

**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. 57 of 2022**

Sriram Lakshmanan

Rep by his POA, Lakshmanan

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**Complainant**

**Vs.**

1. M/s. Green Peace Construction Pvt Ltd.,

Rep. by its Managing Director,

Paul Rathna Kumar Earnarst

2. Lavanya Earnarst, Director

M/s. Green Peace Construction Pvt Ltd.,

3. Sathya Jagadeesan, Director

M/s. Green Peace Construction Pvt Ltd.,

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**Respondents**

**Complainant** : Rep by M/s. P.L. Narayanan, Advocates

**Respondents** : Rep by M/s. Rajesh Kumar, Advocates

Heard on: 01.08.2023

Delivered on:09.11.2023

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondents towards purchase of an apartment 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 learned counsel for the complainant submits that he had booked a residential apartment in the respondent's project by name, "**Green Peace Emerald Enclave**", at Kodambakkam Village, Guindy Taluk in the year 2013. The complainant was allotted a residential apartment No. 1R in the 1<sup>st</sup> Floor,

Block Nos. M37 to M43 pent house type with one covered car parking. The total consideration for the apartment was fixed at Rs.1,17,00,000/-. The complainant avers that he has paid a sum of Rs.60,00,000/- to the respondents at various intervals, this is, even though, the respondents had not entered into a sale and construction agreement.

(b) The complainant reiterates that the respondents had not entered into any agreement and have still not done so even till date. The complainant has not even shared with drawings of the apartment. The respondents have failed to hand over the apartment and were even not refunding the amount paid by the complainant despite their repeated request of the complainant. The complainant avers that he had moved the Hon'ble NCLT for claiming this refund but his complaint was disposed off on grounds of maintainability.

(c) However, in the meantime, following repeated request by the complainant, the respondents have returned a sum of Rs.4,50,000/- on 29.01.2021. Aggrieved, the complainant prays for refund of Rs.55,50,000/- with interest under Section 18 of the RERA Act along with a litigation cost.

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

(a) The respondents failed to file the counter due to which the chance to file counter was closed. The learned counsel for the respondents filed set aside petition in I.A No. 115 of 2022 which was allowed to file counter on payment of cost. The learned counsel for the respondents thereafter filed common counter for R1 to R3.

(b) The learned counsel for the respondents at the outset submits that the complaint is not maintainable either in law or facts and thus prays to dismiss the complaint. The respondents avers that the company had gone into the liquidation process due to their financial crisis. The respondents avers that the

company have only a meager property as most of their projects are joint venture projects. The respondents had even suggested two plots to the complainant to choose one plot as a security and had even offered a choice to be made by the complainant between two plots which they are identified. The respondents have offered this as a security for the money that the respondents were to return to the complainant. The respondent's had suggested to return money to the complainant at the rate of Rs.5,00,000/- per month by which he could settle the principle first and interest thereafter.

(c) The respondents avers that it was in this direction that he repaid a sum of Rs.4,50,000/- to the complainant on 29.01.2021. The respondents submits that it was due to their financial crisis that they were not able to repay the rest of the amount and undertake to repay at the rate of Rs.5,00,000/- per month. Thus, the respondents prays to dismiss the complaint.

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

5. To prove their claims the complainant and the respondents have filed their respective evidence on affidavit with documents.

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

- (i) Is the complaint maintainable to entitle the complainant to the refund of Rs.55,50,000/- with interest due to the respondents failure to deliver the complainant's apartment?
- (ii) What are the reliefs made out?

**TRUE COPY**

**7. Answer for point No.(i):**

(a) In the year 2013, the complainant was allotted a residential apartment No. 1R in the 1<sup>st</sup> Floor, Block Nos. M37 to M43 by name, "**Green Peace Emerald Enclave**", at Kodambakkam Village, Guindy Taluk. There were no agreements entered between the two parties neither in the year 2013 nor till date. The complainant has however paid a sum of Rs.60,00,000/- (Ex.A5 and Ex.A6) out of the agreed consideration of Rs.1,17,00,000/-.

(b) The respondents have questioned the maintainability of the complaint. Thus, it is essential to determine the maintainability before deciding on the relief claimed by the complainant. The project was initiated in the year 2013 which lies in a period before the RERA Act came into force. However, the respondents have refunded a sum of Rs.4,50,000/- on 29.01.2021 this would amount to conceding that the project had not been completed and handed over to the complainant.

(c) This would imply that when the RERA Act came into force, the project was an ongoing project within the definition of Section 3 of the RERA Act. This would thus makes the project fall within the purview of the RERA Act in consonance with the order of the Hon'ble Supreme Court in the Judgement in *M/s. New Tech Promoters and Developers Pvt Ltd., Vs. State of UP & Ors.* The retroactive applicability of the Act requires the project to be registered by the respondents wherein he had neither shown any evidence of having registered the project with the RERA nor have they claimed any exemption in any way.

(d) This would be the violation of Section 3 of the RERA Act for entail penalty under Section 59 of the RERA Act. This would therefore clearly establish that the complaint falls within the scope of the RERA Act and thus the complaint is maintainable.

**TRUE COPY**

(e) The respondents have not entered into any agreements with the complainant and have collected a sum of Rs.60,00,000/- in 5 installments as shown in the table below;

S.No	Cheque No.	Date	Drawn on	Payment particulars	Amount
1	010005	26.06.2013	Central bank of India	Booking advance	25,00,000/-
2	010007	03.07.2013	Central bank of India	Cost of construction	5,00,000/-
3	0100010	29.07.2013	Central bank of India	Cost of construction	10,00,000/-
4	0100011	19.08.2013	Central bank of India	Cost of construction	10,00,000/-
5	0100012	03.09.2013	Central bank of India	Cost of construction	10,00,000/-
				<b>Total Paid</b>	<b>60,00,000/-</b>

The respondents have failed to enter into any agreements and register the same and have obtained more than 10% of the total consideration which is a violation of Section 13 of the RERA Act warranting penalty under Section 61 of the RERA Act. The respondents have refunded a sum of Rs.4,50,000/- on 29.01.2021 which would amount to the respondents admitting to the contents of the complainant.

(f) The respondents further gone on to submit that they were willing to refund the remaining amount of Rs.55,50,000/- in installments wherein they have agreed to return the principle amount first and the interest thereafter. Accordingly, it is clearly made out that the complainant is entitled to refund of Rs.55,50,000/- from the respondents with interest under the provisions of Section 18 of the RERA Act and thus the point is answered accordingly.

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**8. Answer for point No.(ii):**

(a) Therefore, the complainant is entitled for refund amount of Rs.55,50,000/- from the respondents 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 respondents.

(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 respondents are directed as follows:-**

- (i) The respondents shall pay the entire amount at the interest rate 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) A penalty of Rs.1,00,000/- is imposed under Section 59 of the RERA Act on the respondents for the violation of Section 3 of the RERA Act payable within 30 days of issue of this order.
- (iii) A penalty of Rs.50,000/- is imposed under Section 61 of the RERA Act on the respondents for violation of Section 13 of the RERA Act payable within 30 days of issue of this order.

Sd/- 09.11.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

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**LIST OF WITNESSES**

CW-1 ---Sriram Lakshman

RW-1 --- Lavanya Earnest

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Brochure
Ex.A2	---	Side plan
Ex.A3	21.12.2011	Patta copy of land
Ex.A4	18.08.2011	General power of attorney
Ex.A5	---	Payment receipts
Ex.A6	01.01.2013 to 31.12.2013	Bank statement
Ex.A7	---	E-mail communications
Ex.A8	---	E-mail communications
Ex.A9	06.08.2015	E-mail communication
Ex.A10	20.02.2016	E-mail communication
Ex.A11	---	E-mail communications

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	27.08.2018	NCLT order
Ex.B2	15.05.2019	Order of company appeal No. 572 of 2018

Sd/- 09.11.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

