

**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 Nos. 40 And 41 of 2022**

(1) Selvakumar .....(RCP No. 40 of 2022)  
(2) Muthu Kumar .....(RCP No. 41 of 2022)  
.... **Complainants**

Vs.

M/s. Grove OMR Properties Pvt Ltd.,  
Rep. by its Director, Subramani Ganesan  
(Project not registered) ..... **Respondent**

Complainants : Rep. by M/s. VAT Legal, Advocates.  
Respondent : Ex - Parte

**Heard on** : 13.09.2022  
**Delivered on** : 21.10.2022

**ORDER**

Both the above complaints claiming refund of the amounts paid by the complainants to the respondent towards purchase and construction of the respective booked flats with interest and costs are filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Since both the complaints are relating to same project of the respondent and same points arise for determination, the complaints are heard together and disposed of by a common order.

3. **Averments of the complainant in RCP No. 40 of 2022, in brief, as follows:**

(a) The complainant was allotted a Unit No. IR 122 in the 12<sup>th</sup> Floor of the "Imperial Red Block" in the project of the respondent situated at Padur

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Village, Chengalpattu Taluk, Kancheepuram District. The complainant entered into a construction agreement dated 25.02.2014 and registered the UDS vide sale deed dated 12.03.2014 as Document No. 3767 of 2014 in the office of the Sub Registrar, Thiruporur. The delivery date for the apartment was promised in August, 2017. The complainant had paid a sum of Rs.42,36,356/- to the respondent by March 2014 which was nearly 90% of the total sale consideration.

(b) In spite of which the respondent has still not completed the project and made delivery of the project to the complainant. All efforts of the complainant to hand over the apartment fell on deaf ears and the respondent did not react to such request. The complainant submits that the project has not been completed even after over 6 years and has been abandoned for the past 3 years exposed to rough weather conditions and corrosion.

(c) The complainant pleads that at this stage, even if the respondent completes the building the quality of the same would be poor. Seeing no chance of getting the apartment in the complete state from the respondent, the complainant pleads for refund of amount paid to the respondent along with interest, compensation and other costs.

4. **Averments of the complainant in RCP No. 41 of 2022, in brief, as follows:**

(a) The complainant was allotted a Unit No. IR 127 in the 12<sup>th</sup> Floor of the "**Imperial Red Block**" in the project of the respondent situated at Padur Village, Chengalpattu Taluk, Kancheepuram District. The complainant entered into a construction agreement dated 25.02.2014 and registered

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the UDS vide sale deed dated 12.03.2014 as Document No. 3765 of 2014 in the office of the Sub Registrar, Thiruporur. The delivery date for the apartment was promised in August, 2017. The complainant had paid a sum of Rs.39,88,000/- to the respondent by March 2014 which was nearly 90% of the total sale consideration.

(b) The respondent has still not completed the project and made delivery of the project to the complainant. All efforts of the complainant to hand over the apartment did not yield any results. The complainant submits that the project has not been completed for over 6 years and lies abandoned for the past 3 years exposed to rough weather conditions and corrosion.

(c) The complainant pleads that at this stage, even if the respondent completes the building the quality of the same would be poor. Seeing no chance of getting the apartment in complete state from the respondent, the complainant pleads for refund of amount paid to the respondent along with interest, compensation and other costs.

5. In spite of service of notice, the respondent remained absent and hence treated as ex-parte.

6. In evidence to prove his claim, the complainants have filed proof affidavit with documents.

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

(i) Whether there has been a delay in handing over the allotted apartment to the complainants?

(ii) What are the reliefs the complainants are entitled to?

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

(a) The construction agreements were entered on 25.02.2014 (Ex.A2) in both the RCP's while the sale agreement dated 25.02.2014 (Ex.A1) was also signed on the same date. The promoter vide Para 5.4 of the construction agreement agreed to handover the project on or before the completion of 30 months from the date of the agreement or from the commencement of construction whichever is later with a grace period of 4 months, thereby projecting the delivery date to 25.12.2016 including the grace period.

(b) The apartments have not been handed over to the complainants. The complainants have paid a sum of Rs.42,36,356/- in RCP No. 40 of 2022 and a sum of Rs.39,88,000/- in RCP No. 41 of 2022. The complainants in both the RCP Nos. 40 and 41 of 2022 submit that even till date they have not received the possession of the apartment. In the absence of any submission by the respondent, the submissions made by the complainants are accepted and a clear delay in delivery is made out entitling the complainants to claim the refund as sought by them. Thus, the point is answered accordingly.

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

(a) In view of the answer for point No.(i), the complainants are entitled for the refund of the amounts paid and other reliefs as discussed below.

**(b) RCP No.40 of 2022:**

(i) The complainant has paid in total a sum of Rs.42,36,356/- to the respondent. Therefore, the complainant is entitled for refund of the amount of Rs.42,36,356/- from the respondent.

(ii) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is

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entitled for the interest at the rate of 7.30% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 9.30% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondent.

(iii) Considering the circumstances of the case a sum of Rs.25,000/- is fixed towards litigation expenses.

**(c) RCP No.41 of 2022:**

(i) The complainant has paid in total a sum of Rs.39,88,000/- to the respondent. Therefore, the complainant is entitled for refund of the amount of Rs.39,88,000/- from the respondent.

(ii) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 7.30% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 9.30% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondent.

(iii) Considering the circumstances of the case a sum of Rs.25,000/- is fixed towards litigation expenses. Therefore, the complainants are entitled for the relief as detailed above. Thus, the point is answered accordingly.

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

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

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- (ii) The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
- (iii) The charge of the aforesaid amount as encumbrance shall be 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.
- (iv) On repayment of the claim as per the order, the complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 21.10.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

R.C.P.No.40/2022

List of witnesses

CW-1 --- Selva Kumar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	25.02.2014	Agreement for sale
Ex.A2	25.02.2014	Construction agreement
Ex.A3	12.03.2014	Sale deed
Ex.A4	13.03.2014	Payment receipt
Ex.A5	---	E-mails

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

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**R.C.P.No.41/2022****List of witnesses**

CW-1 --- Muthu Kumar

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	25.02.2014	Agreement for sale
Ex.A2	25.02.2014	Construction agreement
Ex.A3	12.03.2014	Sale deed
Ex.A4	---	Payment receipts
Ex.A5	12.03.2014	Agreement relating to deposit of title deeds
Ex.A6	12.11.2015	Supplementary loan agreement
Ex.A7	---	E-mails

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

Sd/- 21.10.2022  
 Mr. SUNIL KUMAR, I.P.S (Retd)  
 SINGLE MEMBER  
 TNRERA, CHENNAI

