

**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. 92 of 2021**

- (i) Anita Clayton  
(ii) MA. Clayton

..... **Complainants**

**Vs.**

M/s. Pacifica (Chennai Project) Company  
Infrastructure Pvt Ltd.,

Rep. by its Authorized Signatory, Vikram Agnihotri ..... **Respondent**

**Complainants** : Rep by M/s. BFS Legal, Advocates.

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

**Heard on** : 23.09.2022

**Delivered on** : 17.02.2023

**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 have booked an apartment in the respondent's project, namely, "**Pacifica Auram**", in Padur and Pudupakkam Villages, Chengalpattu Taluk, Kancheepuram District. The complainants were allotted Flat No. A1203 in Aurum Phase 1 Building – 'A' "**Economy Units**". The sale and the construction agreement were provided to the complainants by the respondent but neither signed nor registered. The total consideration for the apartment was Rs.53,26,684/- out of which the complainants have paid a sum of Rs.18,00,780/- in 6 installments.

(b) The complainants did not pay any further installments as no update on the progress of the apartment was forthcoming from the respondent.

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Subsequently, after waiting for some time and getting no response from the respondent, the complainants decided to withdraw from the project and pleads for refund of the amount of Rs.18,00,780/- paid by them with interest and litigation cost.

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

(a) The respondent concurs with the allotment of Flat No. A1203 in Aurum Phase 1 Building – 'A' "*Economy Units*". The respondent submits that the complainants opted for payment plan where the amount shall be paid in installment by the complainants. On receipt of 20% of the entire consideration, the agreement for sale agreement was to be executed and construction agreement was to be executed. On receipt of 50% of the payment, the agreement was to register the UDS.

(b) The respondent vide e-mail dated 22.05.2015 to the complainants had intimated the cancellation of the booking in respect of the flat allotted to the complainants and thus the allotment stood cancelled. The respondent further avers as per Clause 7 of the booking form, the earnest money of Rs.2,00,000/- should be forfeited and no responsibility attached to the villa allotted.

(c) The respondent submits that he was ready and willing to settle the amount after adjustment out of the total amount of Rs.9,50,390/- paid by the complainants. Further, the respondent avers that the complainants are stopped from making any complaint before the Hon'ble Forum in the absence of agreement for sale and construction. The issue therefore would be civil in nature lying beyond this scope of the Hon'ble Forum. The respondent goes on to submit that another condition stipulated in the booking form was to settle any dispute by mutual discussion failing which to settle through arbitration under the Arbitration and Conciliation Act, 1996. Hence, not maintainable and thus request to dismiss the complaint.

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4. An attempt to settle the matter amicably has failed.
5. The respondent has filed their respective evidence on affidavit with documents. The complainants have failed to file the proof affidavit despite opportunity given to them.
6. On the basis of the rival contentions of the parties, the following points arise for determination:

Whether the complaint could be arbitrated in the absence of any evidence?

7. **Answer for the Point:-**

(a) This agreement between the complainants and the respondent with regard the allotment of Flat No. A1203 in the respondent's project. The complainants claim to have paid a sum of Rs.18,00,780/ while the respondent submits that he had received payment of Rs.9,50,390/-. There is no agreement with regard to the amount paid and in the absence of corroborative evidence this CCP could not be further proceed with.

(b) There is no sale and construction agreement signed between the 2 parties. The agreement for claiming return of money by the complainants is that the complainants were not able to get a proper response from the respondent and that the employee of the respondent who was co-ordinating was no more working in the respondent's office. The complaint is dismissed due to insufficient evidence and also the reason for seeking return of money paid by the complainants makes no cause for action under the RERA Act.

**In the result, the above complaint is disposed off.**

Sd/- 17.02.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

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**LIST OF WITNESSES**

RW-1 --- S. Vijayaraghavan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS****NIL****LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2020	Authorization letter
Ex.B2	12.04.2021	Project permission granted by TNRERA

Sd/- 17.02.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

