

**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. 52 of 2021**

(i) Padmini.V  
(ii) Venkatesh.K ..... Complainants

Vs

M/s. VGN Developers Private Ltd.,  
Rep by its Director, ..... Respondent

**Complainants** : Rep by M/s. P. Giridharan, Advocates.

**Respondent** : Rep by M/s. K. Harishankar, Advocates.

**Heard on : 29.03.2022**  
**Delivered on : 30.03.2022**

**ORDER**

The above complaint by the complainants 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 complainants, in brief, as follows:**

(a) The complainants have booked a flat with the respondent in their project namely, "VGN NOTTING Hill". The allotment letter on 21.07.2017 which indicates the total cost of the flat of Rs.2,61,86,702/-. The sale agreement was entered on 29.08.2016 and on the same day the construction agreement was also executed. The complainant has made payments as follows:-

S.No	Date	Amount (in Rs)
1	01.07.2016	2,00,000.00/-
2	30.07.2016	24,18,790.00/-
3	29.08.2016	3,83,100 (Registration, stamp fees, registrar office exp.)
4	16.09.2016	52,37,341.00/- (40,00,000/- + 12,37,341/-)

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5	05.10.2016	26,18,670.20/-
6	25.04.2017	26,18,670.20/- (13,09,335.10 + 13,09,335.10)
7	23.05.2017	26,18,670.20/-
8	28.06.2017	26,18,670.20/- (20,00,000 + 6,18,670.20)
9	06.03.2018	8,39,600.00/- (Registration of flat, stamp fees, office exp)
10	26.03.2018	14,06,669.32/- (8,06,669.32/- + 6,00,000/-)
11	28.05.2018	14,06,669.32/- (7,81,313 + 6,25,356.32)
12	31.07.2018	14,06,669.32/- (10,00,000 + 4,06,669.32)
13	18.09.2018	14,06,669.32/- (6,06, 669.32 + 8,00,000)
14	25.12.2019	14,06,669.32/-
	<b>Total</b>	<b>2,65,86,858.40/-</b>

The schedule B flat was to be completed by the end of 26 months from the date of construction agreement which is on 29.08.2016 with a grace period of 6 months which would make final handing over date i.e. 29.04.2019.

(b) The complainants seeks refund of amount paid by them for a sum of Rs.2,65,86,858.40 @ 18% p.a interest beside compensation and the legal expenses.

(c) The respondent has not filed any counter despite opportunity been given to him.

(d) The complainants were allotted the unit (Ex.A2). The complainants relied on his evidence marked as Ex.A4 wherein the agreement was for completing the project within 26 months from the date of construction agreement dated 29.08.2016 with a grace period of 6 months. The final date of handing over works out to 29.04.2019. The complainants were yet to pay 5% of the total amount.

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

- (i) Whether the house was handed over as per the agreement and on the date committed?
- (ii) The demand for refund is justified?

4. **Answer for Point No.(i)**

(a) The schedule date of delivery by the end of 26 months from the date of construction agreement which is on 29.08.2016 with a grace period of 6 months i.e. 29.04.2019 as the final date of delivery (Ex.A4). The flat has not been handed over to the complainants yet despite having paid the due 95% of total amount. The respondent relied on Para 11 (a) Ex.A4. The respondent argues that the proposed handing over date is subject to further extensions as may be required by the developer as follows:

*(b) If any to catch up the delays due to execution of any possible extra work required by the allottees in the said residential unit, over and above the standard specifications mentioned in Annexure-III*

*(c) If any delay in completion due to reasons beyond the control of the DEVELOPER like market conditions unexpected demand/non-availability of civil, electrical and plumbing materials and other force majeure conditions including but not limited to rain, flood, earthquake or by reason of war, civil commotion, riots, acts of God, and or due to any delay on the part of the statutory authorities to give revised approvals, service connections like electricity, sewerage, water and statutory approvals, orders from Court and Government Departments or any Authority, revocation of permit/s by any authority, any other unforeseen conditions, statutory interventions consequently causing delay in completion of construction, then the DEVELOPER is entitled for suitable extension of time ("Extensions").*

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(d) The ALLOTTEES agrees that any such extensions availed by the DEVELOPER shall not be considered as delay in completion/handling over of the said residential unit. The 'Proposed Handing Over Date' mentioned herein is only with respect to completion of the respective residential unit of the ALLOTTEES and is not applicable for completion of the entire project and other common amenities, facilities inside the premises. The DEVELOPER on receipt of all payments due from the ALLOTTEES and on completion of the respective residential unit shall inform the ALLOTTEES its readiness to handover the possession of the said residential unit ("Hand over date"). In the event of failure to take possession of the said residential unit by the ALLOTTEES, the DEVELOPER shall not be held responsible for any delay in handing over and for any theft, damage of materials, installations inside the said residential unit.

(e) In the event of any construction delay in handing over of the residential unit to the ALLOTTEES beyond the 'proposed Handing Over Date' subject to any extensions availed, the DEVELOPER agrees to pay delay charges at the rate of 18% per annum on the construction cost of the pending construction stage ('delay charges'). This delay charges payable by the DEVELOPER will not calculated from the proposed latest handing over date (subject of the extensions, if any) till the date of intimation of readiness to hand over possession. The said delay charges becomes applicable and payable by the DEVELOPER subject to the condition that only if the ALLOTTEES have made all stage wise payments on time as per ANNEXURE -II and within the demand notice period and not in default/breach of any terms and conditions of this agreement entered into between the DEVELOPER and the ALLOTTEES. The ALLOTTEES hereby agrees that they will not be eligible to claim the

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*said delay charges in the event of any payment delayed by the ALLOTTEES. The ALLOTTEES agrees to waive their right to claim the delay charges from the DEVELOPER once the possession of the Schedule – 'B' property is taken by the ALLOTTEES and that there would be no further claim by the ALLOTTEES once the possession letter is signed by the ALLOTTEES.*

*(f) The payment of delay charges is restricted to only for the delay in handing over of the respective residential unit of the ALLOTTEES and is not applicable for any delay caused in respect to the completion of construction of common facilities and amenities and service connections inside the project premises.*

(g) The contractual agreement is one sided and cannot be allowed to come to the rescue of the respondent. The respondent while arguing, the case blames scarcity of sand, rising of steel, pandemic as the reasons for delay. The date of handing over is 29.04.2019 which falls much before the starting of pandemic and cannot be accepted as reason for the delay. The respondent has no point of time in the arguments disputed the delay in handing over the project. The question here by answered accordingly as there was a delay in handing over the flat.

**5. Answer for Point No. (ii)**

(a) In view of the answer for Point No.(i), the complainants are entitled for refund of Rs.2,65,86,858.40/- 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 complainants are 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. Thus, the point is answered accordingly.

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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 amounts at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 5 of this order within 30 days of issue of this order.
- (ii) The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
- (iii) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainants 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 complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

**Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH**

**CCP.No. 52/2021**

**LIST OF WITNESS**

CW-1--- P. Padmini

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	26.05.2016	Planning permit issued by CMDA
Ex.A2	07.07.2016	Allotment letter
Ex.A3	29.08.2016	Sale agreement
Ex.A4	29.08.2016	Construction agreement

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Ex.A5	10.09.2016	Project advertisement in Hindu newspaper
Ex.A6	06.03.2018	Sale deed
Ex.A7	07.07.2016	Invoices/demand letter issued by respondent
Ex.A8	---	Proof of payments
Ex.A9	---	E-mail communications
Ex.A10	---	Project details in TNRERA website
Ex.A11	31.12.2019 to 30.09.2020	Quarterly progress report by respondent
Ex.A12	---	Computation of out-standing dues by respondent
Ex.A13	09.11.2020	Demand notice and tracking receipt sent by the counsel for complainants
Ex.A14	20.11.2020	Reply sent by the respondent counsel.

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**

Sd/- 30.03.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH  
TNRERA, CHENNAI

