

**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. 131 of 2022**

- 1) G.Sunil Kumar
- 2) Sanitha.P.M

.....Complainants

Vs.

- 1) L.SatheeshKumar,
Proprietor (Builder),
ACE Home
- 2) D.Prabakaran,
Power Agent (R1)
And Land Owner

.....Respondents

Complainant : Rep by M/s. A.Raveechandran, Advocates
Respondent : Ex-parte

Heard on: 21/11 /2023
Delivered on: 15/05/2024

ORDER

1. The above complaint by the complainants seeking refund of amount paid to the respondents towards purchase of a plot/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 Learned counsel for the complainants submits that the complainants were Husband and Wife. The complainants entered into sale agreement on 07/11/2021 with the power agent of Respondent 1 and 2. They were the absolute land owners of Plot No. 1 in Suriya Narayana Garden layout situated

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in Sorencheri Village, Poonamallee Taluk, Thiruvallur District. The layout extends to 1238 sq.ft. for which CMDA approval had been obtained vide PPD/LO 140/2020 approved vide letter no. L1/7542/2020 dated 30/12/2020 and was also registered with the RERA bearing registration no. TN29/Layout/0208/2021 dated 07/07/2021. Morefully described in Schedule hereunder. From Schedule-B in partition deed no. 1719/2015 dated 07/05/2015 in SRO Poonamallee represented by her General Power of Attorney agent (2nd Respondent).

(b) The complainants aver that the 2nd respondent (Power Agent) decided to sell the property for a total consideration of Rs.27,23,600/-. The sale agreement dated 07/11/2021 casts a duty of due diligence with regard to the title on the complainants, while the respondent undertook the obligation to makes the property free from all encumbrance and complete the signing of the sale agreement within 45 days. The complainants were obliged to make the required payments where after the respondent had agreed to execute the sale deed in favour of the complainants. The complainants have paid a sum of Rs.13,00,000/- to the respondents.

(c) The complainants aver that the builder has neither ensured registration of the UDS nor have they completed the construction. The complainants aver that despite repeated calls the respondents failed to provide any information about the project. The construction agreement executed later by the 1st respondent lays down the condition where the construction of the said individual villa was to be completed and possession of the same handed over to the complainant in 6 months. However, the date on which the 6 months would start has not been enumerated in the agreement. The complainants issued a legal notice on 01/06/2022 addressed to the 1st Respondent and 2nd respondent which was not

acknowledged. Aggrieved, the complainants prays for refund of Rs.13,00,000/- with interest from the 1st Respondent and 2nd respondent jointly and severally.

3. In spite of service of notice, the respondents remained absent and hence treated as ex-parte.

4. In evidence to prove his claim, the complainants filed proof affidavit with documents.

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

(i) Are the complainants entitled to the refund of the money paid by them with interest due to non – delivery of the complainants unit?

(ii) What are the reliefs made out?

6. **Answer for Point No (i):-**

The complainants 1 and 2 are Husband and Wife. They entered into a sale agreement with the respondents on 07/11/2021 (Ex-A1). The construction agreement was entered between the complainants and the 1st respondent on 08/11/2021 (Ex-A2). The agreed consideration for construction was Rs.21,03,800/- as laid down in clause 4 of the construction agreement. The Sale consideration was to the tune of Rs.27,23,600/-. The complainants have paid a sum of Rs.13,00,000/- (EX- A7). The payment of Rs.13,00,000/- also finds a mention in the mail sent to the respondent by the complainant on 25/05/2022 (Ex-A8). The date of handing over had been mentioned as 6 months vide clause 5 of the construction agreement. However, the date on which the period of 6 months would start does not find a mention in the agreements. In such a situation, the start of the date on which the 6 months would start is determined as date of signing the construction agreement which is 08/11/2021. The complainants unit was not handed over to them as agreed due to which the

complainant had sent a legal notice vide E-mail dated 25/05/2022 (Ex-A8, Ex-A9 and Ex-A10). The legal notice was also sent on 01/06/2022 (Ex-A13) which was returned as "not received" by the 1st respondent (Ex-A14), while the same was delivered to the 2nd respondent on 25/06/2022 (Ex-A15). The respondents have neither completed the complainant's unit as agreed nor have they responded to the pleas made by them for the refund of the money paid by them. It has thus been established that the complainants were not handed over their units as per the agreements and hence they are entitled for the refund of the money paid by them with interest as prayed for and thus the 1st point is answered accordingly.

7. Answer for Point No: (ii):-

a) Therefore, the complainants are entitled for the refund of an amount of Rs.13,00,000/- from the Respondents with interest Jointly and Severally.

b) The rate of interest payable shall be current highest marginal cost lending rate of interest of State Bank of India (SBI) +2% per annum. Hence the complainant is entitled for interest at the rate of 7.80% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 9.80% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

8. In conclusion, 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 Paragraph No. 7 of this order within 30 days of issue of this order.

(ii) The charge of the aforementioned amount as encumbrance, if any, shall be on the flat booked by the complainants until repayment of the claim as per this order. The office of this Forum is directed to inform the encumbrance created by charge in the order to the Sub-Registrar concerned.

- (iii) On repayment of the claim as per the order, the complainants shall execute the cancellation of the Sale agreement and the Construction Agreement as the case may be, at the expense of the respondent.

Sd/- 15/05/2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

RCP No. 131 of 2022

LIST OF WITNESSES

CW-1 ---G.Sunil Kumar
CW-2 --- S. Sanitha Sunil Kumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	07/11/2021	Sale Agreement
Ex.A2	08/11/2021	Construction Agreement
Ex.A3	06/11/2021	Housing Loan Letter
Ex.A4	15/07/2021	Plan Dated 15/07/2021
Ex.A5	15/07/2021	Plan Dated 15/07/2021
Ex.A6	18/11/2021	Plan Dated 18/11/2021
Ex.A7	31/12/2021	Statement of Account
Ex.A8	25/05/2022	Mail dated 25/05/2022
Ex.A9	25/05/2022	Mail
Ex.A10	21/06/2022	Mail dated 25/05/2022
Ex.A11	08/11/2021	Cost Sheet
Ex.A12	---	Photographs
Ex.A13	01/06/2022	Legal Notice dated 01/06/2022
Ex.A14	03/06/2022	Copy of Returned Notice
Ex.A15	25/06/2022	Track Consignment Report
Ex.A16	22/01/2022	Times of India Newspaper
Ex.A17	---	Aadhar Card

Ex.A18	---	Aadhar Card
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LIST OF DOCUMENTS FILED BY THE RESPONDENTS-NIL

Sd/- 15/05/2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

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N. [Signature]
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY