

**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. 357 of 2021**

A. Palani Complainant

Vs.

M/s. Abi Constructions.,
Rep by its Proprietor, R.Giritharan Respondent

Complainant : Rep. by Mr. R. Karthikeyan, Advocate.

Respondent : Respondent remained absent.

Heard on : 13.04.2022
Delivered on : 20.04.2022

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of an apartment 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 has booked a house in Flat No. B5, 2nd Floor with the respondent in the project at Chengalpattu Taluk, Kayarambedu Village, Kancheepuram District. The complainant and the respondent entered into a construction agreement dated 16.02.2012. The sale deed was executed on 30.06.2011. The total sale consideration was Rs.10,00,000/- of which the complainant has paid Rs.6,00,000/- . While as per the agreement in Clause 3 the final amount of Rs.4,00,000/- is to be paid at the time of handing over of the flat.

(b) The assurance for handing over the house was 6 months from the date of construction agreement. Since, the house is not completed as committed and also still not completed. The complainant prays for refund of amount paid by him to the tune of Rs.6,00,000/- (Ex.A5) Page Nos. 46 to 48.

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

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) Whether the complainant is entitled for refund of the amount paid to the respondent with interest on the ground of failure on the part of the respondent to complete the construction and handover possession as per the terms and conditions of the agreement?

(ii) Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The complainant was examined as CW1. He says that he had booked a house in the project of the respondent for a total sale consideration of Rs.10,00,000/-. He had paid a sum of Rs.1,16,000/- for the UDS which was registered on 30.06.2011 (Ex.A5) at Chengalpattu Sub Registrar Office. In addition to this, the complainant has paid a sum of Rs.4,84,000/- thereafter.

(b) The complainant has paid payment as follows:-

| Date | Amount in Rs. |
|--------------|-------------------|
| 06.06.2011 | 1,00,000/- |
| 25.06.2011 | 4,00,000/- |
| 08.08.2011 | 1,00,000/- |
| TOTAL | 6,00,000/- |

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(c) The complainant has put up evidence for having paid Rs.6,00,000/-. The effort made by the complainant to get possession is exhibited in the letter to the promoter at Ex.A7.

(d) The complainant avers that till date the house did not handed over to him. The complainant paid a total sum of Rs.6,00,000/- which has to be refunded as the respondent failed to deliver the house as agreed up on in the construction agreement.

(e) Therefore, the complainant is entitled for refund of amount Rs.6,00,000/- . Thus, the point is answered accordingly.

7. Answer for Point No. (ii)

(a) In view of the answer for Point No.(i), the complainant is entitled for refund of amount paid to 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 and refunded 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 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 amounts 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.

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- (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 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/- 20.04.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1--- A. Palani

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

| Ex.Nos | Date | Documents Name |
|--------|------------|--|
| Ex.A1 | 30.06.2011 | Sale deed |
| Ex.A2 | 16.02.2012 | Construction agreement |
| Ex.A3 | --- | Letters |
| Ex.A4 | 12.03.2018 | Letter |
| Ex.A5 | --- | Payment receipts |
| Ex.A6 | 11.12.2019 | Letter to grievance officer |
| Ex.A7 | 30.01.2020 | Letter |
| Ex.A8 | 15.09.2014 | Certificate of encumbrance on property |
| Ex.A9 | 07.02.2020 | Order copy from TNRERA |

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 20.04.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI