

**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. 29 of 2022**

Mrs. Punitha ..... Complainant

**Vs.**

1) M/s. Amar Prakash Developers (P) Ltd.,  
2) M/s. IDBI Bank Ltd., ..... Respondents

**Complainant** : Mr. S. Anand Raj, Advocate

**1<sup>st</sup> Respondent** : Mr. D. Ravichander  
Mr. P. Dinesh Kumar

**2<sup>nd</sup> Respondent** : Ex-parte.

**Heard on** : 14.03.2023

**Delivered on** : 27.03.2023

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondents 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 a Flat no. N703 on 12/05/2019 and later swapped for Flat no. N603 in the respondents project by name "Royal Castle". The consideration for the flat so allotted was agreed at Rs.33,35,392/- and an amount of Rs.5,35,392/- was paid by the complainant while Rs.20,16,000/- was released by the bank from which the complainant had taken loan. Thus total sum of Rs.25,51,932/- was received by the respondent. The construction agreement was executed on 10/06/2019, while the sale deed dated 27/06/2019 was registered in Document no. 4609/2019 and 4610/2019 both on 27/06/2019. The agreed

*S. J.*  
27/3/23

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date of delivery as per clause 4 of the construction agreement was September, 2019 and thereafter, the complainant avers that she continue to make repeated requested for the hand over who was not even met with a proper reply from the respondent. Since the complainant was not able to get delivery of the apartment even till July, 2021, she visited the projected site and did not find any progress in the work and hence decided to withdraw from the project which was communicated to the respondent through mail dated 02/07/2021 which was followed by a legal notice dated 06/12/2021, seeking refund with interest.

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

(a) The respondent submits to the correctness of the basic fact regarding the booking of the complainant in the respondent's project as also for having entered into sale and construction agreement. The respondent also concurs with the complainant regarding handing over date which was on or before September 2019 or within 12 months from the date of finalizing of the apartment whichever is later. The clause 4(a) of the construction agreement primarily highlights the right of the respondent in case of delay in delivery. The delivery condition also provided that if the delay was due to Force Majeure conditions, allotment shall be terminated and respondent would be refunded the amount paid by the allottee. The entire amount received by the respondent from the complainant was to be refunded within 90 days from the date of determination of the impossibility of the performance.

(b) The respondent blames the complainant for having made payments with delay and avers that the respondent is allowed to extend the delivery date in such a case. The respondent also submits that the project got delayed due to Force Majeure events in which situation extension of time for delivery was already agreed. The respondent mentions Covid-19,

A.J.  
21/3/23

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pandemic since 2020 as another major factor which had a crippling effect on the economy and infrastructure projects.

(c) This caused serious financial hardship to the respondent restraining him from performing his obligation towards the complainant. The respondent also blames the complainant for not having included the financier as a necessary party in RCP and thus pleads to dismiss complaint.

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

5. To prove their claim, the complainant filed their respective evidence on affidavit with documents.

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

(i) Is there a delay by the respondent in handing over the completed apartment as laid down in the construction agreement entitling the complainant to refund?

(ii) What are the reliefs made out?

**7. Answer for the point (i):**

(a) The complainant was allotted Flat No. 703 which was later swapped for Flat No. 603 in the respondent's project by name 'Royal Castle' (Ex - A3). The sale agreement was entered on 10.06.2019 and was registered on 27.06.2019 (Ex - A5). The construction agreement was entered on (Ex - A4). The total cost of the flat was agreed at Rs.33,35,392/- (Ex-A1). The complainant has paid a sum of Rs.5,35,392/- while Rs.20,16,000/- was released by the bank from which the complainant took as a loan (Ex - A2 series).

A.J.  
21/3/23

TRUE COPY

(b) Clause 4(a) of the construction agreement projected the delivery of the completed apartment on or before September, 2019 or within 12 months from the date of finalization of alteration for the apartment whichever is later. While laying down, the date of delivery, the agreements also lays down the payment schedule that shall be made as per the payment plan. The agreement also laid down that if the projects gets delayed due to the Force Majeure conditions the respondent shall be entitled to extension of time for delivery of possession of the apartment provided that such Force Majeure conditions are not of a nature, which makes it impossible for the contract to be implemented. The agreements also stipulates that should the Force Majeure conditions be of a nature, which make it impossible for the contract to be implemented, the allotment shall stands terminated, the respondent shall refund the money to the complainant within 90 days from the date of determination of impossibility of performance.

(c) The facts of the RCP. 29/2022 clearly stipulate the delivery to be on or before September 2019 or 12 months from the date of finalizing of the apartment whichever is later. The construction agreement however vide clause 4(a) provides delivery to be on or before September 2019 or within 12 months from the date of finalizing of alteration for the apartment whichever is later in this case. Since no alterations have been indicated the delivery date as agreed is being constructed on or before September 2019. The fact also indicates that the complainant has still not been delivered. The apartment thus clearly making out a case of delayed delivery entitling the complainant to refund with interest under section 18 of the RERA Act.

(d) The respondent however has tried to take shield of two conditions firstly; the respondent holds that timely payments have not been made.

A.J.  
27/3/23

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The total consideration agreed for the flat was Rs.33,35,392/-. The respondent has already received sum of Rs.25,51,932/- and has not shown any evidence of having completed corresponding stagewise construction and thus cannot take the shield of delayed payments for any relief. The second plea is taken by the respondent that of Force Majeure conditions existed which entitles extension of time for delivery of possession. The respondent cites the pandemic Covid-19 and submits that it had a crippling effect on the economy leading to delay in completion. The stipulated date of delivery was on or before September 2019 which was well before the pandemic Covid-19 struck. Hence, even this plea does not allow any relief to the respondent.

(e) The respondent also submits that necessary parties have not been impleaded and submits that financier of the respondent is not a party in the RCP. This contention of the respondent is also not sustainable as the agreements were only between the complainant and the respondent, all monies have been received by the respondent only. The financier to the complainant does not have any relations with the respondent. Hence, this plea of the respondent is also not sustainable. Thus it is clearly made out that there is delay in delivery entitling the complainant to refund with the interest and thus the point is answered accordingly.

**8. Answer for the point (ii):**

(a) However, the respondent is entitled to refund the amount of Rs.25,51,932/- of which the complainant has paid Rs.5,35,392/- while financier to the complainant has paid the remaining amount of Rs.20,16000/- 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

*A.S.*  
27/3/23

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the complainant is entitled for interest at the rate of 7.30% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 9.30% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

**9. In the result, respondent are directed as follows:-**

- (a) The respondent shall pay the entire amount at the interest rate and cost as per the findings in answer for point (ii) in para 8 of this order within 30 days and issue for this order.
- (b) The charge of the foresaid amount shall be on the flat 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 Registrar concerned.
- (c) 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 expenses of the respondent.
- (d) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

*sd/- 27/3/2023*  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

*A.J.*  
*27/3/23*

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**LIST OF WITNESSES**

CW-1 --- Mrs. Punitha

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	19.05.2019	Quotation
Ex.A2	----	Payment Receipts
Ex.A3	10.06.2019	Sale Agreement
Ex.A4	10.06.2019	Construction Agreement
Ex.A5	27.06.2019	Sale Deed
Ex.A6	24.07.2019	Memorandum of Deposit of Title Deeds
Ex.A7	06.12.2021	Legal Notice and Acknowledgement
Ex.A8	----	Postal Acknowledgement

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

Sd/- 27/3/2023

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

