

**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. 57 of 2021**

(i) W. Shajahan
(ii) S. Parsana Parveen
..... **Complainants**
Vs.

M/s. VGN Developers Pvt Ltd.,
Rep. by its Authorized Signatories,
S. Balaji & T.K. Balaji
..... **Respondent**

Complainants : Rep by M/s. Sarvabhauman Associates, Advocates.

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

Heard on : 18.10.2022

Delivered on : 13.02.2023

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of a flat 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 were allotted a dwelling Unit No. 9B, 9th Floor in the project, namely, "**VGN Fairmont**", of the respondent's project situated at Alandur Village, Guindy, Chennai. The sale and the construction agreement were executed on 12.02.2016. The sale agreement stipulated that the UDS shall be registered on fulfillment of payment terms as agreed between both the parties.

(b) The complainants as on 05.07.2019 paid a sum of Rs.88,39,702/-. The agreement projected the delivery to be 36 months with a grace period of 6

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months from the date of agreement projecting the date to 11.08.2019. The complainants aver on his visit to the site in July 2019 after making the last payment he found that the project was not nearing any completion. Hence, the complainants stopped making further payments and applied to withdraw from the project and sought refund.

(c) No sale deed has been executed despite the respondent pressing for the same but the complainants does not wish to do so seeing the inordinate delay and seeks to withdraw from the project and get refund with interest and compensation.

3. Counter averments of the Respondent, in brief, as follows:-

(a) The respondent agrees to the allotment of Unit No. 9B in 9th Floor in Block 'B' of the respondent's project by name, "**VGN Fairmont**", in February 2016. The sale and the construction agreement were executed on 12.02.2016 with the projected delivery in 36 months with a grace period of 6 months from the date of agreement and submit that the delivery should have been made over in August 2019.

(b) The respondent submits that the project had commenced in the year 2015 after obtaining all the required approval. However, the Central Bureau of Investigation (CBI) registered the FIR against the respondent's company subsequently the Enforcement Directorate (ED) attached the said property in January 2018. This stopped the access of the respondent to the project site hence all the construction work were stopped.

(c) The respondent avers that this was shared with the complainants. The respondent further avers that after an extensive and strenuous legal battle followed and finally the Hon'ble Tribunal, New Delhi for the Prevention of Money Laundering Act (PMLA) lifted the ED attachment on 14.02.2019 and subsequently, the CBI also filed a closure report. The respondent goes on to question the maintainability of the complaint on grounds of Law as also

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on facts. The respondent avers that it was a settled law that if an act is unable to be performed, on the ground of impossibility of performance of contract due to the supervening events over which the parties had no control which is entitled for relief and avers that they are not to be held liable.

(d) The respondent accordingly submits that such impossible situation had happened due ED attachment. He goes on to submit that he had taken all efforts to come out of the situation and finally got the ED attachment lifted on 14.02.2019. Thus, the property was attached for 13 months wherein the respondent was unable to construct or carry on any activity during the said period. Thus, entitling him to extension of time and cites Clause 11(c) of the construction agreement to substantiate his claim.

(e) Subsequent to the lifting of the attachment on 14.02.2019 all works are started again however due to the Covid-19 pandemic and the lockdown, the work further got affected. The respondent submits that post Covid-19 pandemic, the work is going on in full swing and had likely to be completed soon. The respondent question the complainants for having failed to initiate the cancellation process right after the expiration of the date on which the respondent to hand over the unit as per the construction agreement and cannot at this stage come to take that relief. The respondent had spent huge amount of money in buying and constructing the project and any withdrawal would cause a great prejudice to the respondent and thus prays for dismissing the complaint.

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

5. Both the parties have filed their respective evidence on affidavit with documents.

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

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(i) There is a delay in delivery of the apartment and whether the attachment of the property will provide relief to the respondent from his liabilities?

(ii) What are the reliefs made out?

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

(a) The complainants and the respondent had entered into an agreement on 12.02.2016. The complainants have paid a major portion of the consideration to the tune of Rs.88,39,702/-. The date of delivery promised was 36 months plus 6 months of grace period making the total period of delivery to 42 months from the date of signing the agreement. The delivery accordingly gets projected to 11.08.2019.

(b) The respondent had not been able to give delivery on the date promised. The respondent has tried to take the plea that the situation had gone beyond his control as FIR was registered against him by the CBI in December 2016 and subsequently, the project property was attached by the ED in the month of January 2018. So, it is agreed, as also admitted by the respondent that he did not have access to the site for 13 months due to the ED attachment of the project site and this was a situation where he had no control.

(c) The respondent submits that due to the attachment, he had no access to the project property due to which he could not carry on any construction work and thus the delay. The date of handing over is 11.08.2019 giving a 42 months period from the date of signing of the agreement. The number of months the property remained attached by the ED till January 2018 is 13 months.

(d) The property remained attached from January 2018, subsequently the respondent were able to get the attachment of the property from the ED lifted in the month of 14.02.2019, the CBI too filed a closure report and

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thus it would be clear that from January 2018 to February 2019, the property was attached wherein the respondent had no access to the property and thus it was for a reason beyond his control that he could not carry out the construction work and hence he cannot be held liable for the delay caused in the period which is 13 months. Thus from the date of booking the unit the respondent would have to be given an additional of 13 months for delivering the unit to the complainants. Thus, to the agreed period of 36 months plus 6 months another 13 months would be added making the total period for delivery to be 55 months from the date of signing the agreement i.e. 12.09.2020.

(e) Thus, the date of delivery would shift to 12.09.2020. The unit has not been handed over to the complainants by the date that works out to 55 months (inclusive of 13 months of ED attachment) when the property was attached. Since, the respondent failed to deliver the unit by September 2020, there is a delay in delivery which is made out entitling the complainants to seek refund of Rs.88,39,702/- the amount with interest as per Section 18 (1) (b) of the RERA Act. Thus, the point is answered accordingly.

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

The complainants are entitled to get Rs.88,39,702/- from the respondent with interest @ 7.30% which is the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% i.e., 9.30% per annum for the amounts paid from the date of respective payments till repayment by the respondent. The respondent shall not pay interest for the period of 13 months when the project site was attached by the ED. The period of delivery shall be considered to be 36 months plus 6 months of grace period as originally agreed in the construction agreement dated 12.02.2016 and a period of 13 months shall be added for which time the project site was

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attached allowing the delivery period to be 55 months (36 months plus 6 months plus 13 months = 55 months). The complainants are 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 an amounts at the interest rate, as per the findings in answer for Point No.(ii), Para No.8 of this order within 30 days of issue of this order.
2. The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
3. The charge of the aforesaid amount as encumbrance, if any, 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.
4. 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.

Sd/- 13.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- W. Shajahan
RW-1 --- A. Rangappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	12.02.2016	Agreement for sale
Ex.A2	12.02.2016	Construction agreement
Ex.A3	---	Payment schedule

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Ex.A4	---	Statement of accounts
Ex.A5	13.01.2016	Particulars of loan availed

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	28.12.2016	FIR filed by CBI
Ex.B2	13.02.2018	Provisional attachment order
Ex.B3	14.02.2019	Order passed by PMLA Tribunal
Ex.B4	---	CBI final report

Sd/- 13.02.2023
 SUNIL KUMAR, I.P.S (Retd)
 SINGLE MEMBER
 TNRERA, CHENNAI

