

**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. 289 of 2021**

V. Balachandran

..... Complainant

Vs.

M/s. Amar Prakash Developers Pvt Ltd.,
Rep. by its Managing Director,
Aadarsh Kumar Surana

..... Respondent

Complainant : Rep. by Mr. S. Vijayakumar, Advocate.

Respondent : Rep. by M/s. D. Ravichander, Advocates.

Heard on : 27.09.2022
Delivered on : 12.12.2022

ORDER

The above complaint by the complainant is for seeking refund with interest from the respondent towards purchase of the apartments 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:-

(a) The complainant in pursuant to an advertisement applied for allotment of an apartment in project namely, "**Temple Waves**", in Kundrathur, Chennai. The respondent has offered to complete the construction of the apartment on or before June 2020 or within 12 months from the date of finalization of alteration of the apartment. The complainant was allotted an apartment bearing No. H-324 in the 3rd floor, 'H' block in the said flat for the total sale consideration of Rs.37,86,580/-. The sale deed was registered on 24.06.2019 vide document no. 13233 of 2019, while the construction agreement dated 04.05.2019 was also registered on 24.06.2019 vide Document No. 13232 of 2019 of Book 1 in the office of SRO, Kundrathur.

(b) The respondent has undertaken to handover the flat to the complainant in the month of June, 2020. The complainant has paid a total sum of Rs.20,14,317/-. The complainant visited the site of construction during the month of August, 2021 much after the promised date of delivery and was shocked to see the project at the same stage as at the time of booking. Despite such efforts the handing over of the apartments still eludes him. The complainant therefore requests refund of a amount of Rs.20,14,317/- paid by him with interest, compensation and cost.

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

(a) The respondent denied all averments made by the complainant and puts the same to strict proof except those specifically admitted. The respondent avers that the complaint has been filed before the Adjudicating Officer. The respondent submits that has the Adjudicating Officer has jurisdiction only to adjudge the quantum of compensation while the adjudication of refund and interest etc are vested with the Authority and thus the complainant is not maintainable.

(b) The respondent concurs with the complainant on basic facts such as allotment of the flat to the complainant in the respondent's project, sale and construction agreement and also to complete the construction on or before June, 2020 or within 12 months from the date of finalizing the apartments whichever is later. The respondent further avers that this duration would be subject to force majeure effects.

(c) It is thus clear, submits the respondent, that the project got delayed only an account of force majeure event making the performance of the contract further complicated due to Covid-19 pandemic since March, 2020 resulting in severe financial hardships to the respondent. Even the projects validity got extended by 6 months due to the pandemic and thus no fault can be attributed to the respondent for the delay and thus no refund may be allowed. The respondent further submits that even UDS for the apartment stands in the name of complainant. The respondent blames the complainant for not including the financial institution in the proceedings which was *M/s. ECL Finance Limited*, hence, pleads for dismissing the complaint.

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:

(ii) Whether there was a delay in handing over of the apartment by the respondent to the complainant?

(ii) What are the reliefs made out?

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

(a) The facts of the CCP would indicate that the sale deed was entered on 24.06.2019 (Ex.A9) and the construction agreement on 04.05.2019 (Ex.A6). The complainant has paid a sum of Rs.20,14,417/- supported by receipts at Ex.A1, Ex.A4, Ex.A5, Ex.A8 amounting to Rs.20,14,317/- for the flat. The committed date of delivery was laid down in the construction agreement stipulating the completion of construction of the apartment on or before June, 2020 or within 12 months from the date of finalisation of alteration for the apartment whichever is later. The construction agreement as stated was entered on 04.05.2019 projecting the completion date to 04.05.2020 or June, 2020 at the most. The respondent has not been able to give any evidence to contradict the claim of the complainant for non-delivery of the apartment even till date. Hence, it is clearly held that there is a delay in handing over the apartment from the agreed date by the Respondent.

(b) The respondent has denied the delay and pleads that due to the existence of force majeure conditions he was allowed, as per the agreement, to delay the delivery. Despite having taken the shield of force majeure conditions, the respondent has failed to give any substantial situation warranting consideration it to be treated as force majeure. The respondent mentions Covid-19 as such a condition

which could allow it to be considered as force majeure and provide relief to him. It may be seen that the promised date of delivery as per the agreement would extend to not beyond June 2020. The Covid-19 conditions existed only from March 2020 and even the Authority allowed an extension of time by 6 months postponing the delivery at most to the end of the year i.e. December 2020. The apartment has still not been handed over, thus no relief on this count could be allowed to be claimed by the respondent.

(c) The non inclusion of the financier *M/s. ECL Finance Limited* has no bearing on the validity of the agreement between the two parties more so as the financier was not a party in the construction agreement or sale agreement and non-inclusion of the financier, who had no role for the delay in delivery of the flat and thus such a non inclusion will not come to the rescue of the respondent.

(d) The respondent has submitted that the jurisdiction to decide the entitlement of the refund and compensation vests only with the Authority and not with the Adjudicating Officer. This claim of the respondent does not give him any relief. It was in compliance of Hon'ble Supreme Court Judgement in *M/s. New Tech Promoters and Developers Pvt Ltd., Vs. State of UP & Ors. Etc*, now claims, as the one made in this CCP, by the complainant, are being handled by the Authority and not the Adjudicating Officer.

(e) Hence, the complaint lies within the scope of jurisdiction of RERA and as shown above the delay in delivery is clearly made out in handing over of the apartment to the complainant and thus the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.20,14,317/- 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.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 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.
- (ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (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 respondent.

Sd/- 12.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

TRUE COPY
12/12/22

LIST OF WITNESSES

CW-1 --- V. Balachandran

RW-1 ---- G. Dinesh Kumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

| Ex.Nos | Date | Documents Name |
|--------|------------|--------------------------------------|
| Ex.A1 | 03.03.2019 | Cost of apartment letter |
| Ex.A2 | 03.03.2019 | Receipt |
| Ex.A3 | 03.05.2019 | Payment request letter |
| Ex.A4 | 03.05.2019 | Receipt |
| Ex.A5 | 06.05.2019 | Receipt |
| Ex.A6 | 04.05.2019 | Construction agreement |
| Ex.A7 | --- | Apartment plan |
| Ex.A8 | 31.05.2019 | Receipt |
| Ex.A9 | 24.06.2019 | Sale deed |
| Ex.A10 | 09.09.2019 | Encumbrance certificate |
| Ex.A11 | 10.09.2019 | Memorandum of deposit of title deeds |
| Ex.A12 | 28.11.2019 | Rental agreement |
| Ex.A13 | 01.02.2021 | Rental agreement |
| Ex.A14 | 16.03.2020 | Office closed e-mail |
| Ex.A15 | --- | Reminder letter 2 |
| Ex.A16 | --- | Reminder letter 3 |
| Ex.A17 | --- | Reminder letter 4 |
| Ex.A18 | --- | Reminder letter 5 |
| Ex.A19 | 21.12.2020 | Report of canara bank |
| Ex.A20 | 20.02.2021 | Reminder letter 6 |
| Ex.A21 | 06.03.2021 | Reminder letter 7 |
| Ex.A22 | 03.05.2021 | Termination notice |
| Ex.A23 | 05.05.2021 | Acknowledgment of notice |

LIST OF DOCUMENTS FILED BY THE RESPONDENT

| Ex.Nos | Date | Documents Name |
|--------|------------|------------------------|
| Ex.B1 | 04.05.2019 | Construction agreement |
| Ex.B2 | 24.06.2019 | Sale deed |

| | | |
|-------|------------|---------------------------|
| Ex.B3 | 04.08.2022 | Payment ledger statement |
| Ex.B4 | 12.04.2018 | Form 'C' issued by TNRERA |

Sd/- 12.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY
N. Anand
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY