

**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. 65 of 2021**

N. Krishnan,

..... **Complainant**

**Vs.**

M/s. Pacifica (Chennai Project) Infrastructure Pvt. Ltd.,  
Rep. by its Authorized signatory,  
Vijayaraghavan

..... **Respondents**

**Complainant** : Rep by M/s.Raj & Raj Associates, Advocates.

**Respondent** : Rep by M/s.Stephen C. Kumar, Advocates.

**Heard on** : 04.11.2022

**Delivered on** : 09.03.2023

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of an villa 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 had booked and was allotted an apartment A-601 in the building name 'Pride Towers' lying in the township by name Pacifica Aurum developed by the respondent. The construction and sale agreement were both entered on 30.04.2013, while the UDS was registered on 07.08.2014 vide deed of sale document no. 11267/2014, dated 07.08.2014 for a sale consideration of Rs.10,55,600/-.

(b) The construction agreement stipulates the construction cost to Rs.47,49,925/-. The complainant has so far paid a total sum of Rs.51,72,372/- as the construction cost. The agreed date of delivery was fixed by 30.06.2015 with

**TRUE COPY**

A.12/23

a grace period of 6 months projecting the final delivery to be by 31.12.2015. Though the construction was started, it still remains to be completed. Following pressure, the respondent registered the project with the TNRERA in registration no. TN/01/buildings/0181/2019, dated 30.10.2019. The respondent as per the registration with the TNRERA had fixed the delivery to be by 31.10.2020.

(c) Aggrieved at not getting delivery of his apartment, the complainant pleads for refund of Rs.51,72,372/- paid by him to the respondent with interest.

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

(a) The respondent submits to the correctness of the basic facts stated by the complainant regarding allotment of the apartment A-601 to the complainant. However, the respondent refutes the claim of the complainant with regards to the handing over possession to the complainant and submits that he made it ready within the time. The respondent further submits that the complainant had already moved the National Consumer Redressal Forum for the same relief. The complainant is therefore barred from moving the Hon'ble Authority without seeking permission from the National Consumer Redressal Forum or else without withdrawing the complainant lying before the National Consumer Redressal Forum. The respondent blames the complainant of trying to conduct parallel trail before the two Forums and hence the complaint is not maintainable.

(b) The respondent goes on to avers that the project construction was already completed when the RERA Act came into force. The project remains incomplete only for want of connection of the podium with the main building. The respondent had registered the project with the TNRERA, where the completion was projected to 30.10.2021. The project also got delayed due to covid-19 pandemic. The respondent pleads that any direction to refund the money at this

TRUE COPY

21/12/23

stage will open the gate for litigation. The respondent also submits that the interest claimed by the complainant is exorbitant.

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

5. The respondent has filed his counter and evidence there for on affidavit with documents. However, he remains absent for argument despite opportunity given to him.

6. On the basis of rival contention of the parties the following points arises for determination.

(i) Whether there has been delay in delivery in handing over the apartment warranting refund with interest as claimed by the complainant?

(ii) What are the reliefs made out?

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

(a) The sale agreement was entered between the two parties 30.04.2013. The UDS was registered on 07.08.2014 for a sale consideration of Rs.10,55,600/-. The construction agreement was entered on 30.04.2013 (Ex - A2) which also gives the details of allotment of A601, the Pride Towers lying in the Pacifica Aurum. The construction agreement lays down consideration for construction to be Rs.38,35,461.50/-. In addition it laid down cost over and above for securing EB connection, Water connection, Sewerage connection, Property tax etc.

(b) The construction agreement as fixed lays down the handing over of the completed apartment by 30.06.2015 and allows a grace period of 6 months taking the delivery to on or before 31.12.2015. The complainant has paid Rs.51,72,372/- (Ex - A3 series). The project was subsequently not completed as on May, 2017 and subsequently the respondent was forced to register the same with the TNRERA on 08.02.2019. The respondent questions the maintainability

TRUE COPY

12/12/23

of the complaint as the matter is already pending before the National Consumer Redressal Forum by the complainant for the same relief.

(c) The complainant has declared in the complaint itself and has made a mentioned that he had already approached the National Consumer Redressal Forum before the establishment of RERA and has also undertaken to withdraw the complainant and proceed only with the complaint made before the Hon'ble TNRERA. The question mark put by the respondent on the maintainability is therefore not sustainable as complainant has already come out with his intention to proceed only with the Hon'ble Authority.

(d) Moreover, Section 88 of the RERA Act clearly lays down that the provisions of the RERA Act shall be in addition to not in derogation of the provision of any other law for time being in force. Section 88 of RERA as follows;

***“The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force”***

Hence the complaint filed by the complainant is maintainable.

(e) The agreed date of delivery was 31.12.2015 including the grace period of 6 months. The respondent by his own admission has declared the date of delivery to be by 31.10.2020 while registering the incomplete project with the TNRERA. This would clearly amount to admitting that the apartment was not ready on the agreed date i.e.31.12.2015. The complainant is therefore entitling to his claim of Rs. 51,72,372/- with interest. Thus the point is determined accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.51,72,372/-.

TRUE COPY

A-12/23

(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.

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

(i) The respondent shall pay the amount at interest rate and cost as per the findings in answer for Point No. (b) 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.

(iii) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant 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 complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondents.

Sd-09.03.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

TRUE COPY

9/3/23

**LIST OF WITNESSES**

CW-1 --- N. Krishnan

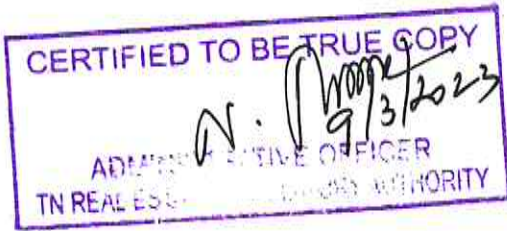
RW-1 --- S. Vijayaraghavan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos.	Date	Documents Name
Ex.A1	30.04.2013	Agreement for Sale
Ex.A2	30.04.2013	Construction Agreement
Ex.A3	07.03.2013	Receipts
Ex.A4	01.03.2020	Certificate for Interest
Ex.A5	08.02.2019	Final Orders
Ex.A6	06.11.2019	Final Order

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos.	Date	Documents Name
Ex.B1	07.09.2020	Authorisation letter
Ex.B2	30.10.2019	TNRERA Certificate



Sd-09.03.2023  
 SUNIL KUMAR, I.P.S (Retd)  
 SINGLE MEMBER