

**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. 8 of 2022**

Roshan S  
Rep. by POA Holder, S. Sundararajan ..... **Complainant**

**Vs**

M/s. Tata Value Homes Ltd.,  
Rep. by its Managing Director ..... **Respondent**

**Complainant** : Party – In - Person

**Respondent** : Rep. by Mr. Deepak Poonamiya, Advocate.

**Heard on** :13.12.2022

**Delivered on** :27.02.2023

**ORDER**

The above complaint by the complainant seeking refund with interest from 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 had booked and was allotted a Plot No. 31 in "**Tata Crescent Enclave**", at Oragadam promoted by the respondent on 15.02.2019. Since, there were several issues relating to the title, the complainant refused to sign the sale agreement. The complainant avers that while this issue was going on, the respondent had collected a sum of Rs.4,03,178/- from the complainant.

(b) The complainant further avers that since the respondent was not following proper procedure, he had proceeded to cancel and sought refund. Later, again the respondent tried to give an offer to sign the

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*S. Sundararajan*

agreement, but the complainant did not heed to the request of the respondent as he had already made up his mind to seek refund. Aggrieved, the complainant seeks refund of the total amount of Rs.4,03,178/- paid by him.

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

(a) The learned counsel for the respondent denies all allegations made in the complaint. The respondent avers that it was only on the application of the complainant that on 18.02.2019 the complainant was given allotment. The total consideration for the unit was Rs.44,79,750/- which was to be paid as per the agreed payment schedule. The respondent submits that it was wrongly submitted by the complainant that the respondent refused to sign the sale agreement as stipulated in the RERA Act.

(b) As per the schedule of payment a total of six instalments were to be paid. The first being at the time of booking and the last at the time of handing over. The complainant had paid Rs.4,03,178/-. Thereafter the dispute between the complainant and respondent started, the complainant failed to pay the next instalment of Rs.3,73,178/-. Several email reminders were sent to the complainant by the respondent but to no avail.

(c) Subsequently, the respondent cancelled the allotment vide his letter dated 15.06.2020 however, even at this stage, the respondent was open to get payment and continue the complainant as an allottee. The Clause 4 of the construction agreement lays down details for cancellation without any charges if the request was made within 30 days of the receipt of the communication of withdrawal by the complainant.

(d) However, the Clause 4 also lays down that if the complainant had made payment online and wishes to withdraw, the promoter shall not be liable to refund the fees paid by him and the same shall stand forfeited. The

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respondent relies also on Clause 10 which lays down that upon cancellation by the respondent, refund of all amount paid shall be made without any interest and also that booking amount or the actual amount whichever is higher subject to the maximum of 10% of the sale consideration shall not be refunded.

(e) Thus, the agreement allowed a fair chance for both the complainant and the respondent to cancel the allotment. On the part of the respondent, the agreement allowed cancellation in the event of non-payment by the complainant with a right to retain the booking amount or the booking amount whichever is higher subject to maximum of 10%.

(f) The respondent further avers that at that particular stage when the cancellation was done, the complainant owed a sum of Rs.10,51,610/- of which he had paid Rs.4,03,178/- leaving a balance of Rs.6,48,432/- yet to be paid. Financial loss has been caused to the respondent due to this non-payment leading to cancellation as the respondent had to sell the said plot to another buyer at a loss and thus the respondent pleads to dismiss the complaint.

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

5. Both the parties have filed their respective evidence on affidavit with documents

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

- (i) Is the complainant entitling for refund of the money paid to the respondent having refused to sign the sale agreement?
- (ii) What are the reliefs made out?

7. **Answer for Point No (i):-**

(a) The complainant was allotted a Plot No. 31 in "*Tata Crescent Enclave*", in the respondent's project (Ex.A1) by paying a total sum of Rs.4,03,178/- (Ex.A2 series). The respondent has raised demand notice from time to time which has been only paid to an extent to making the total payment of Rs.4,03,178/-. Thereafter, despite repeated demand, the complainant had not made any payments. The complainant had raised a query with regard to the requirement of the sale agreement (Ex.A3). The respondent also refers to a e-mail dated 29.07.2019 which is in response to the complainant's requirement for seeking details of legal documents and series of mail clearly indicates that the complainant did not pay up despite all effort of the respondent. The communication between the two parties reveals that while the respondent had despatched the required documents to the complainant, the same did not reach him.

(b) The total consideration for the plot was Rs.44,79,750/- of which the complainant had paid a sum of Rs.4,03,178/- which is less than 10%. Hence, the respondent cannot be faulted for not having registered the sale agreement in pursuance to the Section 13 of the RERA Act. The respondent has made repeated demands for payment of instalments and sufficient caution have been given to the complainant before cancelling the allotment vide their letter dated 15.06.2020 (Page 51 of the respondent's typed set).

(c) The correspondence between the complainant and the respondent on the one hand shows that the complainant had made request for the certain documents and e-mail correspondence indicates exchange of e-mails where the respondent has keep on replying to all the queries raised by the complainant. (Ex. B8) and (Ex.A3 series).

(d) While this was going on, the complainant has failed to make payment and finally after giving adequate notice (Ex. B6 and Ex.B7), the allotment to

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the complainant has been cancelled (Ex. B10 and Ex.B11). In all, it is found that the complainant had some doubt with regard to the documents. The perusal of submitted evidence indicates the willingness of the respondent to satisfy the requirement of the complainant however apparently as it appears several responses sent by the respondent to the complainant did not reach the complainant who remained in doubt about the title.

(e) The complainant's failure to make the payment despite repeated reminders led to the cancellation of the unit which would not entitle the respondent to refund with interest as sought by him. In the mean while, the respondent has sold the disputed unit to a new buyer on 05.03.2021 (Ex.B15) wherein he submits to have made losses. However, the facts finally emerges that the transaction has not materialized and that the respondent had got a new buyer and received the sale amount from the new buyer.

(f) In the end it is only miscommunication that existed between the complainant and the respondent. The respondent has already sold the property to a new buyer and realised the sale proceeds. The respondent is directed to return the monies he had received in full from the complainant but without any interest. Thus, the point is answered accordingly.

**8. Answer for Point No (ii):-**

Therefore, the complainant is entitled to return the amount of Rs.4,03,178/- without any interest. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (i) The respondent shall pay the amount 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.

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- (ii) On repayment of the claim as per the order, the allotment of the said plot shall stand cancelled in the name of the complainant.

Sd/- 27.02.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- S. Roshan

RW-1 --- Yamuna. T

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	25.02.2019	Allotment letter .
Ex.A2	---	Receipts
Ex.A3	---	E-mails
Ex.A4	02.03.2021	Power of attorney

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	18.02.2019	Application form
Ex.B2	25.02.2019	Allotment letter
Ex.B3	---	Demand notices
Ex.B4	---	Receipts
Ex.B5	---	E-mails
Ex.B6	---	E-mails
Ex.B7	---	E-mails
Ex.B8	---	E-mails
Ex.B9	---	E-mails
Ex.B10	---	E-mails
Ex.B11	---	E-mails
Ex.B12	---	E-mails
Ex.B13	---	E-mails
Ex.B14	---	E-mails
Ex.B15	05.03.2021	Sale deed

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Ex.B16	15.06.2020	Statement of account
Ex.B17	12.09.2017	Letter

Sd/- 27.02.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

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*N. Anand*  
*27/2/2023*  
ADMINISTRATIVE OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY