

**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. 78 of 2022**

N. Baskaran **Complainant**

Vs

M/s. Amar Prakash Developers (P) Ltd.,
Represented by its Authorised signatory **Respondent**

Complainant : M/s. D. Kanakalakshmi, Advocates

Respondent : M/s. Ravichander, Advocates

Heard on : 06.04.2023

Delivered on : 11.04.2023

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:

(a) The complainant joined the respondent's project by name Sun City on payment of Rs.5,000/- on 14.07.2019. Subsequently the complainant had paid another sum of Rs.25,000/- and Rs.75,000/- on 17.07.2019 and 29.07.2019 making the total amount paid to Rs. 1,00,000/- in all. The complainant was referred to one M/s Megna Housing Finance Ltd., for home loan.

(b) The complainant was subsequently informed that this project by name Sun City project of the respondent was not launched at all. The complainant thereafter made several efforts to get in touch with the respondent for

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getting details of the project but met with no success. Finally vide emails dated 02.03.2020 and 15.06.2020, the complainant expressed his desire to cancel the booking and sought refund. Aggrieved that the refund was not made to him the complainant pleads for refund of the money paid by him with interest.

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

(a) The learned counsel for the respondent submits that he had promoted the project title Sun City and that complainant had booked Flat No. N6 F2 in the mentioned project. The respondent however disputes the payments claimed as paid by the complainant.

(b) The respondent avers that no agreements had been entered between the two parties. Thereby the complainant has no right for making any claim as the complaint is not maintainable under section 18 of the RERA Act.

(c) Section 18 of the RERA Act provides the refund for any other breach concerning the completion of the project or where deposit had been made while none of which happened in this case. The respondent thereby pleads to dismiss the complaint with cost on the complainant.

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

5. While the complainant has filed evidence on affidavit with documents while the respondent has only filed the counter and did not remain present for any further adjudication.

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

(i) Is the complainant entitled to seek refund of the money paid by him for the project which did not take off?

(ii) What are the reliefs made out?

7. Answer for the point (i):

(a) The complainant had booked flat No. N6 F2 (Ex- A2). The complainant was given a quotation for unit, which was to the tune of Rs. 9,47,503/- (Ex- A1). The complainant has paid an amount of Rs.1,00,000/- as follows;

Sl. No.	Date	Instrument Date	Amount	Ex. No.
1	22.07.2019	25.06.2019	5,000/-	Ex. A2
2	22.07.2019	17.07.2019	20,000/-	Ex. A3
3	22.07.2019	29.07.2019	75,000/-	Ex. A4

(b) The complainant has pleaded that since the project did not take off he had written to the respondent to cancel the booking on date 10.03.2020 (Ex. A7 & A9). The respondent failed to respond to the complainants request despite repeated requests from him. Thus while the complainant had made a payment of Rs 1,00,000/- to the respondent has failed to deliver the flat to him.

(c) The respondent questions the maintainability of the complainant on grounds that no agreements had been signed. However this claim of the respondent is not sustainable as evidence indicates otherwise. The respondent himself submits that Flat No. N6 F2 was booked by the complainant in the respondent's project which will be clear from Ex. A1 and Ex. A2. Further payments have also been received by the respondent clearly mentioning the

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name of the project as Sun City and also shows the complainant as the allottee with the allotted unit No. (Ex. A3 and Ex. A4).

(d) The respondent has also issued a payment request letter dated 22.07.2019 (Ex. A5) clearly showing the name of the project is Sun City and the flat allotted as N6 F2. The details of the bank account (Ex. A11) also shows transfer of money to the respondent from the complainant. All these clearly shows that the respondent was constructing apartments for the purpose of selling to the complainant fitting correctly into the definition of promoter under section 2(z)(k) (i) of the RERA Act.

“Section 2(z)(k) (i) of RERA Act means a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees”

(e) On the other hand the complainant has been allotted for consideration an apartment fitting very well into the definition of an allottee under section 2(d) of RERA Act as enumerated as below,

“Section 2(d) means "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent”.

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(f) The unit for which the consideration is paid by the allottee (complainant) to the promoter (respondent) is for an apartment under section 2(e) of RERA Act, which would be evident of such apartment enumerated as below;

“Section 2 (e) of the RERA Act means "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified”

There is therefore a clear promoter - allottee relationship between the respondent and complainant for an apartment. Hence the contention made by the respondent on maintainability of the complainant gives him no relief. The mere non execution of the agreements will not in any way dilute the claim of the complainant as there is promoter-allottee relationship between the two parties and consideration for the apartment is made over to the respondent. The project has not taken off at all and thus there is no question of completion. Thus the complainant is entitled to seek refund with interest and so the 1st point is answered accordingly.

8. Answer for the point (ii):

a) Therefore the complainant is entitled for refund of Rs.1,00,000/- from the respondent with interest.

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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 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 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.

8. 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 time of issue of this order.

(ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

Sd/-11.04.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- N. Baskaran

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos.	Date	Documents Name
Ex.A1	15.07.2019	Quotation
Ex.A2	22.07.2019	Receipt

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Ex.A3	22.07.2019	receipt
Ex.A4	22.07.2019	Receipt
Ex.A5	22.07.2019	Payment request letter
Ex.A6	02.03.2020	E-mail
Ex.A7	10.03.2020	Cancellation letter
Ex.A8	15.06.2020	E-mail
Ex.A9	23.04.2021	Cancellation letter
Ex.A10	12.07.2021	Reminder letter
Ex.A11	--	Bank statement

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

Nil



Sd/-11.04.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI