

**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. 136 of 2022**

(i) V. Ravi Shanker  
(ii) Prabha Ravi Shanker

..... **Complainants**

**Vs.**

M/s. Green Choice Construction Company Pvt Ltd.,  
Rep. by its Director, C.K.Sridhar

..... **Respondent**

**Complainants** : Rep by M/s. Arun Anbumani, Advocates.

**Respondent** : Ex-Parte

**Heard on** : 13.01.2023

**Delivered on** : 19.01.2023

**ORDER**

The above complaint by the complainants seeking refund with interest from the respondent towards purchase of the 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 was allotted a Flat bearing No. 4K in the 4<sup>th</sup> Floor of the respondent's project situated at Virugambakkam Village, Ponnambalam Salai, K.K.Nagar, Chennai for a total sale consideration of Rs.96,25,000/- which was inclusive of all charges including a covered car park. The builder agreement was signed between the two parties on 23.11.2012 wherein, the respondent undertook to complete the construction and hand over possession within 20 months from the date of getting approval.

(b) The complainants paid a sum of Rs.20,00,000/- during March and April 2013. The construction did not take off till as late as 2017 for which the

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respondent kept giving some excuses. Subsequently, at the instance of the respondent another builder agreement was signed on 16.03.2017 for the same flat wherein the total consideration of Rs.96,25,000/- was split into two, for the construction of Rs.63,74,280/- and sale Rs.32,50,720/-. Hereafter, the respondent committed to complete the construction and hand over possession within 12 months from the time of signing this agreement.

(c) On 16.03.2017, the agreement for sale also was entered between the two parties and the cost of the UDS was agreed at Rs.32,50,720/-. It was also agreed that the sum of Rs.18,00,000/- out of the total sum of Rs.20,00,000/- paid by the complainants would be treated as an advance towards sale consideration and the balance sum of Rs.14,50,720/- was agreed to be paid at the time of registration of the UDS. The remaining sum of Rs.2,00,000/- out of Rs.20,00,000/- was treated as booking amount.

(d) Yet, another addendum to the builder agreement and agreement for sale dated 16.03.2017 was entered into on 22.01.2018 wherein, the respondent committed to get the pending approval for the project and start construction by 01.02.2018 and handover possession in 8 months from the date of starting the construction. The complainants made a further payment of Rs.20,50,000/- during the period between January to August 2018. It was at this time, that the respondent informed the complainants that the flat allotted to the complainants was not getting approved and hence offered to allot another Flat No. 4F instead of Flat No. 4K.

(e) The complainants further avers that in November 2018, the complainants informed the respondent of their intention to no longer continue with the project and that they wanted refund of the money paid by them to the tune of Rs.40,50,000/-. The respondent thereafter found a

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new buyer for the complainant's flat, however, he still did not refund the money received from the complainants despite the repeated reminder to this effect sent to the respondent. The complainants therefore seeks refund of the amount paid by them along with interest and cost of litigation.

3. In spite of service of notice, the respondent 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) Is the complainant entitled to get refund of the amount paid by them due to delayed delivery?
- (ii) What are the reliefs made out?

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

(a) The complainants were allotted a Flat bearing No. 4K in the 4<sup>th</sup> Floor of the respondent's project and signed a builder agreement dated 23.11.2012 (Ex.A1). The total consideration for the flat including all expenses and also including a covered car par was Rs.96,25,000/- (Ex.A1 in Page No. 6 of the complainant's typed set). The complainants entered into another builder agreement and an agreement of sale by splitting the total consideration of Rs.96,25,000/- in two parts as construction of Rs.63,74,280/- and UDS of Rs.32,50,720/-.

(b) The complainants have paid a sum of Rs.20,00,000/-. As per the terms and condition laid down in the first builder agreement dated 23.11.2012 when the date of delivery was agreed to 20 months from the date of getting the approval however, as per the 2<sup>nd</sup> builder agreement, the date of handing

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over was 12 months from the time of signing the 2<sup>nd</sup> agreement which was on 16.03.2017 (Ex.A2). A sum of Rs.20,00,000/- paid by the complainants was treated as Rs.18,00,000/- as part of the UDS and Rs.2,00,000/- as booking advance.

(c) Addendum to the builder agreement was signed again on 22.01.2018 with a promise to complete and handover in 8 months from the new date i.e. 22.01.2018. At this time, the complainants was further demanded and also paid a sum of Rs.20,50,000/- making the total amount paid to Rs.40,50,000/- in all. Even this promise of delivery was not kept up by the respondent and finally in November 2018 after completion of 8 months also the complainants not requiring the flat any more made representation to the respondent for cancelling and for seeking refund.

(d) The respondent agreed to the same, however, even after exchange of repeated e-mails no refund was coming. The respondent even sold off the said flat to a new buyer. However, even after that the respondent did not pay the refund, the following emerges;

(i) That the complainants and the respondent had an allottee / promoter relationship.

(ii) That the complainants were allotted a flat for which the completion in delivery was projected in 20 months from the date of getting approval.

(iii) That the approval was not coming and finally a new agreement and an additional agreement was further signed despite which the delivery of the flat was delayed even till November 2018.

(iv) That the complainants sought refund in November 2018 following which the respondent sold the flat to a new buyer with the consent of the complainants (Ex.A7).

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(v) That the first agreement stipulated the date of delivery to 20 months from the date of getting approval, then modified to 12 months from 16.03.2017 and finally 8 months from 22.01.2018.

This date shown as 20 months from the date of approval is an abstract date which is not a definite one and this is further shown when even after signing of a new addendum the respondent informed that the approval for the flat allotted was not coming through and hence change of flat from 4K to 4F. This date of first agreement would thus be taken as a relevant date and 20 months delivery period would start from 23.11.2012 which would make the delivery to 23.07.2014. The complainants did not receive possession of the flat even till atleast November 2018, hence there is a delay in delivery where refund of money paid by the complainants has to be allowed. Thus, the point is answered accordingly.

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

(a) Therefore, the complainants are entitled for refund amount of Rs.40,50,000/- with interest starting from the end of 20 months from 23.11.2012 i.e. 23.07.2014.

(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 with effect from 23.07.2014. Hence, the complainants are entitled for the interest at the rate of 7.80% 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., 9.80% 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 complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (i) The respondent shall pay the 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.
- (ii) On repayment of the claim as per the order, the complainants shall execute the cancellation of the agreements signed between the two parties, as the case may be, at the expense of the respondent.

Sd/- 19.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- V. Ravi Shanker

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	23.11.2012	Builder agreement
Ex.A2	16.03.2017	Builder agreement
Ex.A3	16.03.2017	Sale agreement
Ex.A4	16.03.2017	Addendum to builders agreement and agreement of sale
Ex.A5	---	Payment details
Ex.A6	03.08.2018	E-mail
Ex.A7	05.02.2019	E-mail
Ex.A8	---	E-mail communications
Ex.A9	---	E-mail communications
Ex.A10	---	E-mail communications
Ex.A11	13.11.2020	E-mail
Ex.A12	07.12.2020	E-mail
Ex.A13	09.12.2020	E-mail
Ex.A14	13.12.2020	E-mail

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Ex.A15	17.12.2020	E-mail
Ex.A16	01.01.2021	E-mail
Ex.A17	---	E-mail communications
Ex.A18	28.04.2021	E-mail
Ex.A19	30.08.2021	E-mail
Ex.A20	---	E-mail communications
Ex.A21	30.08.2021	E-mail
Ex.A22	---	E-mail communications
Ex.A23	---	E-mail communications
Ex.A24	30.08.2021	E-mail
Ex.A25	15.10.2021	E-mail
Ex.A26	08.12.2021	E-mail
Ex.A27	---	E-mail communications
Ex.A28	04.02.2022	E-mail
Ex.A29	---	E-mail communications
Ex.A30	---	E-mail communications
Ex.A31	---	E-mail communications
Ex.A32	28.04.2022	E-mail
Ex.A33	---	E-mail communications
Ex.A34	---	Details of payment
Ex.A35	10.10.2022	Completion certificate

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**

Sd/- 19.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

