

**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. 374 of 2021**

M/s. Phoenix Serene Spaces Private Limited  
(Formerly known as M/s. Phoenix Hodu Developers Pvt Ltd)  
Rep. by its Authorised signatory,  
Kondepu Rajasekhar

..... **Complainant**

**Vs.**

P.G. Aananth,  
S/o. Govindaraju Thangarasu

..... **Respondent**

**Complainant** : M/s. T. Sai Krishnan, Advocates.

**Respondent** : Ex-parte.

**Heard on** : 30.08.2022  
**Delivered on** : 23.11.2022

**ORDER**

The above complaint by the complainant is filed for seeking refund with interest from the respondent who has neither paid the consideration nor cancelled the UDS, 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 is a Real Estate promoter / Developer and had developed a project namely, "**The Village**," at Old Mahabalipuram Road, Chengalpattu District. The said project was registered under the Tamil Nadu Real Estate (Regulation and Development) Act, 2016 having registration No. TN/01/Building/0163/2017, dated 02.11.2017. The respondent bought a total of five residential row houses / attached villa during the month of July, 2020. The construction and sale deed for each of the five villas were entered separately on 05.08.2020. For one of the five villas bearing No.18

in Block No.2 of the project, the cost consideration was Rs.1,95,97,135/- of which Rs.30,00,000/- was towards the UDS and Rs.1,65,97,135/- towards the construction of the unit. The complainant had offered to the hand over the possession of the villa to the respondent on 31.10.2020 after receiving all the payments and the same date of handing over was projected for the other villas as well.

(b) Accordingly, the complainant had kept the villa ready for delivery to the respondent after receiving the completion certificate dated 13.07.2018 from the Executive Officer , Thiruporur Town Panchayat, Kancheepuram District.

(c) The UDS for Villa No. 18 in Block No.2 was registered on a payment of Rs.40,00,000/- by the respondent. This amount of Rs.40,00,000/- was utilised for UDS sale consideration of Rs.30,00,000/- and the remaining Rs.10,00,000/- was treated towards consideration for construction. The respondent had agreed to pay the remaining amount for the villa No. 18 for which he subsequently issued two cheques for an amount of Rs.61,29,635/- and Rs.94,67,500/-, but both these cheques were dishonoured when presented for collection for the reasons '**stop payment**'. Thereafter, despite repeated requests to pay for the villas, the respondent failed to do so including for the Villa No. 18 for which the UDS had been registered nor did he pay for the other 4 villas. Aggrieved the complainant requested the respondent to execute the cancellation of the sale deed which too was not done by the respondent.

(d) Subsequently, the complainant sent a legal notice dated 02.02.2021 following which the respondent came forward with an offer to cancel the sale deeds for the Villa No.18, while deciding to retain a total of two villas including the Villa No.18 and relinquishing the remaining three. The respondent has not even honoured this commitment of his and even at this



stage has neither cancelled the sale deed for Villa No. 18 nor has he paid up the remaining amount for Villa No. 18 or for any other villa. The complainant finds himself in a situation where the respondent has not paid the consideration and is holding the complainant to ransom for Villa No. 18. The complainant therefore pleads for either the payment of the balance sum of Rs.1,55,97,935/- with interest from the date of default i.e. 10.10.2020 for Villa No. 18 or to cancel the sale deed and the construction agreement and reconvey the UDS in the name of the complainant registered in Document No.6673 of 2020 and No.6672 of 2020 at the Office of SRO, Thiruporur. The complainant also seeks compensation and cost for legal expenses.

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

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

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

(i) Does the non-payment of the balance construction consideration or cancellation of the UDS for one villa entitle the complainant / Promoter to refund?

(ii) What are the reliefs made out?

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

(a) The complainant had registered the project with TNRERA with Registration No. TN/01/Building/0163/2017, dated 02.11.2017 (Ex. A4). The construction agreement between the complainant and the respondent was entered on 05.08.2020 (Ex.A7) and sale deed was also entered on 05.08.2020 (Ex. A8). The total consideration for construction was enumerated in para 3.1 of the construction agreement and was to the tune

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of Rs.1,59,35,155/-. The sale deed for the UDS was for a sum of Rs. 30,00,000/- (page 71 of the complainant typeset). The construction agreement laid down the stipulated date of delivery to 31.10.2020 with grace period of 6 months.

(b) The sale deed and construction agreement for all the 5 villas were entered on 05.08.2020. With regard to Villa No. 18 in Block 'B' the complainant had received a sum of Rs.40,00,000/- of which Rs.30,00,000/- was the consideration for the registration of the UDS and the remaining Rs.10,00,000/- remained as a part payment towards the construction. Subsequently, the respondent handed over two cheques to the complainant by way of D.D bearing no. 223216 and 223217 both dated 04.08.2020 towards payment entire consideration. The complainant had received completion certificate for the project vide order of the Executive Officer, Thiruporur Town Panchayat on 13.07.2018, and was ready to deliver much ahead of the promised date of delivery date of 31.10.2020 as in the construction agreement.

(c) The completion certificate had already been obtained on 13.07.2018 (Ex.A5). The respondent handed over two cheques dated 05.08.2020 (Ex. A9 and A10) for an amount of Rs.61,29,635/- and Rs. 94,67,500/- but both the cheques were returned as unpaid (Ex.A12 and Ex.A13) due to '**Stop payment**'.

(d) This would clearly show that the complainant had fulfilled the conditions laid down in the sale deed and construction agreement. He had got the UDS registered and also completed the villa much ahead of the committed date for which the respondent had made only part payment for Villa No. 18 in Block 'B', and had not paid for the other 4 villas.

(e) The respondent has not only failed to pay the balance amount but has also prevented the complainant to sell the villas to a new buyer by failing to



cancel the sale deed for which he had already registered the UDS. The complainant is therefore entitled to either payment of the remaining consideration with interest or cancellation of the sale deed as pleaded and deduction of interest for the unpaid amount from the date of which the amount was due to the complainant that is the date of delivery of the Villa No. 18 viz. 31.10.2020. Thus, the point is answered accordingly.

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

(a) The respondent is given a time of 30 days to either pay the balance amount for the villa where UDS is registered with interest from the date of due date of completion viz. 31.10.2020. In the event of failure on the part of the respondent to pay the balance amount with interest and cancel the UDS, the Authority shall proceed to cancel the sale deed in favor of the complainant under Rule 19(2) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The complainant shall be entitled to an interest payable at the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum from the date of last payment till the cancellation of the sale deed from the amount already received from the respondent viz Rs.40,00,000/-. The Balance amount if any shall be refunded back to the respondent.

(b) In view of the answer for Point No.(i) the complainant is entitled to either payment of Rs.1,55,97,135/- from the respondent or cancellation of the sale deed whereby UDS has been registered.

(c) 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%

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per annum, i.e., 9.30% p.a for the entire amount paid from the date of respective payment till repayment by the respondent.

(d) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed which may also be deducted from the amount held by the complainant from the respondent to the tune of Rs.40,00,000/-. 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. If the defaulting party, that is the respondent, fails to pay the balance due with interest and thereafter fails to come forward for cancellation of the UDS, the Authority shall do the same and reconvey the UDS in favour of the complainant.
4. 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/- 23.11.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

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**LIST OF WITNESS**

CW-1 --- Kondepu Rajasekhar

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	11.12.2007	Certificate of incorporation
Ex.A2	03.02.2016	Board resolution for change of company name
Ex.A3	15.03.2016	Certificate of change of company name
Ex.A4	02.11.2017	Registration certificate of project
Ex.A5	13.07.2018	Occupation/Completion certificate
Ex.A6	08.07.2019	Board resolution copy of authorized signatory
Ex.A7	05.08.2020	Construction agreement
Ex.A8	05.08.2020	Sale deed
Ex.A9	05.08.2020	Copy of the Cheque No. 000009
Ex.A10	05.08.2020	Copy of the Cheque No. 000014
Ex.A11	---	E-mails by respondent
Ex.A12	22.10.2020	Return memo for the Cheque No. 000009
Ex.A13	22.10.2020	Return memo for the Cheque No. 000014
Ex.A14	---	E-mails to respondent
Ex.A15	02.02.2021	Legal notice by complainant
Ex.A16	03.02.2021	Copy of return cover of legal notice
Ex.A17	---	E-mail communications

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**

Sd/- 23.11.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

