

**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. 427 of 2021**

**Mrs. Vijaya Bharathi.L** ..... **Complainant**

**Vs.**

**The Tamil Nadu Housing Board** ..... **Respondent**

**Complainant** : M/s. B. Deepak Narayanan, Advocates

**Respondent** : M.R. Sheik Abdul Rahim, Advocate

**Heard on : 30/03/2023**

**Delivered on : 12/04/2023**

**ORDER**

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

(a) The complainant was allotted Flat No.L-45/12 developed by the respondent. The said flat was allotted to the complainant provisionally vide Allotment Letter dated 28/07/2016. The cost of the flat was agreed at Rs.28,54,000/- as per the allotment letter. The complainant paid initial deposit of 10% of the total cost of Rs.28,54,000/- after which a Regular Allotment Order dated 09/09/2016 was issued to the complainant. The complainant thereafter paid the installment as laid down in the allotment

order. The agreed date of delivery of the completed flat was on or before 30/09/2018.

(b) The complainant avers that there was a huge delay in handing over the possession by the respondent. The respondent promised to compensate for the delay in delivery for possession of the Flat. The complainant further avers that instead of giving compensation, the complainant was slapped with a demand of interest for a sum of Rs.76,966/- by the respondent. The complainant had ultimately paid the said amount on 17/05/2019 and thereafter, got the possession on 21/05/2019. The complainant avers that the sale deed had not been executed even at this stage nor was the Certificate of completion obtained. The complainant submits that much after the handing over the possession of the Flat and the respondent issued a demand on 05/09/2019 to the complainant to pay an additional sum of Rs.56,533/- and gave no break up for the same.

(c) The complainant further avers that there were structural defects which the respondent has failed to rectify even after being requested for the same. The respondent demanded an additional sum of Rs.3,19,000/- vide their letter dated 05/11/2020 wherein they had arbitrarily fixed the consideration of the Flat at Rs.31,73,000/- instead of Rs.28,54,000/-. The additional cost that was demanded by the respondent changed the consideration from the agreed Rs.28,54,000/- to Rs.31,73,000/-. The complainant avers that despite repeated requests before the respondent there was no response from the respondent, even after the complainant issued a legal notice. Aggrieved, the complainant pleads for refund of

extra amount paid by him to the respondent. The complainant also pleads for interest for delay in delivery and litigation cost.

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

The Learned counsel for the respondent submits giving details of the various types of projects undertaken by the respondent in Tamil Nadu overall. With regard to the project in this CCP, the respondent avers that it was in the year 1976 that this file was approved for shops. However, due to lack of response, it was decided to change the land use to Residential purpose vide order dated 03/08/2015, whereafter it was decided to construct the 222 LIG Flats to meet the requirements of lower income group. The respondent further avers that the construction work was entrusted to a contractor on 23/05/2016 and accordingly, site was hand over to him on 09/06/2016. The Provisional Allotment to this self finance scheme was done on 28/07/2016 and the tentative cost of the flat was indicated at Rs.28,54,000/-. Subsequently, the cost of the Flat was finalized at Rs.31,73,000/- and the same was informed to the complainant on 05/11/2021. The respondent holds that the complainant still has to pay Rs.56,533/- towards the balance cost along with the belated interest, Maintenance charges, etc.,

(b) The respondent avers that the complainant has suppressed the fact that the last installment of Rs.2,86,500/- paid on 29/09/2017 was actually realized by this respondent on 11/07/2019 and hence this additional balance cost of Rs.56,533/- as belated interest. The respondent has submitted that this project could not fall in the category of ongoing project as application issuing completion certificate was submitted on 07/06/2017 and was obtained on 28/11/2018. The respondent further

avers that they informed the final cost of the Flat on 05/11/2020 which has not been paid till date and thus pleads to dismiss the petition.

4. An attempt to settle the matter amicably has failed.

5. The complainant has filed their evidence on affidavit with documents. The respondents filed the counter but remained absent all along thereafter despite opportunity being provided.

6. On the basis of rival contentions of the parties, the following points arise for determination:

(i) Is the complainant entitled to seek payment of money claimed by him due to delay in delivery and other reliefs sought by him?

(ii) What are the reliefs made out?

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

(a) The complainant had applied for allotment of 222 LIG Flats from the respondent project and was allotted Flat No. L-45/12 in 222 LIG (EX-A2) at a cost of Rs.28,54,000/-. The complainant was required to make payment of total of 10% of the total consideration amounting to Rs.2,85,400/- within 10 days of Provisional allotment order dated 28/07/2016.

(b) The complainant had accordingly paid the 10% whereafter the complainant had paid the required amount and regular allotment order was issued (EX-A3). The complainant had thereafter made the remaining payments (EX-A8 page 16 of the complainants type set). The complainant was requested to pay an additional amount of Rs.76,998/-

which he finally paid under protest (EX-A8 page 15 of the complainant type set). Another demand of Rs.56,333/- was put on the complainant on 05/09/2019. In all the complainant was directed and has paid an additional amount of Rs.3,19,000/- over and above the agreed amount in the allotment letter.

(c) The respondent pleads that the final cost of the apartment was fixed at Rs.31,73,000/- and hence the complainant has to pay the additional amount of Rs.3,19,000/-. This is the clear admittance to the complainants contention where in the allotment letter, the cost was indicated at Rs.28,54,000/-, while finally Rs.31,73,000/- is being charged, this includes an un-paid of Rs.56,533/-. This Rs.56,533/- has occurred, as submitted by the respondent, due to delayed realization of Rs.2,86,500/- after a period of more than 2 years. However, the respondent has not given any evidence to substantiate his claim of such delayed payment. Thus, it is clearly set out that Rs.3,19,000/- extra is being charged. However, of as submitted by the respondent Rs.56,533/- is yet to be paid. Thus in all the complainant has made an excess payment of **Rs.3,19,000 – Rs.56,533 = Rs.2,62,467/-**.

(d) The regular allotment letter was issued by the respondent on 09/09/2016 (EX-A3). The date of delivery was 30/09/2019 as submitted by the complainant. The complainant was finally handed over the flat on 21/05/2019 (EX-A5). The respondent has neither contended nor provided any evidence to deny the delayed delivery. Thus, there is a delay in delivery clearly made out from 30/09/2018 to 21/02/2019 entitling the complainant to interest for the delayed delivery.

(e) The contention of the respondent in his counter is that this project would not fall within the purview of the RERA Act. This contention is not sustainable. Section 3(1) provides as follows: -***“Provided that projects that are on-going on the date of commencing of this Act and for which completion certain has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of 3 months from the date of commence of this act”***. The respondent in his counter statement has submitted that he had received the completion certificate on 28/11/2018 which makes it a project which ought to register under section 3 of the RERA Act. This authority would take necessary action on this.

(f) The respondent is also silent on the complainant submission of structural defects in the building. The respondent is directed to make a survey and attend to the structural defects and rectify the same within 3 months of the issue of this order.

(g) The respondent has also failed to execute the sale deed despite payment of the full amount and has thus violated section 13 of the RERA Act for which penalty shall be imposed on the respondent for Rs.50,000 and thus the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund of additional amount paid by him to the tune of Rs.2,62,467/- besides interest for delay in delivery on the amount paid by him with effect from 30/09/2018 (The due date of delivery) to 21/05/2019 (The date of actual delivery). On the amount paid by him till paid over by this respondent to the complainant.

(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.

**9. In the result, the respondents are directed as follows:-**

- (i) The respondent shall pay the entire 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.

Sd/- 12/4/2023  
SUNIL KUMAR, I.P.S (Retd.)  
SINGLE MEMBER,  
TNRERA, CHENNAI.

*Sd/-*  
12/4/23

TRUE COPY

**LIST OF WITNESSES**

CW-1 --- Mrs. Vijaya Bharathi.L

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	15/07/2016	Application
Ex.A2	28/07/2016	Provisional Allotment
Ex.A3	09/09/2016	Allotment Order
Ex.A4	---	(Series) Receipts
Ex.A5	21/05/2019	Handover Report
Ex.A6	21/05/2019	Letter of Respondent dated 21/05/2019
Ex.A7	25/01/2019	Letter by Respondent dated 25/01/2019
Ex.A8	---	Statement of Payments
Ex.A9	20/02/2020	Representation by complainant
Ex.A10	29/06/2021	Legal Notice

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

NIL

Sd/- 12/4/2023.  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

