

**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. 68 of 2021**

(i) P. Manimegalai
(ii) T. Nallathambi

..... **Complainants**

Vs.

M/s. VGN Developers Pvt Ltd.,
Rep. by its Managing Director,
Pratish Vedhappudi

..... **Respondent**

Complainants : Rep by M/s. V. Balasubramani, Advocates.

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

Heard on : 18.10.2022

Delivered on : 21.02.2023

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 booked a residential Flat bearing Unit No. 7D in 7th Floor, Block 'C' in the respondent's project namely, "**VGN Fairmount**", situated at Thiru-vi-ka Industrial Estate, Alandur, Chennai. The sale and the construction agreement were signed on 29.06.2016. The complainants on demand from the respondent had made a total payment of Rs.77,27,781/- as on 01.08.2016. The respondent had to complete the flat by the end of 24 months with a grace period of 6 months, projecting the delivery date to 29.12.2018 including 6 months grace period.

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(b) The respondent avers that he was shocked to find no construction work having started till as late as August 2019 which was beyond the agreed period to deliver. The complainants further aver that despite his best efforts he could not reach the respondent for any information on the project. Aggrieved, the complainants sent a cancellation request to the respondent.

(c) The complainants further avers that on 05.08.2019, the respondent confirmed the cancellation and intimated the complainants that they transferred the flat booking from originally allotted C3-7D to B2-8E and that the cancellation letter would be issued only for the transferred flat. The complainants aver that such transfer to other flat was never agreed condition in the agreement. Despite repeated reminders, the respondent failed to cancel the agreement and thereafter refund the amount paid by the complainants.

(d) Aggrieved, the complainants seeks refund of Rs.77,27,781/- paid by them to the respondent along with compensation and criminal action against the respondent. This request of the complainants fell on deaf ears and he was not favored with any refund. The complainants seeks refund of the amount paid by them with interest and compensation.

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

(a) The respondent avers that the complainants had initially booked a triple bedroom residential flat bearing No. C3-7D in the "VGN Fairmont" project. The respondent further avers that the agreement for sale was entered on 09.06.2016 and the construction agreement was also executed on the same date. The respondent concurs with the complainants regarding his claim of making payment of Rs.77,27,781/- out of the total amount of Rs.1,54,78,462/-.

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(b) Subsequently, on request of the complainants, the respondent shifted the flat bearing No. C3-7D to B2-8E in the same project and accordingly, the complainants have signed the booking form for the new flat on 30.01.2019 and all the payments made so far were adjusted towards the new flat. The respondent avers that the complainants failed to make the stage wise payments as per the agreed schedule and thus pleads that since the payments were not made on time he cannot be held responsible for delay in handing over the flat and that subsequently the complainants are not entitled to the claim made by them.

(c) The respondent also avers that he was willing to refund the money paid by the complainants after deducting the cancellation charges as per the booking form signed and agreed by the complainants and thus the respondent pleads for dismissing the CCP.

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:

(i) Is the complainants are entitled to seek refund due to delayed delivery?

(ii) What are the reliefs made out?

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

(a) The complainants booked a flat in the respondent's project, namely, "**VGN Fairmount**", and signed the construction and sale agreement on 29.06.2016 (Ex.A1 & Ex.A2) and not on 09.06.2016 as claimed by the respondent. The agreement laid down the delivery of the completed unit by the end of 24 months with a grace period of 6 months and thus

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projecting the delivery date to 29.12.2018 (Page No. 5 of the complainant's typed set). The complainants have paid a total sum of Rs.77,27,781/- as on 01.08.2016 (Ex.A3 payment receipts). The total consideration was agreed at Rs.1,21,37,962/- for construction (Ex.A1) and Rs.33,40,500/- for UDS (Ex.A2) making the total consideration to Rs.1,54,78,462/-.

(b) The complainants avers that when they visited the project site in August 2019 they did not find any construction work having taken place and thus decided to withdraw from the project and sought refund with interest. The complainants, on the one hand, submits that they had sought cancellation and refund while the respondent argues that the complainants had applied for change of flat (Page 35 of the respondent's typed set). However, perusal of the referred request for flat / transfer relied upon by the respondent does not bear of signature of the complainants and has signature only of employees of the respondent and thus cannot be relied upon as an evidence to show request of change. However, contrary to their submissions, the complainants have signed the transfer application form (Ex.A5) and were allotted a new Flat No. B2-8E from C3-7D. This however, has not been followed up with any agreement or even a fresh postponed date of delivery from the earlier committed date. The construction agreement cited by the respondent (Ex.B2) also mentions the Flat No. C3-7D. So, even if there is a change in the flat allotted it does not result in altering the due date of delivery which remains December 2016.

(c) No such mention of such a change is mentioned in the booking form (Ex.B1) where the Flat Number continues to be mentioned as C3-7D. The respondent has argued that since the complainants has not paid the stage wise payment they cannot claim cancellation. Perusal of the booking form (Ex.B1) in general terms and conditions under the heading payment default lays down that if the customer failed to make the payment as given in the

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payment schedule or fails to make the entire booking amount within 7 days, the respondent has the right to cancel the booking. Similarly, in case of default in payment after signing the agreement, the respondent had been provided the option for cancellation of the flat.

(d) However, the complainants have paid a sum of Rs.77,27,781/- out of the total consideration of Rs.1,54,78,462/-. The respondent has not shown any evidence of raising a demand or even cancelling due to non-payment of the same. Thus, the complainant continues to have a allottee/promoter relationship in terms of the RERA Act. The due date of delivery was 29.12.2018 and the delivery has not been made till now whereby clearly implying that the request for cancellation had been made before the handing over and after the due date of delivery has passed while the complainants still enjoyed the allottee / promoter relationship with the respondent. Hence, the complainants are within their rights to claim of refund of money paid by them to the tune of Rs.77,27,781/- with interest and thus the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainants are entitled for refund amount of Rs.77,27,781/-.

(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 from the date of respective payment till repayment by the respondent. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly

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In the result, the respondent is directed as follows:-

- (i) The respondent shall pay the amount at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 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, 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, if any, 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 agreement of project promotion and construction, as the case may be, at the expense of the respondent.

Sd/- 21.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- P. Manimegalai

RW-1 --- A. Rangappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	29.06.2016	Agreement for construction
Ex.A2	29.06.2016	Agreement for sale
Ex.A3	---	Receipts
Ex.A4	30.07.2019	Cancellation request form

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Ex.A5	30.01.2019	Re-allotment booking form
Ex.A6	---	Invoice for B2-8E
Ex.A7	30.01.2019	Allotment letter
Ex.A8	---	E-mails

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	---	Booking form
Ex.B2	29.06.2016	Agreement for construction
Ex.B3	31.01.2019	Flat transfer request
Ex.B4	03.03.2020	Reply notice to legal notice by complainants

Sd/- 21.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

