

**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. 189 of 2022**

**G.Ethirajulu** ..... **Complainant**

**Vs.**

**M/s. Brownstone Foundation Pvt Limited** ..... **Respondent**

**Complainant** : Mr. G.Ethirajulu (PIP)

**Respondent** : Exparte

**Heard on** : 08/06/2023

**Delivered on** : 08/06/2023

**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 booked and was allotted Flat No.52 in the respondent's project, the builders agreement was entered on 05/07/2018. The complainant paid a sum of Rs.15,00,000/- in 2 installments as Rs.12,00,000/- on 05/07/2018 and Rs.3,00,000/- on 16/08/2018. An additional agreement was entered between the two parties on 27/05/2019 and an additional sum of Rs.3,00,000/- was further paid in 2 installments as Rs.2,00,000/- on 27/05/2019 and Rs.1,00,000/- on 14/09/2020. Thus the total payment of Rs.18,00,000/- was paid by the complainant out of the total consideration of Rs.30,92,120/-. The complainant avers that according to builder's agreement dated 05/07/2018, the completed unit was required to be handed over by

June, 2019 with a grace period of 3 months. An additional agreement dated 27/05/2019 was executed with a promise to complete and hand over before February 2020. The respondent failed to keep up the promise of even this extended promise.

(b) The complainant avers that since the respondent failed to deliver as promised even in the additional agreement, the complainant wishes to withdraw from the project and seeks refund of Rs.18,00,000/- with interest along with cost.

3. In spite of service of notice, the respondent remained absent all through the proceedings despite opportunities given to him.

4. In evidence to prove their claim, the complainant has filed proof affidavit with documents.

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

(i) Is the complainant entitled to refund with interest of the consideration paid by him to the respondent due to non delivery of the unit as per the agreement?

(ii) What are the reliefs made out?

**6. Answer to Point No. (i)**

(a) The complainant entered into a builder's agreement with the respondent on 05/07/2018 (EX-A1). According to the agreement the total consideration was laid down in the clause 2 of the agreement as Rs.30,92,120/- which was to be paid in installments as agreed in the clause 3 of the said agreement. Clause 5 of the agreement lay down with regard to the delivery of the completed unit to be on or before June, 2019 with a 3 months grace period, finally projecting the delivery to September, 2019. The respondent



entered into additional agreement dated 27/05/2019, by which the promised hand over of the completed unit was made to be within 9 months, by February, 2020. The complainant has paid a total of Rs.18,00,000/- (EX-A3, A4, A6 and A7). The respondent has not registered the agreements and has thus violated section 13 of the Tamil Nadu Real Estate Regulatory Authority Act.

(b) The respondent did not hand over the unit even after 2<sup>nd</sup> agreement was signed which was stipulating the delivery to be on or before February, 2020.

**Section (18):-**

***“Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—***

***(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***

***(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.***

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."*

It is shown clearly that there has been a delay in handing over the unit to the complainant. This as per section 18 entitles, the complainant either to stay with the project and get interest for the delayed period of delivery or else to withdraw from the project and seek refund with interest. In this RCP 189 of 2022, the complainant decides to withdraw from the project hence, as a result of the delay caused in handing over, the complainant is eligible for refund sought by him with interest and thus the first point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs. 18,00,000/- 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 8.00% 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., 10.00% 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.

**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) On repayment of the claim as per the order, the complainant shall execute the cancellation of the Builders agreement, at the expense of the respondent's if any.
- (iii) The respondent is imposed a fine of Rs.50,000/- under section 61 of the Tamil Nadu Real Estate Regulatory Authority Act for the violation of the section 13 of the Tamil Nadu Real Estate Regulatory Authority Act.

Sd/- 08/06/2023  
SUNIL KUMAR, I.P.S (Retd.)  
SINGLE MEMBER,  
TNRERA, CHENNAI.

**LIST OF WITNESSES**

CW-1 --- G.Ethirajulu

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	05/07/2018	Builders Agreement
Ex.A2	05/07/2018	Allotment Letter
Ex.A3	05/07/2018	Receipt dated 05/07/2018
Ex.A4	16/08/2018	Receipt dated 16/08/2018

Ex.A5	27/05/2019	Additional Agreement dated 27/05/2019
Ex.A6	---	Receipt dated 27/05/2019
Ex.A7	18/08/2020	Receipt dated 18/08/2020
Ex.A8	21/11/2021	Legal Notice

**LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL**

Sd/- 08/06/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

