

**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. 433 of 2021**

K. Bharathi

..... Complainant

Vs.

M/s. Vista Estates
Rep. by the Managing Director,
Raghav Senthil

.... Respondent

Complainant : Rep. by M/s Rahul J Krishnan, Advocates.

Respondent : Ex-parte

Heard on : 05.08.2022

Delivered on : 27.12.2022

ORDER

The above complaint by the complainant seeking refund with interest from the respondent towards purchase of the 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 expressed an interest in purchasing a plot No. 31 in the respondent's project layout **JBM Dhakshin Nagar**, Perumanttununalur, Chennai, phase -1. The total sale consideration of the plot was Rs.12,10,000/-. The advance amount of Rs.20,000/- was transferred on 20.03.2020. The Respondent paid a total sum of Rs.1,60,000/- including the advance from 20.03.2020 to 13.08.2020. The complainant applied for a bank loan for which property documents were to be submitted.

(b) On request before the Respondent the property documents given to the complainant were for a plot in the phase-2 and the complainant further submits that on the documents it was repainted as Plot No.31 of phase-1 and

TRUE COPY

27/12/22

thus the property documents were not of the plot in which the complainant had expressed interest avers the complainant. Aggrieved, the complainant represented before the Respondent on 03.09.2020 for refund of the amount of Rs.1,60,000/-. The complainant further avers that the Respondent agreed to refund Rs.1,00,000/- within the period of 3 months and refused to refund the remaining Rs.60,000/- claiming it to be non-refundable.

(c) The complainant pleads that no sale agreement were entered and the booking form does not stipulate any such condition and thus pleads for refund with interest, compensation and legal cost.

3. In spite of service of notice, the respondent finally remained absent after being allowed once on an I.A and hence treated as ex-parte.

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

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

(i) Is there any misrepresentation on behalf of the Respondent where he made the complainant to believe a wrong plot as the complainant's warranting refund of money paid by the complainant to the Respondent?

(ii) What are the reliefs made out?

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

(a) The complainant entered and executed sale deed on 04.09.2006 (Ex.A1). The complainant has paid a sum of Rs.1,60,000/- in 3 instalments as Rs.20,000/- on 20.03.2020 (Ex.A10), Rs.40,000/- on 13.08.2020 (Ex. A9) and Rs.1,00,000/- on 06.06.2020 (Ex. A8). The complainant submits that she had applied for Plot No.31 in the phase -1 of the Respondent's project and the

same was shown to her by the Respondent. However, when she got the documents she was given documents of a plot in phase-2 which had been painted to show as if in phase-1. Based on this, the complainant seeks to withdraw from the project and seeks refund of amount paid by her.

(b) In the absence of any contradiction to the claim made by the Respondent it is held that the Respondent violated the Section 7 B (d) of the RERA Act where the promoter indulged, in fraudulent practices. Hence, it is held that the Respondent had misrepresented the documents when he had shown a plot in phase-1 but finally gave documents for a plot in phase-2 but falsely making the complainant to believe it to be phase-1 by repainting on the document. Thus, the respondent has failed to deliver the plot of land which had promised and on the date assured entitling the complainant to get refund of the amount paid by her.

(c) It is Suo-Moto observed that the project that the complainant had come to know of the promotion of the plot vide telecommunication on 18.03.2020 and had paid the advance of Rs.20,000/- on 20.03.2020. The RERA Act had already been notified by this time the respondent had not non-registered the project. This Respondent's project has more than 8 plots as it is seen from Ex. A4 and the project size is also more the 500 m². A penalty of Rs.1,00,000/- is imposed on the Respondent for the non-registration of the project and proceeds with sale. 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 for a sum of Rs.1,60,000/- 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.

(c) Considering the facts and circumstances of the case, a sum of Rs.20,000/- 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 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.

(ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

(iii) The respondent is prevented from creating any 3rd party encumbrance and a charge shall be on the above mentioned property till repayment of the claim as per this order. The Registry of the Authority shall take action to ensure compliance with 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.

(v) The respondent shall pay a sum of Rs.1,00,000/- as penalty under Section 59 of the RERA Act for non-registration of the project and proceeding with the sales. The penalty should be paid within 30 days of issue of this order. The respondent is also

directed to register the project forthwith and submit form 'A' within 30 days of issue of this order.

Sd/- 27.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- K. Bharathi

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	04.09.2006	Sale Deed Doc.No.10899/2006
Ex.A2	24.12.2004	General Power of Attorney
Ex.A3	12.04.1982	Sale deed
Ex.A4	---	JBM Dakshin Nagar Layout Plan for Phase-I
Ex.A5	---	Encumbrance Certificate
Ex.A6	---	Layout and pictures of Phase-II
Ex.A7	---	JBM Dakshin Nagar Brochure
Ex.A8	06.06.2020	Receipt of transaction of Rs.1,00,000/- from Vista Estates
Ex.A9	13.08.2020	Receipt of transaction of Rs.40,000/- from Vista Estates
Ex.A10	---	Screenshot of transaction of Rs.20,000/-
Ex.A11	---	Chitta
Ex.A12	---	Geographical mapping of Plot No.31
Ex.A13	---	Conditions for Land Portion

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Copy to:
The Additional Director,
(TNRERA)

Sd/- 27.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

