

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

**Quorum : Thiru. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
RCP No. 158 of 2022**

1. M. Saravanan
2. S. Sunitha

..... **Complainants**

Vs

1. M/s. Anugraha Real Value Services Chennai Private Limited,
Represented by its authorized signatory.
2. M/s. Cybercity Mangadu Project Pvt. Ltd

..... **Respondents**

Complainant : M/s E. Sivanandan, Advocate

Respondent : Ex-parte

Heard on : 17.02.2023

Delivered on : 06.03.2023

ORDER

The above complaint by the complainant seeking refund with interest from the respondents towards purchase of the apartments 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 entered into a sale agreement on 29.11.2019 with the 1st respondents represented by the 2nd respondent in their project with the undivided share of Rs.252 sq. ft for total sale consideration of Rs. 56,27,439/-. The construction agreement was also entered on 29.11.2019 with the 2nd

respondent. The complainant has paid a sum of Rs. 25,82,163/-. The due date of delivery as per agreement was on or before 30.09.2021.

(b) The respondents, however instead of delivering the completed apartment, send a cancellation notice to the complainant on 15.03.2022 alleging non-payment of the required stage-wise monies as per the agreement. The complainant, thereafter, personally visited the site and requested for the handover their unit but was neither favoured with the delivery nor was any progress made in the project even thereafter. Finally, the complainant, vide their communication dated 30.03.2022, requested for cancellation and refund of the money paid by them. In response, the respondents replied in their mail dated 04.04.2022 wherein they admitted that the construction had not been completed and that the work was still going on.

(c) Thereafter the complainant, vide their mail dated 28.04.2022, finally requested for cancellation and refund. The complainant prays for refund of Rs. 25,82,163/- with interest and litigation cost.

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

4. The complainant has filed their evidence on affidavit with documents.

The respondents did not file any documents and were treated as Ex-parte.

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

(i) Is there any delay in delivery in the complainant's apartment entitling the complainant of refund with interest?

(ii) What are the reliefs made out?

TRUE COPY

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

(a) The complainant was allotted apartment No. 5A-703 on 17.05.2018 (Ex- A1). The sale agreement for the UDS was entered on 11/2019 (Ex.A2) for a sum of Rs. 2,77,200/-. The construction agreement was also entered on 29.11.2019 (Ex.A3). The construction agreement vide clause 2.1 stipulate the construction cost to be Rs.46,80,684/- in addition to that club house charges Rs.1,00,000/-, infrastructure charges Rs.1,64,400/-, deposit and incidental expenses Rs. 1,24,416/- and finally Rs. 15,000/- for legal expenses and Rs.62,208/- as development charges were also laid down.

(b) The agreed date of delivery for the completed apartment, as laid down in clause 7 of the construction agreement, was on or before 30.09.2021. The complainant has paid a sum of Rs. 25,82,163/- (Ex.A4 series). The respondents had sent a cancellation notice to the complainant vide their mail dated 15.03.2022 (Ex.-A5 at page 94 of the complainant's typeset) wherein the respondents had intimated the complainant about the cancellation of the allotted unit due to non-payment of stage wise payment.

(c) The complainant had reacted to the respondent's mail dated 15.03.2022, vide their mail dated 30.03.2022, wherein he had reiterated that the delivery had not been made by 30.09.2021 (Ex.A5). The complainant also intimated the respondents about the non-completion of the project. The complainant also strongly objected to the cancellation charges imposed by the respondents for cancellation which was to the tune of Rs. 4,09,983/- and rather pleaded for the full refund of Rs. 25,82,163/- paid by him. The respondents, at this stage, vide their email dated 04.04.2022, had admitted to

the delay in handing over the complainants unit and had clearly stated in his reply to the complainant vide his email dated 05.04.2022 (and not 04.04.2022 as referred by the complainant) as reproduced below;

“with the reference to the below mail there was a delay in construction however currently the construction is going and hoping to complete the construction as per the construction agreement” (Ex.A8).

(d) Therefore, the mail dated 05.04.2022 clearly shows that the complainant unit had not been completed even as on 05.04.2022, even though agreed date for delivery was 30.09.2021. The respondents had therefore defaulted in not making the delivery of the completed unit by 30.09.2021 the agreed date entitling the complainant to refund with interest as per the section 18(1) of the RERA Act and thus the 1st point is answered.

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

(a) Therefore, the complainant is entitled for refund amount of Rs. 25,82,163/- from the respondent's jointly or severally.

(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 7.80% 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 respondents.

(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.

TRUE COPY

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.
- (ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (iii) The charge of the aforesaid amount as encumbrance, if any, shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
- (iv) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondents.

sd - 7/3/23
SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER,
TNRERA, CHENNAI.

TRUE COPY

LIST OF WITNESSES

CW-1 --- M. Saravanan

CW-2 --- S. Sunitha

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	17.05.2018	Allotment letter
Ex.A2	29.11.2019	Sale Agreement
Ex.A3	29.11.2019	Construction agreement
Ex.A4	---	Payment receipts
Ex.A5	30.03.2022	E-mail
Ex.A6	15.03.2022	E-mail
Ex.A7	05.04.2022	E-mail
Ex.A8	04.04.2022	E-mail
Ex.A9	19.04.2022	E-mail
Ex.A10	15.03.2022	E-mail
Ex.A11	07.04.2022	E-mail
Ex.A12	29.04.2022	Legal Notice
Ex.A13	30.04.2022	Acknowledgement Card

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

sd-7/3/23
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY
N. M...
7/3/23
ADMINISTRATIVE OFFICER
IN REAL ESTATE REGULATORY AUTHORITY