

**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. 192 of 2022**

1) Samuvel Turaipandi Nadar

2) Teresa Samuvel Nadar

..... **Complainants**

**Vs.**

**M/s. Emami Reality Limited  
Represented by its Managing Director**

..... **Respondent**

**Complainant** : Rep by Mr. M.Dinesh, Advocate

**Respondent** : Rep by M/s. RANK Associates

**Heard on : 03/08/2023**

**Delivered on : 05/01/2024**

**ORDER**

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of a 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 entered into the respondent's project by name "Emami Tejomaya" located at Rajiv Gandhi Salai (OMR), Egatur, Navaloor, Chengalpattu. The complainant had booked flat no. A1503 for which the Provisional allotment letter was issued to him on 11/02/2020 by the respondent. The complainants has paid a total sum of Rs.10,05,278/- in two installments as Rs.2,00,000/- on 11/02/2020 and Rs.8,05,278/- on 03/03/2020. The complainants aver that after being paid the last installment on 03/03/2020, he met with huge losses in business due to Covid-19 due to which he was forced to cancel the booking on 14/03/2020.

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(b) The complainants aver that instead of refunding the money paid by him, the respondent did not heed to his requests where after, the complainant, on 24/06/2020, vide an E-mail received by the complainant from the respondent wherein he had demanded interest for the delayed payment. The respondent had proposed to forfeit the booking amount and after deduction of the amount on account of delayed payment interest @ 9.6% on the outstanding and refund only the balance amount to the complainants. The complainants aver that, thereafter, the respondent offered to refund Rs.1,55,241/- which he refused to accept. Aggrieved, the complainants prays for the refund of Rs.10,05,278/- along with litigation charges.

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

(a) The Learned counsel for the respondent terms the complainant as only an investor who wanted to book a flat and exploit it commercially by selling at a higher price. The respondent avers that due to the onset of Pandemic he changed his mind and decided to seek refund. The respondent avers that the complainant being an educated person, he was expected to understand the implication of entering into the transaction. The respondent avers that due to the onset of the Pandemic he was not able to find another buyer resulting in unwanted liabilities as he had to complete the flat allotted to the complainant being part of the overall project without any payments resulting in huge losses.

(b) The respondent also submits that the complainants had already agreed to the conditions for cancellation and the consequential deductions even before making the booking. The respondent therefore re-iterates on making deductions and also on charging interest as had been already communicated by him to the complainants vide his E-Mail dated 24/06/2020 and thus prays to dismiss the complaint.

4. An attempt to settle the matter amicably has failed.
5. Complainants have filed their respective evidence on affidavit with documents while the respondent had filed his Counter and the Proof Affidavit.
6. On the basis of the rival contentions of the parties, the following points arise for determination:
  - (i) Is the complainants entitled to refund of the money paid by him on the cancellation of the flat booked by him due to his financial condition?
  - (ii) What are the reliefs made out?

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

(a) The complainant was allotted flat no. A1503 in the project by name "Emami Tejomaya" vide provisional allotment letter dated 11/02/2020 by paying the application money of Rs.2,00,000/- (Ex-A1). The allotment letter put the total consideration for the apartment to Rs.73,58,029/- which was to be paid in several installments as enumerated in the annexure to the provisional allotment letter. The complainant paid a sum of Rs.2,00,000/- on 11/02/2020 (Ex-A2) and Rs.8,05,278/- on 03/03/2020 (Ex-A3) making the total payment Rs.10,05,278/- out of the total consideration of Rs.73,58,029/-. The complainant thereafter has proposed to withdraw from the project and had sought to know the cancellation procedure vide his email dated 14/03/2020 (Ex-A4). The complainant has thereafter referred this mail dated 14/03/2020 as his communication for cancelling of the booking where it is observed that the mail only seeks to know the procedure for cancellation. However, in the absence of any counter claim made by the respondent the date of cancellation is not disputed and is settled as 14/03/2020. There were series of communication, thereafter, between the complainants and the respondent

wherein even the respondent had issued an email dated 24/06/2020 raising demand for interest for the delay in making payment to the respondent (Ex-A4).

(b) Above being the facts, it is clear that the complainants has booked the flat and had made payments till 03/03/2020 and had cancelled the same on 14/03/2020. The reasons put forth by the complainants that he had loss of money due to pandemic is not sustainable as the cancellation was done on 14/03/2020 whereas Corona was declared as pandemic later in the month of March 2020. However, the complainants had the right to cancel the booking after forfeiture of the cancellation amount and the respondent is obliged to refund such balance amount to the complainants. The booking amount has not been specified in any of the evidence adduced by the rival parties, in the absence of the same 10% of the amount paid by the complainants so far amounting to Rs.1,00,527.80/- shall be retained by the respondent as the cancellation amount and the balance amount shall be refunded back to the complainants. The reasons put forth and the pandemic situation thereafter as led to situation where the respondent too has pleaded to suffer as the cancellation was done only a few days after making the payments and also due to the reason that the respondent has kept vacillating in offering the reasons for cancellation.

(c) The total value of the complainant's unit is found to be Rs.73,58,029/- as per the provisional allotment letter. The complainant has paid a sum of Rs.10,05,278/- which has not been contested by the respondent and for which the complainant has submitted the due receipts. This would imply that the respondent has collected more than 10% of the total consideration without executing any agreements for the transaction. On 'suo moto' cognizance by this

Authority it is found that the respondent has violated Section 13 of the RERA Act for which the penalty shall be imposed.

(d) Consequently, with the facts and arguments submitted by the rival parties, it is determined that the complainant is entitled to refund of the money paid by him after deduction of the cancellation amount as prayed by him and thus the 1<sup>st</sup> point is answered.

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

(a) Therefore, the complainants are entitled for the refund of money paid by them after deduction of the cancellation amount Rs.10,05,278/- (-) Rs.1,00,527.80/- = Rs.9,04,750.20/- from the respondent without interest.

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

- (i) The respondent shall pay the amount 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) A penalty of Rs.50,000/- is imposed on the respondent for violation of section 13 of the Real Estate (Regulation and Development) Act under section 61 of the Real Estate (Regulation and Development) Act.

Sd/- 05/01/2024  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

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**LIST OF WITNESSES**

CW-1 ---SamuvelTuraipandi  
RW-1 --- Pradeep Chhotaria

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	11/02/2020	Provisional Allotment Order
Ex.A2	11/02/2020	Receipt
Ex.A3	03/03/2020	Balance Receipts
Ex.A4	16/03/2020	Booking Cancellation Mails
Ex.A5	16/07/2020	Non acceptance mail
Ex.A6	---	Timeline Mail
Ex.A7	---	Residential Proof for C1
Ex.A8	---	Residential Proof of C2

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



Sd/- 05/01/2024  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI