

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member

C.C.P No. 290 of 2021

Mrs. Anees Mahmudha

... Complainant

Vs

M/s. Amar prakash developers Private Limited,

Rep. by its Authorised Signatory

...Respondent

Complainant

: Rep. by Mrs. Gouhar un nissa, Advocates.

Respondent

: Ex-parte.

Heard on : 02.03.2023

Delivered on : 03.03.2023

ORDER

The above complaint by the complainants seeking refund with interest from the respondent towards purchase of the apartments 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 complainant applied for apartment in the respondent projects and the construction agreement was entered on 17.03.2019. The agreed consideration for construction of the apartment was Rs. 29,18,636/-. The agreement stipulated the date of delivery of the completed apartment to be on or before June 2020 or within 12 months of the date

of finalization of the apartment whichever is later. The sale deed was executed on 24.04.2019 for a sale consideration of Rs. 3,96,000/-.

(b) The final consideration for the apartment was Rs. 41,00,003/- including Rs. 7,85,367/- for amenities and other charges. The complainant has paid a sum of Rs. 41,00,000/- in six installments starting from 09.03.2019 to 31.05.2019.

(c) The complainant requested the respondent either to hand over the completed apartment or swap it to some other unit which was ready both of which were not acceded to by the respondent. The complainant claims refund of Rs. 41,00,000/- paid by him with interest and in addition also seeks compensation and cost for legal expenses.

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

(a) The learned counsel for the respondent at the outset challenged the complainant on point of jurisdiction on the ground that the Adjudicating Officers only has powers to grant compensation and refund is vested only with the authority.

(b) The respondent goes on to submit that the complainant was allotted an apartment promoted by him by name "Temple Waves". The respondent also concurs with the basic facts with regard to construction agreement as also to deliver the completed apartment on or before June 2020 or within 12 months from the date of finalization of the apartment whichever was later.

(c) The respondent accordingly submits that the delay in delivery occurred only due to force majeure conditions which allowed the respondent to extension of time for delivery as per the construction agreement. The respondent submits that the pandemic Covid – 19, since March 2020 affected the project, financially making it impossible

for the respondent to complete the project. The respondent submits that even the government had extended the time limit by 6 months, upto September 2020.

(d) Accordingly, the TNRERA had also made the registration extended upto 31.12.2021 and thus no fault is made out on the respondent. The respondent goes on to submit that the complainant has also failed to implead the relevant party, that is the financier, which is ECL finance limited and thus pleads to dismiss the case.

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

5. The complainant has filed their respective evidence on affidavit with documents. The respondent remained absent despite opportunities given to him hence was treated as exparty after having filed the counter and the proof of affidavit.

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

7. Questions:-

- i. Is the complaint maintainable and is there a delay in delivery of the completed apartment by the respondent which would entitle the complainant to claim refund with interest?
- ii. What are the reliefs made out?

8. Answer for Point No (i):-

(a) The complainant was allotted apartment number H713 (Page 25 of the complainant type set). The construction agreement between the two parties was executed on 17.03.2019 (Ex.A1). The sale agreement was executed on 24.04.2019 (Ex.A2). Clause 2 of the construction agreement lays down the agreed cost of construction to Rs. 29,18,636/-.

(b) Clause 4 of the construction agreement lays down the date of delivery to be on or before June 2020 or within 12 months of the date of finalization of the apartment whichever was later. Clause 5 (b) 2 lays down the conditions agreed between the two parties in case of termination of the contract by the complainant. In case the respondent failed to complete the project, which is the case in this CCP, the clause 5 (b) 3 would be applicable which lays down as follows

(c) Clause 5 (b) 3: Lays down that

“The allottees shall have the option of terminating the agreement in which case the promoters shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment, along with interest at the rate specified in the rules within 90 days of receiving the termination notice. Simultaneous to the execution of cancellation agreement and registration thereof, if required. However, if the allottee defaults in making timely payments”

The sale deed mentions the cost of the UDS as Rs. 3,96,000/-.

(d) It is thus clear that the complainant has paid a total sum of Rs. 41,00,000/- (Ex.A3 series). The due date of delivery agreed in the construction agreement was June 2020. The apartment has not been handed over to the complainant on or before June 2020. The reasons for delay cited by the respondent too do not qualify to be covered under force majeure. In the given situation the complainant has sought refund of the entire amount paid by the complainant with interest to which the complainant is entitled and the same is allowed as per section 18 (1) of the RERA Act.

(e) As regard non impleading of bank as a necessary party, the objection of the respondent is not sustainable. All the agreements where promise to deliver the apartment are made, is between the two parties the respondent and the complainant. In such a situation, all liabilities shall arise between these two parties alone. The period of delivery will be June 2020 as the other date agreed would fall before June 2020. Hence, the complainant is eligible to claim refund with interest and thus the point is answered accordingly.

9. Answer for Point No (ii):-

(a) Therefore, the complainants are entitled for refund amount of Rs. 41,00,000/- with interest.

(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 with effect from 06.09.2021. 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 respondents are 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. 9 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, if any, 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.

SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES
CW-1 --- Mrs. Anees Mahmudha

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	17.03.2019	Construction Agreement
Ex.A2	24.04.2019	Sale deed
Ex.A3	15.04.2019	Memorandum of Deposit of Title Deeds
Ex.A4	-----	Receipt (Series)
Ex.A5	16.04.2019	Registered Receipt
Ex.A6	24.11.2019	Full payment acknowledgement
Ex.A7	10.03.2020	Letter of request

Ex.A8	04.12.2020	Mail
Ex.A9	-----	Mails (Series)
Ex.A10	12.04.2021	Letter of petitioner
Ex.A11	03.04.2021	Letter by complainant
Ex.A12	-----	Photos

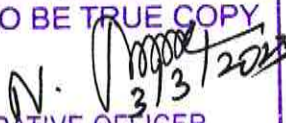
LIST OF WITNESSES

RW-1 --- M/s. Amar Prakaash Developers Pvt. Ltd

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Ex.Nos	Date	Documents Name
Ex.B1	17.03.2019	Construction Agreement
Ex.B2	24.04.2019	Sale deed
Ex.B3	12.04.2018	TNRERA Certificate
Ex.B4	09.03.2019	Quotation Form
Ex.B5	27.03.2019	NOC Certificate

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

CERTIFIED TO BE TRUE COPY

 ADMINISTRATIVE OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY