

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

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

RCP No. 107 of 2022

1. V. Chitra (Deceased)
 2. Vadivalagan
 3. Keerthana (Complainants 2&3 are legal heirs of
Complainant 1) **Complainants**
- Vs.**
- M/s. R.V.S. Developers (P) Ltd.,
Represented by its Director
S. Senthil Azagan**Respondent**

Complainant : Party-in person

Respondent : Ex-parte

Heard on : 22.08.2023

Delivered on : 23.08.2023

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of a plot 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 complainant, in brief, as follows:

(a)The complainant aver that they had booked flat in the respondents project RVSD MONTANA and were allotted flat no.101 in block ALBERTA. The complainant avers that they entered into the sale agreement on 15.10.2014. The total sale consideration was agreed at Rs.24,65,640/-. The complainant have made a total payment of Rs.15,00,000/- to the respondent. The respondent had orally assured to complete the flat within 30 months (including 6 months grace period) projecting the hand over by 02.06.2014. The

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complainant avers that the respondent has not started construction of the flat even after lapse of nearly 6 years from the date of entering into the agreement. Aggrieved the complainant prays for the refund of Rs.15,00,000/- paid by him with interest and Rs. 25,000/- towards litigation expenses.

(b)The respondent failed to appear despite being given adequate opportunities hence he has been treated as Ex-parte.

3. An attempt to settle the matter amicably has failed.

4. The complainant has filed his evidence on affidavit with documents. No evidence has been filed for the respondent who has been treated as Ex-parte.

5. On the basis of the complainant's contention the following points arise for determination.

(i) Are the complainants entitled for the refund of money paid by them with interest due to non-delivery of the completed flat by respondent?

(ii) What are the reliefs made out?

6. Answer for point no. (i):

(a) The complainant was allotted flat no.101 in the block name ALBERTA (Page no.3 of the complainant's type set). The total consideration of Rs.24,65,640/- of which the complainant has paid Rs.15,00,000/- which has been so acknowledged (Ex.A4). The receipt of consideration paid by the complainant has been acknowledged by the respondent (Ex.A1, A2, A3). There has been no sale and construction agreement duly executed between the parties. However, it is clear that the respondent was developing this project as per the project broucher (Page no.8 of the complainant's type set). The allotment of flat no.101 in the ALBERTA (page no.3 of the complainants type set) and cost estimate issued by the respondent (Ex.A4) would conclusively show that while the respondent was the promoter of this project, the allottee

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was the complainant clearly establishing a promoter-allottee relationship. The promoter had developed the project and obtained Rs.15,00,000/- as the consideration out of the total value of the unit of Rs.24,65,640/-.

(b) The complainant died on 19.05.2018 (Ex. A1). The present complainants come in as legal heirs (Ex A7).

(c) Having established the promoter-allottee relationship it needs to be seen that the allotment of the unit is based on the payments in 2014. However, since the unit has still not been handed over the project will fall in the category of ongoing project under section 3 of the RERA Act as the construction has yet not started.

(dc) The respondent had orally agreed to hand over the completed unit within 30 months projecting the completion date 02.06.2014. However, the complainant had made out that he had till date not received possession and that the respondent has not even started construction which would stand as violation of section 18 of the RERA Act, giving no option to the respondent but to refund the money paid by the complainant with interest and thus the 1st point is answered accordingly.

7. Answer for point no.(ii):

(a) Therefore, the complainant is entitled for the refund amount of Rs.15,00,000/- from the respondent with interest.

(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 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,

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i.e., 9.30% p.a for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

8. In the result, the respondents are directed as follows:-

(i) The respondent shall pay the entire amount at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 7 of this order within 30 days of issue of this order.

Sd/- 23/8/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

List of witness and documents by the complainants (RCP.107 of 2022)

CW-1 --- A.S.Vadivalagan

Ex.Nos	Date	Documents Name
Ex.A1	02.06.2014	Receipt
Ex.A2	21.07.2014	Receipt
Ex.A3	05.09.2014	Receipt
Ex.A4	12.11.2014	Cost Estimate
Ex.A5	12.07.2014	Letter dt.12/07/2016
Ex.A6	----	Death certificate
Ex.A7	24.03.2020	Legal heir Certificate

List of witness and documents by the Respondent

NIL

Sd/- 23/8/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

