

**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. 292 of 2021**

**1. Mrs. Bhanu Ramasamy**

**2. Mr. T. Ramasamy**

..... **Complainants**

**Vs.**

**1. M/s. Arthvedastar (Vizag) Realty Pvt Ltd,**

Represented by its Managing Director,

Mr. P.G.Prabhakar Reddy

**2. M/s. P dot G Constructions Pvt Ltd.,**

Represented by its Resolution Professional,

Mr. Sundaresan Nagarajan

**3. Mr. P.G. Prabhakar Reddy,**

..... **Respondents**

**Complainant** : Rep. by M/s. G.R. Hari, Advocate

**Respondent** : Exparte

**Heard on : 27.06.2023**

**Delivered on : 18.07.2023**

**ORDER**

The above complaint by the complainants seeking refund of amount paid to the respondents 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 complainants, in brief, as follows:**

(a) The complainants avers that he was approached by the 3<sup>rd</sup> respondent being the Managing Director of the 1<sup>st</sup> respondent. The complainant entered into the project and was allotted an apartment in respondent's project by name

“Crescent Park”. The complainant was given to believe that the project will be completed in 2 years and the agreed consideration of the UDS as Rs.9,05,400/- and the consideration agreed for the construction agreement was Rs.50,06,500/-. The complainant conformed the booking by making a payment of Rs.1,00,000/- on 04/04/2016. The complainant entered into construction and the sale agreement on 11/04/2016. The sale agreement was entered by the complainant with the power of attorney holder of the land owner. The complainant has paid a total of Rs.33,00,000/- out of the total consideration of Rs.59,11,900/-. The receipt of this payment has been duly acknowledged by the 1<sup>st</sup> respondent vide their letter dated 25/05/2016.

(b) The complainant avers that there was no forward movement in construction in the project after the agreements were entered into. The complainant therefore, moved for refund of the money paid by him before the Resolution Profession who turned down the request as the bankruptcy proceedings were against some other entity. On repeated request of the complainant, the 3<sup>rd</sup> respondent issued cheques of Rs.10,00,000/- (of Rs.5,00,000/- each) to the complainant, which got bounced for the reason “payment stopped by drawer”. The 3<sup>rd</sup> respondent subsequently made it clear to the complainant that he was neither in a position to make a refund of the monies paid by the complainant nor was he in a position to complete the project. The 3<sup>rd</sup> respondent however made an offer to the complainant to enter into a backdated agreement with the 2<sup>nd</sup> respondent for allotment some other flat in the 2<sup>nd</sup> respondent project. The complainant seeing no other remedy, entered into contract for an alternate unit on 20/06/2019, which was backdated as if entered on 11/04/2016. This agreement was executed by the complainant with the 2<sup>nd</sup> respondent and apartment no. 407 was allotted to the complainant thereafter.

(c) The complainant avers that on 11/03/2020, the complainant applied for Encumbrance Certificate for the said survey number. The complainant came to know that the property allotted to him had already been transferred to another person at the Joint Sub-Registrar Office, Chengalpat. The complainant avers that the respondents have jointly and severally received amount from them and prays for refund of Rs.33,00,000/- with interest and compensation for mental agony.

3. In spite of service of notice, the respondent remained absent all through the proceedings despite opportunities given to him.

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

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

(i) Is the complainant entitled to refund all the money paid by him with interest?

(ii) What are the reliefs made out?

**6. Answer to Point No. (i)**

(a) The complainant entered into a construction and the sale agreement (EX-A3). The complainant paid a sum of Rs.33,00,000/- out of total consideration of apartment (EX-A5) out of the total consideration of Rs.59,11,900/-. The 1<sup>st</sup> and the 3<sup>rd</sup> respondent were not able to complete the project and hence offered to refund the money and even paid two cheques for a total sum of Rs.10,00,000/- (Ex-A7 Series). However, the two cheques totaling Rs.10,00,000/- bounced when presented at the bank. The month of August, 2018, the complainant was informed by the 3<sup>rd</sup> respondent that the 2<sup>nd</sup> respondent was in the bankruptcy proceedings and

the 3<sup>rd</sup> respondent shall repay the amount of Rs.33,00,000/- received from the complainant.

(b) The complainant plea was turned down by the Resolution Professional stating that the bankruptcy proceedings were against a different entity. The complainant further bid to recover their monies by issuing notice to the 1<sup>st</sup> respondent also failed. It was at this stage that the 3<sup>rd</sup> respondent expressed his inability to refund sum of Rs.33,00,000/- to the complainants and offered an alternative apartment in the 2<sup>nd</sup> respondent project. The 3<sup>rd</sup> respondent however put a condition before the complainant to enter into a back dated agreement at the 2<sup>nd</sup> respondent company for the alternative apartment, which they offered at another project.

(c) The complainant proceeded on the dotted lines and entered into a back dated agreement on 26.02.2019 back dated to 11.04.2016 (Ex.A15) for allotment of an apartment No. 407. The complainant was even provided with the key for the said apartment. The complainant applied for encumbrance certificate on 11.03.2020 (Ex.A16), when he came to know that the property had already been transferred to another person.

(d) It is thus clearly made out that the complainant has paid a consideration following allotment of a unit by the 1<sup>st</sup> and the 3<sup>rd</sup> respondent. It is also clearly made out that the 1<sup>st</sup> and the 3<sup>rd</sup> respondent have failed to deliver the unit, they have also failed to refund the money due to the complainant. So far as the 1<sup>st</sup> respondent as concerned a clear promoter allottee relationship established, the 3<sup>rd</sup> respondent too was in the promoter category and as per section 2(zn).

**Section 2(zn):**

***“(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building***

*or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;*

(e) The 1<sup>st</sup> and the 2<sup>nd</sup> respondents were unable to complete the project or even refund the money paid by the complainant. On persuasion of the 3<sup>rd</sup> respondent the complainant entered into a fresh agreement with the 2<sup>nd</sup> respondent for an apartment, which was later found to be encumbered to another person. Thus, the relationship between the complainant and the 2<sup>nd</sup> respondent is also established as an allottee and a promoter. The 2<sup>nd</sup> respondent has deliberately entered into a contract for a property which did not carry a marketable title being already encumbered to some other person. The conduct of all the 3 respondents is interconnected vis-a-vis the complainant and accordingly 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent would be liable for any liability arising on them jointly and severally.

(f) Having established a payment of Rs.33,00,000/- by the complainant as a consideration for the apartment which did not get completed, nor was the refund made by the respondents and was allotted a unit with no marketable title, the complainant is entitled for refund of the amount paid by him with interest and thus the 1<sup>st</sup> point is answered.

**7. Answer for the Point No.(ii):-**

(a) Therefore, the complainant is entitled for refund amount of Rs. 33,00,000/- from the respondent's jointly or severally 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. 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 respondents. Thus, the point is answered accordingly.

**8. In the result, the respondents are directed as follows:-**

- (i) The respondent shall pay the entire amount at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 7 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 respondents.

Sd/- 18/07/2023  
SUNIL KUMAR, I.P.S.(Retd.)  
SINGLE MEMBER,  
TNRERA, CHENNAI.

**LIST OF WITNESSES**

CW-1 --- Mrs. Bhanu Ramasamy

**TRUE COPY**

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Pamphlets
Ex.A2	---	Receipt
Ex.A3	11/04/2016	Agreement for Sale
Ex.A4	---	Transaction Statement of ICICI Bank
Ex.A5	25/05/2016	Acknowledgement for Receipt of Rs.33,00,000/-
Ex.A6	---	Order for disqualification of Pala Govinda Prabhakar Reddy
Ex.A7	---	Cheque to complainant for Rs.5,00,000/-
Ex.A8	---	Order of Ministry of Corporate Affairs dated 02/02/2021
Ex.A9	06/03/2018	Mail dated 06/03/2018
Ex.A10	22/06/2018	Letter dated 22/06/2018
Ex.A11	13/07/2018	Notice dated 13/07/2018
Ex.A12	13/07/2018	Order of NCLT, Chennai dated 13/07/2018
Ex.A13	---	Submission Claim and Proof of Claim
Ex.A14	15/02/2019	Demand Notice
Ex.A15	---	Agreement for sale
Ex.A16	11/03/2020	Encumbrance Certificate

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS-NIL**

Sd/- 18/07/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

