

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

**Present :Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
RCP No. 100 of 2022**

(i) V. Swaminathan

(ii) V. Neeraja

..... **Complainants**

Vs.

M/s. Selene Estate Ltd.,

Rep by its Authorised Signatory,

K. Jayaprakasam

..... **Respondent**

Complainants : Rep by M/s. KNS Law Chambers, Advocates

Respondent : Rep by M/s. A.R. Vishwaram, Advocates

Heard on :07.09.2023

Delivered on :30.04.2024

ORDER

The above complaint by the complainants seeking refund from the respondent towards purchase of an apartment 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 learned counsel for the complainants avers that the complainants have approached the respondent and were allotted Flat No. E51504 in the 15th Floor in Tower E5 of the respondent's project, by name, "Ozone Greens" in the year 2019 located at Jalladianpettai Village, Sholingnallur Taluk, Chennai District. The total consideration for the flat is Rs.48,60,011/. The complainants have paid a sum of Rs.5,55,600/- from 30.09.2021 to 20.10.2021 as shown in the table below:-

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Sl.No.	Date	Payment made	Mode of payment
1	30.09.2021	Rs.50,000/-	Online
2	09.10.2021	Rs.1,50,000/-	Online
3	20.10.2021	Rs.2,00,000/-	Online
4	20.10.2021	Rs.1,55,600/-	Online
TOTAL		Rs.5,55,600/-	

(b) The construction agreement and the sale agreement were executed between the two parties on 24.11.2021. The complainants aver that the Clause 5 (b) (3) (ii) has laid down the condition with regard to the termination of the agreement which put the respondent's liability to refund the entire amount paid by the complainants except those paid towards taxes and statutory deposits along with interest at the rate specified in the Rules within 120 days of receiving the termination notice from the complainants.

(c) The complainants go on to submit that they made a request for the cancellation of the booking on 05.12.2021. The request for the refund of Rs.5,55,600/- paid by the complainants, was due to personal emergency. The complainants aver that even the respondent agreed to cancel and refund the amount paid by the complainants, subsequently, did not come forward to refund the amount. An agreement between the two parties requiring the respondent to refund the amount in full exists based on which the complainants seeks refund of Rs.5,55,600/-.

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

(a) The learned counsel for the respondent, at the outset, denied all the allegations and averments contained in the complaint filed by the complainants except those specifically admitted. The respondent submits that the complaint is not maintainable and that the complaint is an abuse of

judicial process which deserves to be dismissed. The respondent admits to the basic facts regarding the construction agreement and the sale agreement executed on 24.11.2021 with respect to the residential Unit No. E5 1504 allotted to the complainants.

(b) The respondent goes on to submit that there has been some delay due to short supply of construction materials, shortage of skilled laborers, restriction imposed by state Government for other state laborers etc., which was causing delay in completing the construction and handing over within the agreed time frame.

(c) The respondent further submits that there are making best efforts to meet the hand over dates. The respondent goes on to submit that timely payment by the allottees is a sine-qua-non for effective implementation for the large projects. The respondent avers that many of the allottees did not make milestone payment which had a cascading effect on the cash flow and implementation of the project.

(d) The respondent had to borrow funds at a very huge cost and invest the same into construction to achieve the milestone progress. The respondent avers that whenever the shortfall had pumped in, substantial money would show that the project work is unhindered and had borrowed at huge cost. The respondent avers that an amount of Rs.5,55,600/- was part of the amount to be paid by the complainants of the total sale consideration. The respondent prays for a period of Eight months time to refund the sale consideration amount as they were arranging funds from various financial institutions and finally prays for a period of Eight months to refund the amount to the complainants.

4. An attempt to settle the matter amicably as filed.

5. The complainants have filed their respective evidence on affidavit with the documents.

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6. On the basis of rival contentions of the parties, following points arise for determination:

(i) Is the complainants are eligible to the refund of Rs.5,55,600/- for cancellation of the booking made by them?

(ii) What are the reliefs made out?

7. Answer to Point No. (i)

(a) The respondent at the outset questions the maintainability of the complaint. However, he forwards no grounds on which the complaint remains non maintainable. Hence, the plea on grounds of maintainability so made does not hold any water. The complainants had entered into the respondent's project and the sale agreement was executed on 24.11.2021 (Ex.A2). The construction agreement was also executed on 24.11.2021 (Ex.A3). The complainants have paid a sum of Rs.5,55,600/- (Ex.A1 series) as shown in the table below:-

Sl.No.	Date	Payment made	Mode of payment
1	30.09.2021	Rs.50,000/-	Online
2	09.10.2021	Rs.1,50,000/-	Online
3	20.10.2021	Rs.2,00,000/-	Online
4	20.10.2021	Rs.1,55,600/-	Online
TOTAL		Rs.5,55,600/-	

The complainants did not wish to continue with the project and had accordingly sent a cancellation letter dated 05.12.2021 (Ex.A4) wherein they have mentioned personal emergency for which they needed money and thus the cancellation.

(b) The complainants have refers to Clause 5 (b) (3) (ii) which read as follows:-

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"The allottee shall have the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the allottee under any head whatsoever towards the purchase of the apartment, save and except those paid towards taxes and statutory deposits along with interest at the rate specified in the Rules within 120 days of receiving the termination notice, simultaneous to the execution of cancellation agreement and registration thereof, if required. Any charges towards stamp duty or registration fee or any other fee payable to the government / statutory authorities for such cancellation / registration shall be borne by the allottee"

The above, as submitted by the complainants, gives absolute right to the buyer to cancel the booking wherein the respondent was required to refund the amount within 120 days of receiving the said termination.

(c) The respondent, on the other hand, has admitted that the project was getting delayed due to various reasons such as shortage of labour and building material and has gone on to mention that his money was locked up in the project due to which he has sought a time of Eight months to complete the refund process. The respondent has submitted in his counter on 20.09.2022 seeking Eight months time vide his counter as shown below:-

"10. The respondent, most respectfully, seeks and prays Eight months time to refund the sale consideration amount as they are arranging funds from various financial institutions. The other claims made by the complainants are exaggerated and hence the respondent is not liable to pay the same.

11. The respondent reserves their rights to add / modify the instant counter statement if necessary.

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In the above circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow 8 months time to refund the received amount and thus render justice"

The time of eight months prayed by the respondent is already over. Moreover, the respondent has also admitted to refund the amount prayed by the complainants seeking a time of eight months, hence the prayer made by the complainants is allowed and the complainants are found to be eligible for the refund of Rs.5,55,600/- as prayed by them and thus the first point is so determined.

8. Answer to Point No (ii) :

Therefore, the complainants are entitled for an refund amount of Rs.5,55,600/- as prayed by the complainants from the respondent.

The complainants are entitled for the reliefs as detailed above. Thus, the second point is so determined.

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

- (i) The respondent shall pay the amount as per the findings in answer for Point No.(ii) in Para No. 8 of this order within 30 days from the issue of this order.
- (ii) On repayment of the claim as per the order, the complainants shall execute the cancellation of the construction agreement and sale agreement, as the case may be, at the expense of the respondent.

Sd/- 30.04.2024
SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER,
TNRERA, CHENNAI.

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LIST OF WITNESSES

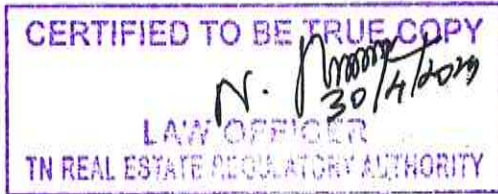
CW-1 --- V. Swaminathan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	---	Payment receipts
Ex.A2	24.11.2021	Agreement for sale
Ex.A3	24.11.2021	Construction agreement
Ex.A4	05.12.2021	Cancellation request form

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 30.04.2024
SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER,
TNRERA, CHENNAI.