

**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. 296 of 2021

1) Mrs.R.Gowri Ravi
2) Mr.Ravi Rajamanickam Complainants
Vs.

M/s. MARG Properties Limited,
Represented by its Director
Mr.G.R.K. Reddy Respondent

Complainant : Rep. by M/s. J.Pachiyappan, Advocates

Respondent : Rep. by M/s. S.Mohanapriya, Advocate

Heard on: 24/08/2023

Delivered on: 01/09/2023

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 joined the respondent project by name 'Brindavan' and was allotted flat no. 1201. The sale agreement was entered on 12/08/2011 and the total sale consideration agreed was Rs.28,59,394/-. The complainant has so far paid a sum of Rs.13,71,390/-. The agreed date of handing over was June, 2013 with a grace period of 4 months. The complainant avers that despite a delay of more than 7 years, he is yet to get

possession of his unit. All efforts made by the complainant to seek handing over of the unit were not fruitful, whereafter, the complainant had requested the respondent several times to cancel the flat booking and refund the money but in vain. Aggrieved, the complainant prays for refund of Rs.13,71,390/- besides compensation and cost of legal expenses.

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

(a) The Learned counsel for the respondent denies all allegations contained in the complaint except those which were specifically admitted by him. The respondent agreed with the complainant with regard to the basic fact regarding the booking of the flat and allotment of a unit by the respondent in his project. The respondent avers that complaint is not maintainable either in facts or in law. The respondent avers that the agreement entered between the two parties mentions that any dispute arising between the two parties could be referred to a sole arbitrator appointed by the respondent as per the clause 25 of the agreement. Thus, the complainant could not come before this forum for any relief.

(b) The complainant avers that they could not complete the construction work due to unexpected hurdles faced by them. They further submit that the hurdle so faced by them were beyond their control and included issues such as Government regulations, delay in approvals, non-availability of raw materials, labour problem, cyclonic turmoil, unforeseen economic slowdown, as also the delay by the flat buyers in making timely payment. The respondent continues to submit that he had borrowed huge sums of monies to invest in the project. The respondent further avers that the complaint also deserves to be dismissed on grounds of limitation and also as the complainant had not made payments as agreed in the agreement.

(c) The respondent avers that the complaint has himself admitted, they have not made the complete payments and thus the respondent cannot be found fault with for the delayed delivery. The respondent further submits that he had learnt that the Courts had held that the project with construction work where it was 40% or more completed no refund could be permitted as other home buyers in the project would get affected. The respondent also refers to an order in one case in which the MAHA RERA had ordered that only on completion of the project would any refund be ordered to the buyer. Accordingly, in the larger interest of the home buyers the refund so ordered would affect the interest of the other buyers. The respondent thus prays 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 rival contentions of the parties, the following points arise for determination:
 - (i) To examine the maintainability of the complaint in view of the objections filed by the respondent?
 - (ii) Whether there was a delay in handing over warranting refund with interest due to the delayed handing over?
 - (iii) What are the reliefs made out?

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

(a) The complainants have complained that the project for which he entered into an agreement on 12/08/2011 has still not been completed and handed over. This has been acknowledged by the respondent who has resorted to take shelter quoting the Force Majeure conditions as the reason for the delay in handing over the unit to the complainant. This would amount to the acceptance that the unit has not been handed over to the complainant as agreed. The respondent has also not been able to submit any Completion Certificate to claim exemption from the registration claiming the exemption Clause of the Section 3 of the RERA Act. This would bring the respondent's project as an on-going project requiring registration to be done. The complaint is thus maintainable.

(b) The respondent has erroneously referred to clause 25 of the construction agreement to provide for the arbitration clause. The said clause for the arbitration lies at clause 44 of the agreement (Ex-B1 and Ex-A2) which provides as follows:-

"ARBITRATION & JURISDICTION

In the event of breach of the terms of this agreement or in the event of any differences or disputes arising between the parties in regard to this Agreement or any matter relating thereto, the same shall be mutually discussed and resolved failing which the same shall be mutually discussed and resolved failed which the same shall be referred to Arbitration under the provisions of Arbitration and Conciliation Act, 1996 in force. Two arbitrators, one each from the side of the Purchaser and Developer will be appointed and Umpire will be selected by such

Arbitrators appointed for Arbitration. The venue of arbitration will be at Chennai.”

(c) It may be mentioned here that the grounds he has questioned the maintainability is not sustainable. Firstly, the RERA Act is enacted recently and the absence of any such provision of arbitration and conciliation would clearly show that it was not the intention of the law makers to apply any limitation clause to the Act. Further, reading of Section 88 of the RERA would also lead us to the same derivation. The Section 88 of the RERA Act lays down as follows: -

Section 88:-

“Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

(d) This would clearly show that the provision of this Act is only meant to provide additional relief to the aggrieved party and that even if Arbitration Act was applicable the relief provided by this Act would only be an additional relief not restricted by the Arbitration Act any way. The interpretation so derived gets further strengthened with the provisions laid down Section 18(2), which amply clarifies the intention of the law makers not to apply the arbitration clause to this relief. The Section 18 (2) reads as follows: -

Section 18(2):-

“(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection

shall not be barred by limitation provided under any law for the time being in force” and the claim for compensation under this sub-section shall not be barred provided under any law for the time being in force”

Hence, it can be clearly established that the grounds for non-maintainability taken up by the respondent are not sustainable and the complainant is maintainable before this forum. Thus the 1st point is answered accordingly.

8. Answer for the Point No.(ii):-

(a) The Complainant entered into the respondent project and was allotted flat no. 1201 in F Block with an area of 1070 sq.ft by the respondent vide his letter dated 09/07/2011 (Ex-A1). The agreement for sale was entered on 12/08/2011 Annexure-I of the agreement for sale enumerates the total consideration at Rs.28,59,394/- which includes Rs.77,315/- as the land cost and for construction the agreed consideration was Rs.27,82,079/-. The complainant has paid a sum of Rs.13,71,390/- which has not been disputed by the respondent in his counter who has clearly stated that the complainant has paid a sum of Rs.13,71,390/- out of the total sale consideration of Rs.28,59,394/-. The agreed date of delivery had been projected by the complainant as in June 2013 with a grace period of 4 months thereby projecting the final delivery by October 2013. The respondent has not contested the submission of the complainant regarding the delay in handing over has not been done even till now even after more than 7 years of the complainant entering into his project.

(b) The respondent has contested the claims of the complainant on grounds that he could not complete the construction as per the agreement due to various hurdles he was facing during the project development which he

submits were beyond his control and include Government regulations, delay regarding various approvals, non-availability of raw material, unexcepted exorbitant increase in raw materials prices, labour problem, cyclone turmoil, un-foreseen economic slowdown, specially IT industry and delay by the flat buyers in making payments. The reasons cited by the respondent with regard to condition other than delayed payment by flat buyers in making payment cannot be taken as force majeure conditions and would not provide any relief to the respondent. The reason regarding the flat buyers making delayed payments also merits no consideration as in the instant case the complainant has made payments as per schedule laid down in the Annexure-1 of the agreement for sale exhibited with payment request letter (Ex. A4) which shows stage-wise payments to have been made and default if any has not been followed up thereafter by the respondent. Hence, the reason as extended by the respondent for the delay in handing over merit no consideration.

(c) Hence, it clearly makes out a case where the respondent has failed to duly complete and hand over the unit to the complainant as per the agreements and leaves the respondent with no other choice but to refund the payments made by the complainant with interest as per the provisions of section 18(1) pf the RERA Act which lays down as follows:-

Section 18(1):-

“18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

In the instant case the complainant does not wish to continue with the respondent's project and has prayed for cancellation. In a situation such as this the complainant is entitled to refund of Rs.13,71,390/- with interest. Thus the 2nd point is answered accordingly.

9. Answer for the Point No.(iii):-

(a) Therefore, the complainant is entitled for refund of Rs.13,71,390/- from the respondent 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.

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

10. **In the result, the respondent is 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. (iii) in Para No. 9 of this order within 30 days from the issue of this order.
- (ii) 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.
- (iii) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale agreement, as the case may be, at the expense of the respondent.

Sd/-01.09.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER,
TNRERA, CHENNAI.

LIST OF WITNESSES

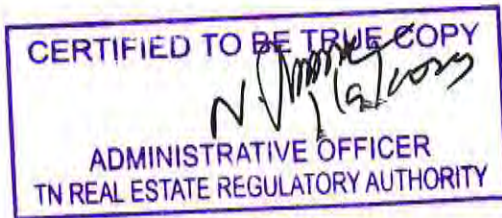
CW-1 --- Ravi Rajamanickam
RW-1 --- K.S. Gajendra Babu

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

| Ex.Nos | Date | Documents Name |
|-----------------|------------|------------------------|
| Ex.A1 | 09/07/2011 | Marg Booking Letter |
| Ex.A2 | 12/08/2011 | Agreement for Sale |
| Ex.A3 Series | --- | Payment Receipts |
| Ex.A4 | 20/12/2013 | Payment request letter |

LIST OF DOCUMENTS FILED BY THE RESPONDENT

| Ex.Nos | Date | Documents Name |
|--------|------------|----------------|
| Ex.B1 | 12/08/2011 | Sale Agreement |



Sd/-01.09.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI