

**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. 334 of 2021**

U. Krishna Chaithanya

..... Complainant

Vs.

M/s. Real Value Promoters Pvt Ltd.,
Rep by its Managing Director,
V.S. Suresh

..... Respondent

Complainant : Rep by M/s. R. Dillikumar, Advocates.

Respondent : Ex-Parte

Heard on : 13.09.2022

Delivered on : 14.11.2022

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of the flat 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 complainant, in brief, as follows:

(a) The complainant was allotted a Flat No. 4B, Block-Q in the "***Padmalaya Project***", of the respondent and unregistered sale agreement entered on 21.05.2014 and the unregistered construction agreement was entered on 21.05.2014. The complainant had agreed to pay a sum of Rs.33,77,462/- as a consideration for construction of the allotment of the property. On 13.06.2014, the complainant and the respondent entered into a memorandum of understanding wherein the respondent had given an undertaking that the respondent will pay interest for the amount disbursed as per the stage by bank for a period of 30 months from the date of remitting the payment advice for the project or till the date of written

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intimation to the customer by the developer with regard to the project being ready to occupy whichever fell earlier.

(b) The complainant so far has paid a sum of Rs.12,57,223/-. On 05.05.2015, the complainant intimated his desire to withdraw from the project due to personal reasons and therefore wants to cancel the allotment and has requested for repayment of amount paid by him.

3. In spite of service of notice, the respondent remained absent and hence treated as ex-parte.

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

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

(i) Is the complainant entitled to refund of the amount paid by him when he has cancelled the booking of the apartment due to his personnel reason much before the due date of delivery agreed upon in the construction agreement?

(ii) What are the reliefs made out?

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

(a) On perusal of the construction agreement Ex.A2 the cost of construction was agreed at Rs.33,73,462/- which included besides construction of the apartment, miscellaneous expenditures for common utilities and amenities etc. The sale agreement was entered on 21.05.2014 Ex.A1. The complainant had made a payment of Rs.12,57,223/- of which the complainant submits that he has paid a sum of Rs.5,00,000/- from his own savings and a sum of Rs.7,57,223/- from the loan which he had obtained from SBI.

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(b) The construction agreement Ex.A2 provides for the completion of the flat within 36 months with a grace period of 6 months from the date of obtaining statutory approvals or from the date 14.01.2014 whichever is later. Presuming the period of 36 months with a grace period of 6 months to start from 14.01.2014 the date of completion should have been 14.07.2017 including the grace period. The complainant after paying a sum of Rs.12,57,223/- decided to cancel the booking and sought refund of the amount paid by him vide his letter dated 05.05.2015 (Ex.A7). The complainant even sent a legal notice to the respondent dated 02.08.2021 (Ex.A8). However, the respondent did not reply to any of the request of the complainant including the legal notice given by the complainant to the respondent.

(c) The reason for cancellation has been mentioned in the complaint as personnel reason. It would be clear that the complainant decided to withdraw from the project much before the agreed date of delivery. Therefore, the complainant cannot seek compensation under Section 31 and 71 as sought for, due to the complainant withdrawing from the project on his own will much before the agreed date of delivery. However, the complainant is within his right to seek refund of the amount paid by him and he ought to have been refunded it to him as per Clause 5 (i) (b) of the construction agreement which read as follows:-

"In the event of the customer prefers to cancel the allotment for the reason of inordinate delay in handing over possession of the schedule 'C' property from the date of its due, the developer shall refund the amount paid by the customer without interest, at the time when the customer gives consent in writing for cancellation of this agreement as well as the agreement for sale and the sale deed, if any,

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already registered in favour of the customer for the schedule 'B' any additional amount, comparing them to the market value of the property"

(d) The following facts emerges;

(i) That sale and construction agreement was entered on 21.05.2014 but remained unregistered.

(ii) The date of completion of the project was agreed to be as 36 months with a grace period of 6 months from the date of obtaining statutory approvals or from the date 14.01.2014 whichever fell later. The later date is 14.07.2017.

(iii) That while the construction agreement was entered on 21.05.2014, the complainant due to his personal reason, decided to withdraw from the project and sent a letter for the same dated 05.05.2015.

(iv) That Section 31 and 71 do not get attracted as the cancellation of the booking was sought much before the agreed date of delivery on 05.05.2015 as against the agreed delivery date on 14.07.2017. There is no other default attributed by the complainant to the respondent except that on demand of refund, due to his personal reason, he failed to refund the same.

(v) That the respondent did not react to the request of the complainant for cancellation (05.05.2015) as also to the legal notice 02.08.2021 and did not turn up during the adjudication at any stage.

(e) In this case, therefore in accordance with the construction agreement as per Para 5 (i) (b) referred above, the respondent shall refund the amount paid by the customer without interest, at the time when the customer gives consent in writing for cancellation of this agreement as well as the agreement for sale and the sale deed, if any, already registered in favour of the customer.

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17/11/22

(f) The complainant is therefore entitled to refund of the amount without interest on the date he cancelled and sought refund, however, the same had not been paid to him. He is thus, entitled for the refund of the amount paid by him. Thus, the point is answered accordingly.

7. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.12,57,223/- from the respondent.

(b) Since, the complainant has sought to cancel the allotment much before the date of delivery agreed upon as also before the RERA Act came into existence. As per the construction agreement, the complainant is entitled to refund of Rs.12,57,223/- on the date of cancellation viz. 05.05.2015. Since, the money has not paid on that day, the complainant is entitled to refund at the rate of current highest marginal cost of lending rate of interest of State Bank of India (SBI), only as the money remained with the respondent all this while without being refunded even as per the construction agreement.

(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.

In the result, the respondent is directed as follows:-

1. The respondent shall pay the amount at the interest rate, as per the findings in answer for Point No.(ii), Para No.7 of this order within 30 days of issue of this order.
2. The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
3. On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction

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agreement and sale deed, as the case may be, at the expense of the respondent

Sd/- 14.11.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- Krishna Chaithanya

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	21.05.2014	Sale agreement
Ex.A2	21.05.2014	Construction agreement
Ex.A3	21.05.2014	Declaration
Ex.A4	07.06.2014	Bank agreement letter
Ex.A5	13.06.2014	Quadripartite agreement
Ex.A6	---	Payment receipts
Ex.A7	05.05.2015	Request for cancellation
Ex.A8	02.08.2021	Legal notice

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 14.11.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

