

**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. 155 of 2022**

**Mr. C.Babu, Vemula**

..... **Complainant**

**Vs.**

**M/s. VGN Property Developers Private Limited**

**Represented by its authorized signatory**

**Mr.Saravanan**

..... **Respondent**

**Complainant** : Rep by M/s. P.R.Krishnaraj, Advocates

**Respondent** : Rep by M/s.K.Harishankar, Advocates

**Heard on : 11/07/2023**

**Delivered on : 16/10/2023**

**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 avers that the respondent had developed the project by the name VGN Melrose Garden. The complainant entered into the project and agreed to purchase a plot at a total consideration of Rs.72,41,159/-. The complainant paid a sum of Rs.14,48,546/- on 26/02/2018. The complainant avers that due to family reason, on the day of making the payment, the complainant decided against going in for the project. The complainant

thereafter has communicated his unwillingness orally of his decisions of not to continue in the project and had sought refund of the money paid by him. The complainant avers that despite repeated follow up for seeking refund, the respondent failed to refund the money. The complainant, thereafter, has communicated his intention to withdraw by an E-mail dated 01/10/2018, which too was also not replied by the respondent. The complainant personally met the respondent when he was informed that money could not be refunded as the Real Estate Market was dull due to the pandemic situation.

(b) The complainant avers that subsequently, the particular plot that had been sold to the complainant had been sold out to another buyer and registered vide Sale Deed No. 4680 on 2019 on 14/06/2019. Continued pressure by the complainant resulted in the respondent refunding part money to the extent of Rs.9,58,584/- in 3 installments, leaving Rs.4,89,962/- yet to be refunded by the respondent. The complainant kept persuading the respondent to refund the remaining money but did not succeed in getting it back. Aggrieved the complainant prays for refund of Rs.4,89,962/- with interest and litigation charges.

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

(a) The Learned counsel for the respondent denies all allegations contained in the complaint except those admitted specifically. The respondent concurs with the complainant with regard to the booking and allotment of the plot to the complainant in their project by name "VGN MELROSE GARDEN". The respondent also concurs with the complainant with regard to the payment of Rs.14,48,546/- by the complainant out of the total consideration of Rs.72,41,159/-. The respondent avers that the complainant instead of continuing with the process of entering into agreement, decided for the cancellation of the booking made by him and had sought refund. The

respondent blames the complainant for being responsible for the cancellation, which resulted in loss to the respondent. The respondent however, concedes that he had agreed to refund the money based on oral cancellation request of the complainant. However, the respondent avers that he had intimated to the complainant regarding the deduction of the amount due to cancellation by him and that the same could not be refunded by the respondent.

(b) The respondent avers that it would be difficult for him to have refunded the money without selling the plot to another buyer. Thus, the respondent prays to dismiss the complaint.

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

5. To prove their claim, both the parties have filed their respective evidence on affidavit with documents.

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

(i) Is the complainant entitled to the refund with interest of the money claimed by him?

(ii) What are the reliefs made out?

7. **Answer for the point (i):**

(a) The complainant entered into the respondent project by name VGN Melrose Garden and was allotted flat no. VGN Melrose Garden, measuring 1541 sq. ft. (Page No.1 of the complainant typeset). The allotment letter issued by the respondent confirms the allotment (EX-B1). The complainant had orally intimated to the respondent regarding his desire to withdraw from the project on the date of making the payment due to personal reasons and had orally communicated the same to the respondent and had sought refund. This has been acknowledged by the respondent in his counter. The respondent has

submitted that he had processed the refund request of the complainant based on the oral request of the complainant and had even refunded Rs. 9,58,584/- leaving a balance of Rs.4,89,962/- yet to be refunded. The complainant has committed that when he did not get the refund, he had approached the respondent vide E-Mail dated 01/10/2018 (EX-A2), where he had reiterated his request for seeking the refund. The respondent had accepted the request and had informed the complainant of transferring the remaining amount by October, 2019. The reply of the respondent has below clearly indicates the same.

***"Dear Mr.Babu,***

***Greetings from VGN!***

***We here by confirm that we will transfer the amount of Rs.5,00,000/- on or before 15<sup>th</sup> September and the balance amount will be in October 2019***

***This is for your kind information and confirmation"***

At this stage, there was no mentioned of any deduction of any amount. However, despite such a commitment by the respondent to the complainant, the amount was not returned to the complainant. In the meantime, the said plot allotted to the complainant, was sold out to another buyer and registered vide sale deed dated 14/06/2019 (EX-A3). The encumbrance certificate (EX-A3) confirms the registration in favour of the new buyer.

(b) It is clear from the contention from the rival parties that no agreements had been entered between them. The respondent contends that the cancellation request was only made by the complainant. The respondent has also submitted that he had to face difficulty any time, when a allottee cancelled his booking. The respondent finally resorts to his contention that without selling the unit, it was not possible for him to make the complete

refund of money. The complainant has submitted that the respondent had sold the unit allotted to the complainant to another buyer vide the sale deed dated 14/06/2019 (EX-A3) and as a corroboration of the same he has submitting the encumbrance certificate dated 14/06/2019 showing the sale of the said plot (Page 52 of the complainant type set). The resale of the said property has not been contested by the respondent and thus, the contention of the complainant is upheld, giving no reason for the respondent not to refund the money to the complainant when the agreement had not been entered into.

(c) The respondent as so far refunded Rs.9,58,584/- in 3 installments of Rs.3,00,000/- on 20/08/2020, Rs.4,00,000/- on 13/10/2020 and Rs.2,58,584/- on 21/01/2021, thus leaving a balance of Rs.4,89,962/- yet to be paid by the respondent to the complainant. The respondent during the oral arguments fell back on the draft sale agreement expressing his willingness to refund the balance amount only after the deduction of 2% as laid down. However, since the agreement between the complainant and the respondent had not been executed falling back on the provisions of the un-executed sale agreement would not be admissible for the respondent, thus deduction of 2% could not be allowed.

(e) However, it is also a fact that the cancellation has resulted only due to the complainant's withdrawing from the project and failing to complete his obligation due to his own compulsions. Thus, the refund shall be admissible only after the said plot was sold to a new buyer. It is, hereby, held that the complainant would become eligible for refund of Rs.4,89,962/- from the date on which the particular plot was sold to the another buyer. Since, this sale to the new buyer happened on 14/06/2019 vide sale deed no. 4680 of 2019, the

refund with interest would be eligible to the complainant from this date viz 14/06/2019 and thus the first point is answered.

**8. Answer for the point (ii):**

(a) Therefore, the complainant is entitled for refund amount of Rs. 4,89,962/- from 14/06/2019 from the respondent with interest.

(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 8.00% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 10.00% per annum 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.

**9. In the result, respondent are directed as follows:-**

(a) The respondent shall pay the entire amount at the interest rate and cost as per the findings in answer for point (ii) in para 8 of this order within 30 days and issue for this order.

(b) On repayment of the claim as per the order, the complainant shall execute the cancellation of the sale agreement and sale deed, as the case may be at the expenses of the respondent.

(c) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

Sd/- 16/10/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

**LIST OF WITNESSES**

CW-1 --- Babu, Vemula

RW-1 --- T.Moorthy

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Payment Schedule
Ex.A2	01/10/2018	Mail dated 01/10/2018
Ex.A3	14/06/2019	Sale Deed dated 14/06/2019

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	06/02/2018	Booking Form
Ex.B2	26/02/2018	Agreement for Sale
Ex.B3	---	Overdue Letter
Ex.B4	01/10/2018	Mail dated 01/10/2018

Sd/- 16/10/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

