be settled in the Civil Court, where the complainant could seek cancellation of the sale deed.

(d) The respondent goes on to submit that there is no cause of action to initiate the present complaint. The respondent does not satisfy the provision of section 18 entitling him to seek refund. The respondent also refuses the complainant's claim for a share in the proceeds generated from the project, as there is no such commitment given by the respondent which is primarily an

agriculture land and thereby the respondent pleads for dismissing the compliant.

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

5. In both the complaints, 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 complainant maintainable?

(ii) Is the complainant entitled to seek refund of the money paid by him?

(iii) What are the reliefs made out?

7. Answer for the Point No. (i)

(a) The facts of the CCP would indicate that the complainant entered into an agreement and registered the land vide sale deed dated 07/10/2010 (EX-A1). The agreed sale consideration was Rs.4,09,500/-. The complainant by the sale deed came into possession of this property lying at Plot No.65 to an extent of 19,500 sq.ft, (Schedule B of the sale deed Ex-A1). The respondent has questioned the maintainability on the ground that the RERA Act is prospective. The sale deed dated 07/10/2010 completes the transaction process where the entire amount is paid by the complainant, sale deed registered and the plot came into the possession of the complainant. The entire process got completed on 07/10/2010.

(b) The respondent has questioned the maintainability of the complaint on grounds that the RERA Act is prospective. This contention of the respondent is sustainable in the light of the "*M/s. New Tech Promoters & Developers Private Limited (Vs.) The State of U.P and others etc in para no. 6745/6749/2021 rising out of the SLP (CIVIL) Nos. 3711 to 3715/2021*".

Hon'ble Supreme Court in their order had settled the issue and had held that the RERA Act is retroactive and not retrospective.

“From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under section 3 to prospectively follow the mandate of the Act 2016”.

(c) In this complaint the transaction was completed on 07/10/2010 with the transfer of the plot from the respondent to the complainant on payment of consideration of registration by way of sale deed. The issue raised by the complainant falls beyond jurisdiction of the RERA Act and hence the complainant is held to be not maintainable.

8. Answer for the Point No. (ii) & (iii)

(a) Since, the answer to Point No. (i) is that the complainant is not maintainable the need to determine point 2 and 3 does not arise.

In the result, the complaint is held as not-maintainable.

Sd/- 20/04/2023
SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER
TNRERA, CHENNAI

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LIST OF WITNESSES

CW-1 --- P.G. RAJENDRAN


RW-1 --- SENTHIL KUMAR

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	07/10/2010	Sale Deed
Ex.A2	02/07/2010	Brochure dated 02/07/2010 Captioned "ARTHA PROPERTY"
Ex.A3	---	M/s. Artha's NEWSPAPER 'AD' marketing plots @ Rs.99/- per Sq.ft.
Ex.A4	---	Company Brochure/Price List
Ex.A5	26/05/2010	Brochure captioned "Sebi Questions Artha Group's Blue Mountain Estates Scheme" in "Moneylife" dated 26/05/2010
Ex.A6	27/08/2015	My holiday entitlement in Blue Mountain Cottages every year as per M/s. Artha's E-mail.
Ex.A7	14/09/2018	Denial of Free Blue Mountain Cottage Stay Holidays by M/s. Artha
Ex.A8	---	Information Memorandum, Blue Mountain
Ex.A9	---	Brochure about Free Stay Cottages
Ex.A10	---	Indiscriminate and clandestine renting out of cottages meant for the Blue Mountain plot owners to outsiders at Rs.8943/- per day through M/s. Yatra and other agencies.
Ex.A11	31/08/2005	Medical certificate of my handicapped sister
Ex.A12	22/11/2018	Letter dated 22/11/2018 to the Chief Secretary, Government of Karnataka from Ministry of Housing & Urban Affairs, Government of India.
Ex.A13	06/09/2017	Ministry of Corporate Affairs-Serious Fraud Investigation Office Letter No. SFIO/COMP/22/2017/1/11536/2017

Ex.A14	06/08/2019	Office of Karnataka RERA Endorsement Letter No. RERA/SECY/2018-19/606 advising us to get Redressal from office of Tamil Nadu RERA
Ex.A15	10/06/2010	Duly filled in application form, ack. Cum receipt for Rs.10,000/- paid vide chq.No.275616 dated 10/06/2010 drawn on ICICI Bank, Nungambakkam Branch.
Ex.A16	09/07/2010	Receipt for Rs.2,50,000/- paid vide chq. No.140796 dated 31/07/2010 drawn on Bank of India, Cathedral Road Branch towards Sale Agreement.
Ex.A17	21/07/2010	Promised development agreement detailing the amenities-duly signed letter by their President, Mr. V.S. Karthikeyan
Ex.A18	05/10/2010	DD for Rs.2,35,000/- drawn on Bank of India, Bangalore Service Br.-Vide Chq.No.140822 dated 05/10/2010 drawn on Bank of India, Cathedral Road Branch.
Ex.A19	09/10/2019	Inspector of Police, H.A.L.P.S., Bangalore-37 Endorsement Letter dated 09/10/2019.

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL

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ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

Sd/- 20/04/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI