

**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. 50 of 2022**

**1. K. Jayanthi Subramanian**

**2. Subramanian. R** ..... **Complainant**

**Vs.**

**M/s. Amar Prakash Developers Pvt. Ltd.,** ..... **Respondent**

**Complainant** : Rep by Mr. T.V. Sekar, Advocate

**Respondent** : Rep by M/s. D. Ravichander, Advocates

**Heard on : 06/04/2023**

**Delivered on : 10/04/2023**

**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:**

The complainant had entered into the respondent project by name "TEMPLE WAVES" and was allotted Flat No. B-318. The complainant entered into a agreement and sale on 16/03/2019 and for the consideration of Rs.4,00,400/-. The construction agreement was entered on 16/03/2019 and for the construction of the allotted unit the agreed amount was Rs.32,91,944/- with a promise to complete the construction and be delivered before June 2021. The complainant has paid a sum of Rs.21,32,000/- of which Rs.17,52,000/- was obtained as housing loan and paid to the respondent. The respondent failed to hand over the unit as promised on the agreed date. Aggrieved, the respondent

pleads for refund of Rs.21,32,000/- paid to the respondent with interest and cost of legal expense.

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

(a) The Learned counsel for the respondent submits to the correctness of the basic facts including the respondent's development of the project by name "**Temple Waves**" by the respondent. The respondent also concurs with the complainant with regard to allotment of Flat No. B-318 to the complainant. The respondent also submits that he had agreed to hand over the completed flat to the complainant on or before June 2020 or within 12 months from the date of finalization of the apartment whichever was later.

(b) The respondent further submits and agrees that there was a delay in handing over the apartment which was only due to Force Majeure conditions. The respondent avers that even as per the construction agreement, the respondent was allowed extension of time for delivery in such conditions where the project completion got affected by conditions which fell in the category of Force Majeure. The respondent submits that the pandemic Covid-19 since March 2020 effected the project, making it financially impossible for the respondent to complete the project. The respondent submits that even the Government had acknowledged the same and had extended the time limit up to 6 months.

(c) The respondent further avers that the complainant failed to make timely payments as per the agreement. The respondent goes on to submit that the complainant has also failed to implead the necessary party with the financier has not been included as a party and thus pleadings to dismiss the RCP.

4. An attempt to settle the matter amicably as filed.



5. The complainant has filed his evidence on affidavit with the document. The respondent remained absent after submitting the counter but did not file evidence to support the same despite opportunities given to him.

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

(i) Is the complaint maintainable and is the delay in delivery of the apartment by the respondent entitling the complainant to the claim made by him?

(ii) What is the relief made out?

**7. Answer to Point No. (i)**

(a) The complaint was allotted Flat No. B-318 (Annexure-C of the construction agreement). The construction agreement was executed on 16/03/2019 (EX-A10). The sale deed was registered on 15/04/2019 between the complainant and the respondent (EX-A13). The construction agreement stipulated the construction cost at Rs.29,62,606/- at clause 2 of the construction agreement while the delivery was laid down in clause 4 (a) to be on or before June 2020 or 12 months from the date of finalization of alteration for the apartment whichever was later. The sale agreement between the two parties has been laid down schedule B of the sale agreement stipulating value to be Rs.4,00,400/-. The complainant has not been handed over the apartment as promised, hence entitled to the claim of refund of the money paid by him to the tune of Rs.21,32,000/- with interest.

(b) The respondent has argued that the complainant had failed to make timely payments and thus the respondent cannot be held liable for the delay. In this regard clause 5 (a) of the construction agreement clearly lays down that in case of non-payment of the demanded installment, the respondent could give a 15 days notice and could even cancel the agreement. None of this has

happened as no evidence to the effect has been produced. In the absence of the same, the promoter allottee relationship between the respondent and the complainant continues.

(c) As regards impleading of bank as a necessary party, the objection of the respondent is not sustainable. All the agreements for the sale agreement, the construction agreement and the promise to deliver the apartment is all between the two parties - the mentioned respondent and the complainant of RCP 50/2022. The resulting liabilities shall therefore lie between these two parties alone. The respondent has failed to deliver the unit to the complainant as agreed and the delay still continues, the complainant is therefore eligible to the claim of the refund with interest and thus point is answered accordingly.

**8. Answer to Point No (ii) :**

(a) Therefore, the complainant is entitled for refund of an amount or Rs.21,32,000/- with interest.

(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 with effect from the 2% annum. Hence the complainant is entitled for the interest at the rate of 7.30% 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., 9.30% p.a for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) 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.



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

(i) The respondent shall pay the amount at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 of this order within 30 days from the issue of this order.

(ii) 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 if any created by charge in the order to the Sub-Registrar concerned.

(iii) 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 respondent.

*Sd/- 10/4/2023*  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

**LIST OF WITNESSES**

CW-1 --- K. Jayanthi Subramanian

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

| Ex.Nos | Date       | Documents Name         |
|--------|------------|------------------------|
| Ex.A1  | 10/02/2014 | Rental Agreement       |
| Ex.A2  | 01/06/2018 | Disability Certificate |
| Ex.A3  | 04/06/2018 | Government Passbook    |
| Ex.A4  | 17/02/2019 | Quotation              |
| Ex.A5  | 17/02/2019 | Receipt                |
| Ex.A6  | 17/02/2019 | Receipt                |
| Ex.A7  | 25/02/2019 | Receipt                |
| Ex.A8  | 25/02/2019 | Receipt                |
| Ex.A9  | 13/03/2019 | Quotation              |
| Ex.A10 | 16/03/2019 | Construction Agreement |

|        |            |                             |
|--------|------------|-----------------------------|
| Ex.A11 | 29/03/2019 | Receipt                     |
| Ex.A12 | 13/04/2019 | Online Registration Receipt |
| Ex.A13 | 15/04/2019 | Sale Deed                   |
| Ex.A14 | 06/05/2019 | Receipt                     |
| Ex.A15 | 16/06/2019 | Mail                        |
| Ex.A16 | 30/08/2019 | Mail                        |
| Ex.A17 | ---        | Mail                        |
| Ex.A18 | 16/03/2020 | Mail                        |
| Ex.A19 | 05/06/2021 | Rental Agreement            |
| Ex.A20 | 22/07/2021 | Notice to Borrower          |
| Ex.A21 | 29/07/2021 | Discharge Summary           |
| Ex.A22 | 21/08/2021 | Reply Notice                |
| Ex.A23 | 21/08/2021 | Reply Notice                |
| Ex.A24 | ---        | Dollarama Offer Letter      |
| Ex.A25 | ---        | Photos                      |

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

*Sd/- 10/4/2023*  
**SUNIL KUMAR, I.P.S (Retd)**  
**SINGLE MEMBER**  
**TNRERA, CHENNAI**

**CERTIFIED TO BE TRUE COPY**

**ADMINISTRATIVE OFFICER**  
**TN REAL ESTATE REGULATORY AUTHORITY**