

**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. 230 of 2022**

1. M/s. S.J.S. Thamarai Selvi

2. Dr. A. Joseph Stanley

..... **Complainants**

Vs.

M/s. Amar Prakash Developers Private Limited

..... **Respondent**

Complainant : Rep by M/s. L.G. Sahadevan, Advocates

Respondent : Exparte

Heard on : 31/03/2023

Delivered on : 20/04/2023

ORDER

The above complaint by the complainants 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 complainants, in brief, as follows:

The complainant was allotted Flat No. B313 in the respondent project "Temple Waves, Vibrant Living" in Kundrathur. The construction agreement and the sale agreement were entered on 17/04/2019, the total consideration of Rs.33,78,946/-. The complainant has paid a sum of Rs.30,81,743/-. The agreed date of completion and hand over the project was on or before June 2020. The complainant avers that the flat has not been handed over and thus pleads for refund of money paid by him with interest. The complainant further avers that the existing charge created over the said property is with M/s. ECL Finance Limited for availing loan. The complainant avers that the project

planning permission exists up to 08/10/2019, while, the completion date has been given as 31/12/2021. Aggrieved, the complainant has moved to get the refund of money paid by him money along with interest.

3. The respondent remained absent, in spite of opportunity given to him and was hence treated as ex-parte.

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

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

(i) Is the complainant entitled to refund of the amount given by him with interest?

(ii) What are the reliefs made out?

6. Answer to Point No. (i)

(a) The complainant has entered into sale agreement with the respondent on 17/04/2019 (EX-A2). The construction agreement was entered on the same day (EX-A3). The complainant has availed a loan from **M/s. ECL Finance Limited**. The total amount paid by the complainant to the respondent is Rs.30,81,743/- (EX-A5). The complainant issued a legal notice to the respondent (EX-A6) seeking refund of Rs.30,81,743/- paid by him.

(b) The sale document had been placed with **M/s. ECL Finance Limited** wherein the promise was made by the respondent that the documents shall be handed over to the complainant within 45 days from the date of agreement. The construction agreement and the sale agreement had been executed between the complainant and the respondent, hence the mutual liabilities remains restricted only between these two parties only.

(c) The construction agreement mentions the total consideration for the amount to be Rs.33,78,946/- as the cost of construction, while for the sale of the UDS amount was Rs.3,72,900/-. The construction agreement stipulated the completion to be on or before June 2020 or delivery within 12 months from the date of finalization of alteration for the apartment, which in this case have not been specified. Thus, June 2022 is the final date of delivery. The apartment has not been handed over to the complainant as agreed entitling him to refund with interest under section (18) of the RERA Act, so the first point is answered.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.30,81,743/- from the respondent.

(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 8.60% 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., 10.60% p.a for the entire amount paid from the date of respective payment till repayment by the respondents.

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/-20/04/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

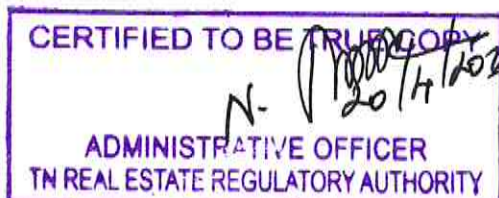
LIST OF WITNESSES

CW-1 --- Mrs. S.J.S. Thamarai Selvi

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	----	Renewal Planning Permit
Ex.A2	17/04/2019	Sale Agreement
Ex.A3	17/04/2019	Construction Agreement
Ex.A4	---	Registration Details
Ex.A5	---	Bank Account Statement
Ex.A6	02/03/2021	Legal Notice

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL



Sd/-20/04/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI