

**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. 51 of 2021**

J. Vijayakumar,

..... **Complainant**

**Vs.**

1. M/s. Ashok Nandavanam Properties Pvt. Limited,  
Represented by its Managing Director.
2. M/s. Sivasankar Real Assets Pvt. Ltd.,  
Represented by its Managing Director

..... **Respondents**

**Complainant** : M/s. Rahul J. Krishnan, Advocates

**Respondents -1&2** : M/s. G.Peranban, Advocates

**Heard on** : 14.03.2023  
**Delivered on** : 10.05.2023

**ORDER**

The above complaint by the complainant seeking refund with interest from the respondents towards purchase of the apartments with interest, and costs is filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

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**2. Averments of the complainant, in brief, as follows:-**

(a) The complainant applied for allotment of plots in the respondent's project and was allotted Plot Nos. 210 and 211. There was no sale agreement entered and the only document which the complainant signed was the booking form.

(b) The complainant despite there being no sale agreement paid Rs.7,00,000/- in 3 instalments as follows;

- |                  |                  |
|------------------|------------------|
| (i) 24.01.2020   | - Rs.1,00,000/-  |
| (ii) 03.02.2020  | - Rs.1,00,000/-  |
| (iii) 20.02.2020 | - Rs. 5,00,000/- |

Thus the complainant has paid Rs. 7,00,000/- out of a total consideration of Rs.12,92,000/-. The applicant insisted to execute the sale agreement after the payment of Rs.7,00,000/-. However at this time the complainant came to know that the 2<sup>nd</sup> respondent with whom the complainant was interacting all along only had a General Power of Attorney dated 18.11.2019 in his favour.

(c) Since the 2<sup>nd</sup> respondent failed to execute the sale deed, the complainant cancelled the booking vide his email dated 24.02.2020 and sought for the refund of the full amount of Rs.7,00,000/- paid by him which the respondent was buying time to pay. This was followed by repeated efforts by the complainant to claim the refund, but all in vain. The complainant further denies that the contention of the respondent that he was seeking the refund on grounds of vastu was not correct. The complainant avers that the project is RERA registered vide No. TN/02/Layout/0096/2018, dated 09.08.2018. Aggrieved, the complainant seeks refund of an amount of Rs.7,00,000/- paid by him with interest besides seeking compensation and cost of legal expenses.

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**3. Counter averments of the respondent 1, in brief, as follows:**

(a) The 1<sup>st</sup> and the 2<sup>nd</sup> respondent filed a common counter wherein the learned counsel for the respondent rejected all the contentions made by the complainant. The respondent begins by holding that the complaint is not maintainable as it does not show any disproportionate gain or unfair advantage.

(b) The respondent concurs with the complainant on basic facts such as booking of plot nos. 210 and 211 on 24.01.2020 to the complainant. The respondent also concedes to have received Rs.7,00,000/- by 20.02.2020. The respondent however submits that thereafter the complainant requested for change of plots for vastu reasons, which too was accepted by the respondent. However, thereafter the complainant hurled unfounded allegations accusing the respondent as if he was refusing to sign the sale deed. The respondent further avers that they were performing their part of contract with all the other allottees in the said project.

(c) The respondent submits that the complainant had perused all the land documents before the booking the plot. The respondent avers that he was willing to refund the advance amount made by the complainant. However the respondent blames the complainant to press for refund of the money while he was simultaneously negotiating with the respondent's representation for sale price of other available plots. The respondent avers that they were taken aback when they received legal notice seeking refund with interest. The respondent avers that he was willing to refund the amount and had even sent an email on 17.06.2021 requesting the complainant to collect the advance amount and thus prays to dismiss the complaint.

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(4) (i) Is the complainant is entitled to the refund of money as prayed by him?

(ii) What are the reliefs made out?

**(5) Answer for Point No (i):-**

a) The complainant was allotted plot nos. 210 and 211 in the respondent's project by name "Metrovaram" phase-1 booked on 24.01.2020 (Ex. A1). The complainant has paid Rs.7,00,000/- out of the total consideration of Rs.12,92,000/- as follows;

- (i) 24.01.2020 - Rs.1,00,000/- (Ex. A3)
- (ii) 03.02.2020 - Rs.1,00,000/- (Ex. A6 series)
- (iii) 20.02.2020 - Rs.5,00,000/- (Ex. A10 series)

After making the last payments of Rs.5,00,000/- on 22.02.2020, on 24.02.2020, the complainant has requested the respondent to refund the money on grounds that the General Power of Attorney holder was not signing the sale deed (Ex. A11, A12 series and A13 series). Having decided to come out of the project, the complainant has thereafter made several requests to seek refund as would be visible for several emails and whats apps written by the complainant to the respondent (Ex. A12 & A13 series).

(b) Since the complainant was not favoured with refund he had sent a legal notice dated 11.09.2020. The respondent had denied all allegations pertaining to the sale deed and has contended that the complaint was desiring the change due to vastu reasons. The respondent has committed violation of the RERA Act when he has collected Rs.7,00,000/- out of the total consideration of Rs.12,92,000/-, thus has collected more than 10% of the consideration without

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executing the sale agreement. This amounts to violation of Section 13 of the RERA Act. Section 13 of RERA Act as follows;

***“(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.***

***(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.***

(c) A penalty of Rs.50,000/- is imposed on the respondent under section 61 of the RERA Act. The complainant, has argued that he was not satisfied with all legal documents pertaining to the plots allotted to him and thus wanted to withdraw from the respondent’s project. He has however not been able to give any evidence to show any defect in title or any legal complications with the power of attorney (Ex. A4).

(d) In fact no such fear would emanate from the emails of the complainant addressed to the respondent dated 23.07.2020 (Ex.A12 series). The project has even passed the scrutiny of RERA being registered in No. TN/02/Layout/0096/2018, dated 09.08.2018. The complainant has not been able to give any evidence of disputed title in any of the evidence adduced by him.



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(e) It could thus be arrived at that the cancellation of the said plots could not be attributed to the respondent's commission or omission. Hence the complainant could only be entitled to the refund of Rs.7,00,000/- without interest from the respondent to which the respondents have already consented and thus the 1<sup>st</sup> question is answered.

**(6) Answer for the point no.(ii):**

No relief is made out except the refund of the principal amount paid by the complainant of Rs.7,00,000/- without interest.

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

- (i) A penalty of Rs.50,000/- is imposed to the respondent under section 61 of the RERA Act as enumerated in para 5(c) above within 30 days of issue of this order.
- (ii) The respondent shall refund the advance amount paid by the complainant Rs.7,00,000/- with 30 days of the issue of this order.
- (iii) The booking form shall be cancelled on refund of the money as ordered.
- (iv) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

*Sd/- 10/5/23*  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

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**List of witness and documents by the complainant**

CW-1 --- Mr.J.Vijayakumar  
RW1&RW2 --- Mr.A.Sivasankar

Ex.Nos	Date	Documents Name
Ex.A1	24.01.2020	Booking form
Ex.A2	----	Encumbrance Certificate
Ex.A3	----	Receipts
Ex.A4	18.11.2019	Power of Attorney
Ex.A5	10.07.2018	Patta
Ex.A6	25.05.2018	Gift Deed
Ex.A7	----	Layout
Ex.A8	----	Planning permit
Ex.A9	09.08.2018	RERA Certificate
Ex.A10	----	Account transfers to respondents
Ex.A11	Feb/ 2020	Draft Sale deed
Ex.A12	----	E-mail
Ex.A13	----	Whatsapp conversation

**List of witness and documents by the Respondents**

Ex.Nos	Date	Documents Name
Ex.B 1	28.09.2020	Reply notice
Ex.B2	16.06.2021	Letter

SUNIL KUMAR, I.P.S (Retd.)  
SINGLE MEMBER,  
TNRERA, CHENNAI.

