

**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. 328 of 2021**

Rajesh Rajan

..... Complainant

**Vs.**

M/s. Pacifica (Chennai Project) Infrastructure Company Pvt Ltd.,  
Now known as Pacifica Builders Pvt Ltd.,  
Rep. by its Director, Rakesh Motilal Israni

..... Respondent

**Complainant** : Rep. by M/s. K. Gowtham Kumar, Advocates.

**Respondent** : Rep. by M/s. Stephen C Kumar, Advocates

**Heard on** : 14.10.2022

**Delivered on** : 31.01.2023

**ORDER**

The above complaint by the complainant is for seeking refund with interest from the respondent towards purchase of the apartment 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 had booked and was allotted Apartment No.A-1704 situated on the 17<sup>th</sup> floor in the building named "**Pride Towers**" in "**Pacifica Aurum**". The sale agreement was entered on 17.03.2014. The complainant avers that in furtherance of the same as sale deed was entered into 10.09.2014 and registered in Document No. 13095 of 2014 at Sub-Registrar Office, Thiruporur for a total sale consideration of Rs.11,31,000/-. A construction agreement between the two parties was also entered on the same day for a total construction cost of Rs.51,46,201/-.

**TRUE COPY**

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(b) The complainant avers to have paid a total sum of Rs.57,63,500.12/-. In addition the complainant is also paid Rs.7,00,191.06/- for various miscellaneous expenses including the payment at Sub-Registrar Office etc. The respondent had promised to deliver the apartment by 30.06.2015 with a grace period of 6 months thus projecting the final date of delivery to 30.12.2015. The agreement also included clause regarding payment of 1% of the amount received subject to maximum 3% in case of delay in delivery by the respondent.

(c) The complainant was also made to pay Rs.82,127/- for the late payment. Despite this there is no substantial progress shown by the respondent and delivering the apartment. The complainant is therefore demands refund of money with interest and compensation.

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

(a) The respondent admits to the basic facts regarding the allotment of apartment no. A-1704. He also agrees with the construction agreement and sale deed being executed on 10.09.2014 and also submits of completion in 24 months with the grace period of 6 months. The respondent avers that the project construction was already completed before the Act came into force but the podium was connected with the main building. Due to which the project was registered with TNRERA Vide No. TN/01/Building/0181/2019, dated 30.10.2019, wherein the date of completion was projected to 30.06.2022. The pandemic covid-19 caused further delay.

(b) The respondent further avers that he had made substantial investment in the project and at this stage at any direction to refund the amount would cause suffering to the project as would also open flood gates for litigation, thus the respondent avers that the complainant should wait till the completion of

the project. The respondent further submits that the claims made by the complainant are exorbitant and 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:

(i) 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 complainant and the respondent had entered into sale and construction agreement on 10.09.2014 (Ex. A1 & A3). The projected date of delivery was 30.06.2015 with a grace period of 6 months. Thus the delivery was projected to 30.12.2015. The respondent however submits that the delivery was to be in 24 months, with 6 months of grace period from the date of construction, which would project the delivery date to 10.03.2017. According to the agreement clause 6, the delivery would be on 30.12.2015 inclusive of 6 months of grace period. The complainant claims to have paid a sum of Rs.57,63,500.12/- (Ex. A7 series).

(b) The respondent submits that he had completed the project well in time but could not hand over due to the reason that the podium was connected to the main building. Further the project being ongoing project was registered with the TNRERA as submitted by the respondent. This would make it clear that even as on 30.10.2019. The respondent had not completed the project and

thus the handing over of the apartment had not been done by 30.12.2015 as agreed upon in clause 6 of construction agreement, dated 10.09.2014.

(c) Therefore there has been a delay in handing over the project entitling the complainant to claim refund due to the delayed delivery. Thus the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.57,63,500.12/- 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. The complainant is 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 pay the amount at 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/- 31.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESS**

CW-1 ---- Rajesh Rajan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	17.03.2014	Agreement for sale
Ex.A2	10.09.2014	Sale deed
Ex.A3	10.09.2014	Construction agreement
Ex.A4	---	E-mail correspondences
Ex.A5	---	Loan disbursement details from HDFC
Ex.A6	---	Acknowledgment of having paid the TDS
Ex.A7	---	Payment receipts

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**

Sd/- 31.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

