

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member

C.No. 32 of 2022

C. Kamaladurai

..... **Complainant**

Vs.

M/s. Hamlet Apartment Private Limited

..... **Respondent**

Complainant : Rep. by M/s. C.Prabhu, Advocate.

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

Heard on : 23.09.2022

Delivered on :. 16.02.2023

This complaint came up for final hearing before the Hon'ble Single Member in the presence of the both the parties, this Authority passes the following order:-

2. Averments of the complainant, in brief, as follows:-

(a) The complainant purchased a unit no.B-703 in the respondent by name "**Mantri Serene**". The sale and construction agreement were signed on 26.02.2015. The complainant submits that the flat had been given a discount 2% on the basic price by the respondent to be adjusted in the last instalment.

(b) The complainant avers that he has paid a sum of Rs.1,13,88,157/- in 10 instalments. It was agreed that 50% of the payment would be made at the time of handing over possession by 10% at the time of booking and 10% at the time of execution of sale and construction agreements. However, on the request of the respondent an amount of Rs.62,45,000/- was paid up front.

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(c) The agreed date of delivery was on 30.09.2017. Despite having paid the money as demanded by the respondent there was no delivery by the promised date. The respondent has also charged the complainant Rs.2,00,000/- towards the club house membership, which too has not been commissioned as yet. It was only on 29.12.2018 with a delay of 15 months that the respondent announced possession to be taken over by the complainant and that too with shortcomings.

(d) The complainant also objects to the calculation of pending payment to be made by the complainant and blames the respondent for wrong calculation. The complainant avers that by his calculation the respondent has to pay Rs.13,08,033/- to him based on the interest credit for the delayed delivery. The complainant submits that he had also paid Rs.5,00,000/- towards maintenance, which too has not been properly accounted. Finally the flat was handed over only on 22.03.2019. The complainant accordingly prays for payment of interest on the upfront payment and completion of the remaining works. The complainant also prays for completing of the basic amenities as also to close the piping and bear the cost for the same as well as payment of Rs.13,08,033/-.

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

(a) The respondent agrees to the basic facts of the allotment of the Apartment No. B-703 in the "**Mantri Serene**" project. The respondent further avers that the consideration for construction was fixed as Rs.43,37,500/- and for sale it was Rs.58,46,950/- totalling to Rs.1,01,84,450/- and including the TDS to Rs. 1,13,88,157/-.

(b) The respondent accepts the complainant's claim of having paid the entire amount. The respondent goes on to submit that initially they had floated a scheme of 50% payment wherein the complainant can make the payment of 50% at the time of handing over. The condition stipulated payment of 10% at the time of booking and 40% at the time of signing the agreements. The final 50% was of course to be paid at the time of handing over.

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(c) The respondent avers that the complainant had denied accepting this scheme and hence the respondent too had not agreed to pay any interest. The respondent further states that due to the real estate market being down, they were not able to complete the project on time and that the complainant had themselves accepted to wait for delivery and also that they were informed of this delay. The respondent avers that the date of handing over was 30.09.2017 while the actual handing over took place on 25.11.2017. The respondent submits that he had made payment towards delay compensation of Rs.78,075/-, which was also accepted by the complainant.

(d) With regard to the incomplete amenities the respondent blames the covid-19 pandemic and fluctuation of the real estate crisis and assures of completion of the same within the next 6 months. The respondent questions the maintainability on grounds that the construction agreement Clause 10 provides for settlement of any dispute through arbitration hence RERA ought to have not been invoked and thus the complaint is not maintainable. The respondent avers that the complainant seeks directions for completion of amenities. However, the respondent himself assures of the completing the construction of the amenities in the next 6 months.

(e) The complainant pleads for closing the piping duct at the respondent cost and also to direct the respondent to pay interest credit of Rs.13,08,033/- upto February, 2022. The respondent avers this two being compensating in nature lies beyond the jurisdiction of the authority. As for the piping duct the respondent submits that they could not interfere in a work which was carried out by the complainant. The respondent also avers that the claim is overdue as the apartment was handed over in 2017 and any claim allowed would lead to adversely affecting the respondent. The respondent finally assures of the apartment being ready and that it would be handed over in October, 2021 and thus pleads to dismiss the complaint.

ORDER

(a) The basic facts in C.No.32 of 2022, the complainant had purchased a flat in unit No. B-703 in respondent's project "**Mantri Serene**". The sale and construction agreement were signed on 26.02.2015. The complainant has made payment of 50% in 2 instalments 10% at the time of booking and 40% at the time of entering into sale and construction agreement. The remaining 50% was to be paid at the time of possession. However, on the request of the respondent the complainant had paid the entire amount to the tune of Rs.1,13,88,157/-

(b) The complainant avers that after making the initial payments he had made a payment of Rs.62,45,000/- upfront as demanded by the respondent. By this, he had completed the full payment. The agreed date of delivery was 30.09.2017. The respondent had received full payment by 30.11.2017.

- (i) The complainant has pleaded for the directions to the respondent complete the amenities.
- (ii) To direct the respondent to close the piping duct which passing through the living room and balcony.
- (iii) To direct the respondent to pay Rs.13,08,033/-as interest credit.

(c) The respondent begins by questioning the maintainability of the complaint on the grounds of the presence of an arbitration clause in the Agreement. The respondent pleads that with a clear mention of an arbitration clause being there the complainant cannot come to the Hon'ble Authority for relief. However, the RERA Act is very clear on this issue and by way of section 88 the same is clarified. The section 88 reads as follows:

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

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- (d) Thus the contention of the respondent is not sustainable and the complaint is maintainable. The respondent has also prayed that the complaint lies beyond the jurisdiction of the Hon'ble Authority also because the relief of interest on upfront payment and closing of the piping duct are compensatory in nature hence beyond the jurisdiction.
- (e) The issue of upfront payment is a contractual agreement as would be shown in the later part of the order and the issue of Piping duct too does not seek any compensation. Thus these grounds too do not make the complaint beyond the jurisdiction of the Authority.
- (f) As regards the completion of the promised amenities, the respondent himself has admitted to the same not being ready and promises to make them ready in six months. The respondent is given a time of six months from the date of receipt of the order to complete the same without fail.
- (g) As regards the piping duct, the respondent submits that it pertains to the work carried out by the complainant and thus this Authority does not wish to interfere in the issue.
- (h) Finally, the complainant claims interest on upfront payment. The complainant argues that the payment mentioned agreed was that 10% payment would be made at the time of booking, 40% at the time of signing the agreement and the remaining 50% on possession. However, the complainant paid the 10% and the 40% (Page 17 and Page 18 of the complainant's typed set). Thereafter, the complainant submits that the remaining 50% was paid on demand from the respondent to the tune of Rs.62,45,000/- and that the respondent had agreed to pay 12% interest on this amount. The respondent denied this claim of the complainant hence no interest as claimed to have been made out.
- (i) The terms of stagewise payment are laid down in the schedule B of the construction agreement which elaborates 10 stages for payment and not three as claimed by the complainant. However, the e-mail

dated 26.11.2016 from the respondent to the complainant clearly acknowledged the upfront payment and as also the respondent commitment of paying a 12% interest by the respondent to the complainant (Page 56 and 57 of the complainant's typed set).

(j) The claim of the complainant with regard to the upfront payment and 12% interest thereon is clearly made out and the respondent has to pay 12% on the upfront amount received by restricted to a calculation from the date of payment till the date of handing over at the rate of 12% per annum. However, an amount of Rs 78,075 has already been paid by the respondent to the complainant which shall be deducted from the total that works out which will not be more than Rs 13,08,033/- claimed by the Complainant.

In the result, the respondent is directed to;

- (i) To complete the amenities in 6 months from the date of issue of this order.
- (ii) The respondent shall pay 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 from the time of getting the upfront payment up to February 2022 as sought by the complainant.
- (iii) With these directions, the complaint is disposed off.

Sd/- 16.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

