

**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. 190 of 2022**

A.Chandru **Complainant**

Vs.

Mr.K.S.Sreedhar,

S/o. K. Subramanian,

M/s. Brownstone Foundation Pvt Ltd

Represented by its Director,

No. 108, CHalla Mall, No.11/11A, Sir THEagaraya Road,

Pondy Bazar, T.Nagar, Chennai-600 017.

..... **Respondent**

Complainant : Rep by Mr. D.Giribabu, Advocate

Respondent : Ex-parte

Heard on : 28/04/2023

Delivered on : 19/05/2023

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 he has booked a flat in the respondent project by name "Jasper". The builder's agreement was entered on 12/05/2018 and the respondent was allotted flat no.S1, yet another additional agreement was also entered on 27/05/2019. The complainant

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has paid a sum of Rs.31,00,000 to the respondent out a total of Rs.49,82,280/-. The agreed date for delivery for the completed flat was on or before June 2019 with a grace period of 3 months. The complainant avers that the respondent failed to hand over the completed flat before June 2019 as agreed. The complainant avers that having failed to deliver by June 2019, the respondent entered into an additional agreement dated 27/05/2019 with a fresh date to deliver the apartment which was on or before February 2020.

(b) The respondent failed to deliver even by the new agreed date. The complainant avers that there is no progress in the construction. The complainant therefore made a request to the respondent to refund the money paid by him with interest and sent a cancellation letter dated 11/03/2021. The complainant had even sent a legal notice dated 04/03/2022 seeking the refund of Rs.31,00,000/- paid by him with interest. The complainant accordingly prays for refund of the money paid by him, under section 18 of the RERA Act with interest.

4. The respondent did not file any counter, proof affidavit from beginning of the case till the last stage.

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

6. To prove their claims the complainants has filed his evidence on affidavit with documents.

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

- i. To determine whether the claims made by the complainant for refund of money with interest due to delay in delivery is made out?
- ii. What are the reliefs made out?

8. **Answer for Point No: (i)**

- (a) The complainant entered into a builder's agreement on 12/05/2018 (EX-A1). The complainant was allotted flat no.S1 for a total consideration of Rs.49,82,280/-. The agreed date of delivery of the completed flat was laid down in clause 5 of the Builder's agreement which was to deliver on or before June 2019 with a grace period of 3 months. The respondent failed to deliver as agreed by June 2019, hence the new agreement called additional agreement was executed on 27/05/2019 (EX-A3). The new agreement extended the delivery date to within 9 months that is before February 2020.
- (b) The complainant has paid a total of Rs.31,00,000/- and as per the table given below (EX-A4):

S.NO	DATE	CHEQUE.NO NAME OF BANK	AMOUNT
1	12/05/2018	960848 INDIAN BANK, CHENNAI	6,00,000
2	12/05/2018	326585 ICICI BANK, CHENNAI	4,00,000
3	12/05/2018	749199 YES BANK, CHENNAI	10,00,000
4	09/08/2018	RTGS, REF NO. KKBK0008484, YES BANK, CHENNAI	5,00,000
5	27/05/2019	870417 YES BANK, CHENNAI	3,00,000
6	15/09/2020	028162 SBI, CHENNAI	3,00,000
		GRAND TOTAL (Rupees thirty one lakhs only)	31,00,000

The respondent has also failed to register the agreements and has thus violated sec 13 of the Tamil Nadu Real Estate and Regulatory Authority Act for which a penalty under section 61 shall be imposed in the respondent.

A legal notice dated 04/03/2022 was served by the complainant on the respondent which also did not yield any benefits to the complainant and the respondent still failed to hand over the completed flat. Thus, it is clearly made out that the respondent failed to deliver the unit for the complainant on the agreed date and thus the complainant is entitled to refund of the money paid by him with interest as prayed and thus the first point is answered accordingly.

9. **Answer for Point No: (ii)**

a) Therefore, the complainant is entitled for refund amount of Rs. 31,00,000/- 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) A penalty of Rs.50,000/- is imposed under section 61 of the Tamil Nadu Real Estate Regulatory Authority for violation of Section 13 of the Tamil Nadu Real Estate Regulatory Authority Act.

d) 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.

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

1. The respondent shall pay the amounts at the interest rate, as per the findings in answer for Point No.(ii), Para No.9 of this order within 30 days of issue of this order.

2. The charge of the aforesaid amount as encumbrance, if any, on the flat booked by the complainants 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.

3. On repayment of the claim as per the order, the complainants shall execute the cancellation of both the builder's agreement and at the expense of the respondent.

SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- Mr. A.Chandru

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	12/05/2018	Builders Agreement
Ex.A2	12/05/2018	Allotment Letter
Ex.A3	27/05/2019	Additional Agreement
Ex.A4	---	Payment Details
Ex.A5	11/03/2021	Cancellation Agreement
Ex.A6	06/05/2021	Remainder Letter
Ex.A7	---	Legal Notice postal cover returned as "unclaimed"

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL



Sdt- 19/5/23
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI