

**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 Nos. 89 & 120 of 2021

(i) Zaheeruddin Fazal Mohammed
Rep. by his POA,
Mr. A. Mohammed Zaheeruddin

...(CCP No.89/2021)

(i) Salahuddin Afsar Mohammed Azimuddin
(ii) Hajira
Rep. by their POA,
Mr. Azizuddin Mohammed Zaheeruddin

...(CCP No.120/2021)

..... Complainants

Vs.

M/s. Metroline Promoters Pvt Ltd.,
Rep by its Director, Mr. Amit Gupta
(Project not registered)

..... Respondent

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

Respondent : Remained absent.

Heard on : 15.02.2022

Delivered on : 07.06.2022

ORDER

Both the above complaints claiming refund of the amounts paid by the complainants to the respondent towards purchase and construction of the respective booked shops with interest and costs are filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Since both the complaints are relating to same project of the respondent and same points arise for determination, the complaints are heard together and disposed of by a common order.

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3. **Averments of the complainants, in brief, as follows:**

(a) The complainants have submitted an application form for the allotment of shops with the respondent. The respondent was offering shops for sale in a commercial complex known as, "**Gold Souk Grande**", situated at GST Road, Vandalur, Chengalpet Taluk, Kancheepuram District, Chennai.

(b) The shops allotted to the complainants, the agreed price, the amounts paid by them and due dates for delivery of the constructed shops to the respective complainant are as follows:-

CCP Nos.	Allotted Shop Nos.	Unit Buyer Agreement	Memorandum of Understanding	Amount Paid Rs.	Due Date for delivery of the shops
(1)	(2)	(3)	(4)	(5)	(6)
89/2021	FF-101A, 1 st Floor	30.09.2009	06.10.2009	64,06,476/-	31.12.2012
120/2021	FF-101, 1 st Floor	01.09.2009	03.11.2009	63,96,042/-	April 2011

(c) Subsequently, the unit buyer agreement was entered with the same respondent on payments of the entire amount. On completion of the payment, the Memorandum of Understanding (*hereinafter referred to as MOU*) was entered with the respondent for a monthly rent. Despite, receiving the entire amount the respondent failed to hand over possession of the shops to the complainants and the efforts seeking of the refund ended in vain. The due date for handing over the shops was 31.12.2012 (CCP.No. 89/2021) and April 2011 (CCP.No. 120/2021).

(d) The complainants further argued that since the project is not completed within three months from the date of commencement of the Act it would qualify to be registered in the RERA. Both the shops have not been handed over on the due date, hence the complainants are entitled for

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refund of the amount paid by them with interest. The complainants therefore seeks refund of entire amount with interest. Further as submitted by the complainants, the project did not complete within three months from the date of commencement of the Act. Hence, it is qualifies to be an ongoing project making it liable to be registered with the RERA.

4. On receipt of the notices of hearing in both the cases, the respondent remained absent.

5. On the side of the complainants, the complainants in both the cases filed their respective evidence on affidavit with documents.

6. On the basis of the contentions of the complainants, the following points arise for determination.

(i) Whether the complainants are entitled for refund of the amount paid to the respondent with interest on the ground of failure on the part of the respondent to complete the construction and handover possession as per the terms and conditions of the agreement?

(ii) Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) As argued by the learned counsel for the complainants it is correctly shown that the respondent had launched the project namely, "**Gold Souk Grande**", which is a commercial complex for which the complainants got allotments and respective agreements were entered between the complainants and the respondent. It is also clear that in both the cases the complainants have made payments of the entire amount (Ex.A4) in both the cases.

(b) In CCP.No. 89 of 2021, the complainant through his POA (Ex.A1) had entered into a unit buyer agreement (Ex.A2) on 30.09.2009 whereby the

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promoter and home buyer relationship was established. The complainant had paid a total sum of Rs.64,06,476/- and a promise to get a monthly rent for the unit at the rate of Rs.61,400/- per month. As per the MOU (Ex.A3), the said shop was to be handed over to the complainants before 31.12.2012 with a grace period of 6 months i.e. 30.06.2013. The said shop was not handed over on the due date. The complainants had even made a complaint to the District Crime Branch, Kancheepuram where no progress was made.

(c) In CCP.No. 120 of 2021, the complainants have entered into a unit buyer agreement (Ex.A2) on 01.09.2009 whereby the promoter and home buyer relationship was established. The complainants have paid a total sum of Rs.63,96,042/- and a promise to get a monthly rent for the unit at the rate of Rs.61,300/- per month. As per the MOU (Ex.A3), the said shop was to be handed over to the complainants before April 2011. The said shop was not handed over on the due date. The complainants had even made a complaint to the District Crime Branch, Kancheepuram where no progress was made.

(d) In both the CCP Nos. 89/2021 and 120/2021 neither the shops were handed over on the due date viz 30.06.2013 in CCP.No. 89/2021 and April 2011 in CCP.No. 120/2021 nor was the rent as agreed in the construction agreement paid to the complainants. The complainants are therefore entitled to refund under Section 18 of the RERA Act which provide as follows:-

“if the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

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(b) due to discontinuance of this business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"

(e) Hence, both the complainants are entitled for refund with interest. The complainants further submit that the said project was an ongoing project under Section 3 of the RERA Act and thus needs to be registered. The contentions as shown above clearly shows the project could qualify to be an ongoing project under Section 3(1) of the RERA Act and thus has to be registered. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

(a) In view of the answer for point No.(i), the complainants are entitled for refund of the amounts paid to the respondent with interest and costs.

(b) CCP.No. 89 of 2021:

(i) The complainant has made a total payment of Rs.64,06,476/- to the respondent as per the Ex.A4. The complainant is therefore entitled for refund of the amount of Rs.64,06,476/- with interest from the respondent.

(ii) 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

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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.

(iii) Considering the circumstances of the case a sum of Rs.25,000/- is fixed towards litigation expenses.

(c) CCP.No. 120 of 2021:

(i) The complainants have made a total payment of Rs.63,96,042/- to the respondent as per the Ex.A4. The complainants are therefore entitled for refund of the amount of Rs.63,96,042/- with interest from the respondent.

(ii) 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 and refunded from the date of respective payment till repayment by the respondent.

(iii) Considering the circumstances of the case a sum of Rs.25,000/- is fixed towards litigation expenses. 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. 8 of this order within 30 days of issue of this order.

(ii) The respondent is directed to submit the project for registration before the TNRERA within 30 days of issue of this order under the provisions of Section 3 of the RERA Act.

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- (iii) The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (iv) 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.
- (v) 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/- 07.06.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

CCP.No. 89/2021

LIST OF WITNESSES

CW-1--- A. Mohammed Zaheeruddin

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	07.08.2009	GPOA
Ex.A2	30.09.2009	Unit buyer agreement
Ex.A3	06.10.2009	Memorandum of understanding
Ex.A4	---	Bank statement for proof of payments

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

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CCP.No. 120/2021

LIST OF WITNESSES

CW-1--- A. Mohammed Zaheeruddin

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	07.08.2009	Application form
Ex.A2	01.09.2009	Unit buyer agreement
Ex.A3	03.11.2009	Memorandum of understanding
Ex.A4	---	Bank statement for proof of payments
Ex.A5	---	Power of attorney (Adjudication No. 196/2020)

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 07.06.2022

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

