

**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. 55 of 2022**

Chaithanya Chowdary. K Complainant

Vs

M/s. Selene Estate Limited
Rep by its Managing Director Respondent

Complainant : Rep. by Mr. B.Mahendran, Advocate

Respondent 1 : Rep. by M/s. A.R. Vishwaram, Advocates

Heard on : 06/07/2023

Delivered on : 07/08/2023

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 entered into the respondent's project on 17/04/2014. The complainant was allotted apartment no. 404 on the 4th floor of the E4 building. The complainant avers that the respondent failed to deliver the apartment even after expiry of grace period on or before 17/04/2017. The complainant has paid a total of Rs.52,65,495/- which makes the payment complete as per the agreement. The complainant avers that even after 58 months, the respondent had failed to deliver the apartment whereby the complainant is

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aggrieved and prays for the refund of the money paid by him with interest along with loss of rental income.

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

(a) The Learned counsel for the respondent denied all allegations except those that he had been specifically admitted. The respondent avers that project in which the complainant had been allotted a unit was of a mixed use and involved a development of about 2 million sq. ft of buildup area, comprising of residential apartments and space for commercial use. The Learned counsel for the respondent pleads that the complaint is not maintainable both in fact or in law. The respondent concurs with the complainant with regard to the construction and sale agreement which were both entered on 17/04/2014 in respect of residential unit no. E4 404. The respondent avers that there has been a delay in completion due to unforeseeable hindrances and names them as short supply of construction materials, shortage of skilled labourers, restriction imposed by the State Government for other state labourers, etc.

(b) The respondent avers that the delay has already been covered in the agreements which provides for a force majeure clause and extension allows extension of handing over there for. The respondent avers that he had made best possible efforts to complete the construction, however due to reasons cited he was not able to complete the same. The respondent also submits that many of the allottees did not make the milestone payments which had caused a cascading effect on the cash flow, hindering the completion of the project. The respondent avers that the construction work of the unit was 90% complete and only internal works were to be done. The respondent prays for time of Eight months to deliver the property in a live able condition. The

respondent submits that he was not liable to any other claims made by the complainant and finally prays to be allowed a time of 8 months to refund the amount received from the complainant.

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

5. To prove their claim, both the parties have 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 the complainant entitled to refund of the money paid by him due to delay in handing over the unit by the respondent?

(ii) What are the reliefs made out?

7. Answer for the point (i):

(a) The complainant entered into the sale agreement on 15/09/2014 (EX-A2) based on which the respondent had received Rs.1,29,285/- from the complainant as sale consideration leaving a balance amount of Rs.43,095/- to be paid on or before execution and registration of the sale deed. The sale agreement was also entered on 15/09/2014 (EX-A1) for a consideration of Rs.56,19,330/- as laid out in the clause 3 of the construction agreement. As per the clause 6.1 of the construction agreement, the construction was to be completed in a period of 30 months with a grace period of 6 months. This would projects the delivery to 15/09/2017 including the grace period of 6 months. The complainant has submitted and it has been accepted by the respondent that the unit is yet to be delivered and vide the counter filed by him he has prayed to be allowed 8 months to refund the amount received by him.

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He has committed as below in the counter filed by him:

“In the above circumstances, it is most respectfully prayed that this Hon’ble Tribunal may be pleased to allow 8 months’ time to refund the received amount and thus render justice.”

This would also amount to admitting that when the RERA Act came into being the project was an ongoing project which implies that section 3 of the RERA Act has been violated inviting penalty under section 59 of the RERA Act on the respondent.

(b) The respondent has very clearly admitted the delay in handing over and even prays for a time of 8 months to refund the money. Section 18 of the RERA Act clearly lays down:-

Section 18:-

“18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in

the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

Since the respondent has failed to deliver the completed unit as agreed, he is left no other option but to refund the money paid to him by the complainant with interest. The respondent has himself accepted the same and has sought for a time of 8 months to make the refund. This makes the complainant entitled to refund of the money paid by him with interest and thus the first point is answered accordingly.

8. Answer for Point No: (ii)

- a) Therefore, the complainant is entitled for refund amount of Rs. 52,65,495/- from the Respondent 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 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.

(c) A penalty under section 59 of the RERA Act for Rs.50,000/- is imposed on the respondent for violation section 3 of the RERA Act.

9. 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. 8 of this order within 30 days of issue of this order.
- (ii) The charge of the aforesaid amount as encumbrance, if any, 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.
- (iii) 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.
- (iv) The complainant is at liberty to move the Adjudicating Officer on his prayer on compensation.

Sd/- 07/08/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- Chaithanya Chowdary
RW-1 --- Premnath

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	15/09/2014	Construction Agreement
Ex.A2	15/09/2014	Agreement for Sale
Ex.A3 (Series)	---	Receipts
Ex.A4 (Series)	---	Account Details
Ex.A5	24/02/2022	Statement of HDFC and Bajaj Housing Finance

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL

Sd/- 07/08/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

