

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

**Quorum : Thiru. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
RCP No. 53 of 2022**

(i) M.R. Srivatsan
Rep. by Power of Attorney Agent,
M.S. Ramakrishnan
(ii) M.S. Ramakrishnan

..... **Complainants**

Vs.

M/s. Land Marvel Homes.,
A Registered Partnership Firm,
Rep. by its Partner

..... **Respondent**

Complainants : Rep. by M/s. S. Saravanakumar, Advocates.

Respondent : Ex-parte.

Heard on : 04.11.2022
Delivered on : 22.12.2022

ORDER

The above complaint by the complainants seeking refund with interest from the respondent towards purchase of the flat with interest, and costs and 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 approached and was allotted Flat No. 103, in 1st Floor in "Amethys Block" in the respondent's project by name, "Solaray". The respondent entered into an agreement for allotment and construction on 12.03.2014. The total consideration for the flat was fixed at Rs.38,95,950/- of which the complainants have paid a sum of Rs.8,80,000/- with a break up of Rs.3,00,000/- for the UDS and Rs.5,80,000/- towards cost of construction.

(b) The complainants have agreed to pay the balance amount due as per the schedule committed in the agreement for allotment and construction. After having received the amount of Rs.8,80,000/- the respondent was not able to continue the project as per the terms of the agreement and continued to seek time on one or the other pretext including delay in obtaining permission for construction. The respondent also informed the complainants regarding challenges they were facing regarding water and electricity connection for the project.

(c) In 2016, the respondent informed the complainants of a further delay which would occur due to promulgation of the RERA Act, 2016. The respondent informed the complainants of his inability to undertake the project and assured to return a sum of Rs.8,80,000/- without any deductions on or before 30.06.2019. The respondent failed to keep up this commitment finally, since the complainants were not able to get the refund the complainants caused legal notice on 27.10.2021 calling for refund of the amount but even this was not replied.

(d) The complainants further submit that despite this being an ongoing project, the respondent has not registered the same with TNRERA. The complainants further submits that despite having received more than 10% of the sale proceed the respondent had violated the Section 13 of the RERA Act and failed to register the sale and construction agreement. Aggrieved the complainants seek refund of amount for a sum of Rs.8,80,000/- paid to the respondent with interest and legal cost.

3. In spite of service of notice, the respondent remained absent all through the proceedings and hence treated as ex-parte.

4. In evidence to prove their claim, the complainants have filed proof affidavit with documents.

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

(i) Is there any delay in handing over the apartment by the respondent to the complainants warranting refund of the money paid by him?

(ii) What are the reliefs made out?

6. **Answer for Point No (i):**

(a) The complainants booked a Flat in the respondent project "**Solaray**" (Ex.A1) and was allotted a Flat No. 103, in 1st Floor in "**Amethys Block**" and paid a sum of Rs.3,00,000/- (Ex.A2). The complainants have entered into an agreement for allotment and construction on 12.03.2014 (Ex.A3). The complainants paid a sum of Rs.8,80,000/- break up of which a sum of Rs.3,00,000/- towards UDS and Rs.5,80,000/- towards cost of construction (Page No. 27 of the complainant's typed set). The remaining money was to be paid in instalments as stipulated in Para 3 of the agreement. The agreement provided for handing over of the flat within 30 months from the date of agreement.

(b) Unable to get their possession the complainants sent a legal notice (Ex.A6) which too fell on deaf ears. It is thus clear, that the respondent failed to deliver the apartment which has already been cancelled by them and also failed to keep up his commitment on the refund of Rs.8,80,000/- to be paid back to the complainants hence delay in delivery and non refund of money is made out. Thus, the point is answered accordingly.

7. **Answer for Point No (ii):**

(a) In view of the answer for Point No.(i) the complainants are entitled for refund of amount for a sum of Rs.8,80,000/- 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 complainants are

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 complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

1. The respondent shall pay the amount at the interest rate, as per the findings in answer for Point No.(ii), Para No.7 of this order within 30 days of issue of this order.
2. The respondent is prevented from creating any 3rd party encumbrance and a charge shall be on the above mentioned property till repayment of the claim as per this order. The Registry of the Authority shall take action to ensure compliance with the Sub-Registrar concerned.
3. On repayment of the claim as per the order, the complainants shall execute the cancellation of the agreement for allotment and construction as the case may be, at the expense of the respondent.

Sd/22.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

TRUE COPY

Handwritten signature
22/12

LIST OF WITNESSES

CW-1 --- M.S. Ramakrishnan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Brochure
Ex.A2	---	Booking receipts
Ex.A3	12.03.2014	Agreement for allotment and construction
Ex.A4	12.03.2014	Letter
Ex.A5	04.04.2019	Letter of undertaking
Ex.A6	27.10.2021	Legal notice
Ex.A7	24.01.2022	Power of attorney

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/22.12.2022
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

