

**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. 80 of 2022**

K.V. Capital **Complainant**

Vs.

M/s. Fifth Field Realtors private Limited **Respondent**

Complainant : Rep by M/s. Bharat B Jain, Advocates

Respondent : Rep by M/s. S.DineshKumar, Advocates

Heard on : 25/04/2023

Delivered on : 17/05/2023

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 is a registered partnership firm which had lend a loan of Rs.20,00,000/- on 11/04/20178 and Rs.75,00,000/- on 23/05/2018, total to Rs.95,00,000 to the respondent. The respondent had agreed the return money as Rs.20,00,000/- by 31/12/2018 and Rs.75,00,000/- by 23/07/2018 with interest at the rate of 30% per annum. Both these commitments were acknowledged by the respondent vide letters dated 11/04/2018 and 23/05/2018. The complainant issued a legal notice to the respondent dated 06/12/2019. The respondent reacted by offering to sell 2 flat in the project

being developed by the respondent. The complainant agreed to the offer. The complainant further avers that he was in the possession of the Board Resolution which had recorded the outstanding due with interest by the respondent to the complainant to be as Rs.1,48,16,250/-

(b) The complainant avers that the respondent agreed to consider this outstanding due as a part consideration against the 2 flat and agreed to receive the allotment by the respondent in the complainant's name. It was further assured that the completed project will be handed over within 30 months from the date of entering into sale and construction agreement. The respondent had communicated to the complainant that in the said project had received approval of the CMDA and that it was pending for registration with the TNRERA. Accordingly, the complainant entered into 2 sale agreements dated 03/03/2021 registered as document no.1021/2021 and 1022/2021 at Sub Registrar Office, Kodambakkam. Similarly, two construction agreements were also entered on the same day. The complainant avers that the said agreement records the Board Resolution of 10/02/2021.

(c) The complainant avers that considering the agreement dated 03/03/2021 handing over the apartment which was 30 months from the day would fall on August 2023. The complainant avers that the respondent have already communicated that they would not be able to hand over the unit by August 2023 as the construction was yet to commence. The complainant avers that the respondent had committed anticipatory breach of the agreement and have failed to perform in its obligation. The complainant avers that as it is at this stage it was impossible for the respondent to complete and hand over the flat by August 2023. Hence, Aggrieved the complainant seeks refund of the amount paid without waiting for the date of completion according to the

agreement, under section 18 of the Tamil Nadu Real Estate (Regulation and Development) Act, 2016.

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

(a) The Learned counsel for the respondent denies all allegations contained in the complainant except those admitted and complainant to strict proof of the same. The respondent avers that it was true that their project had got the approval in the year 2017, but was pending as they had applied for revision of the construction plan with increased FSI which was yet to be approved. The respondent denies that they have taken any loan of Rs.20,00,000/- on 11/04/2018 and Rs.75,00,000/- on 23/05/2018 towards its business. The respondent avers that even if it was to be assuming that the loans have been taken, the same is barred by law of limitation and thus questions the maintainability of the complaint before this forum.

(b) The respondent further avers that he had received no legal notice dated 06/12/2019 from the complainant. The respondent also denies that they had approached the complainant and expressed their inability to pay the outstanding due and that they had offered to sell 2 flats in Real Estate Project developed by them in lieu of the loan and interest accrued on it. The respondent further says that the Board meeting Resolution was their internal matter to which the complainant is neither a party nor a signatory or even an addressee. The respondent submits that the complainant had approached them for getting the flats from the respondents. The respondent denies that they had agreed to settle the outstanding due as consideration against these 2 flats. The respondent maintains that averments contained in the minutes were only to be considered as record wherein the respondent had agreed to sell the property and not acknowledgment of the time barred debt.

(c) The respondent also denies having agreed to refund of sum of Rs.1,48,16,250/- in the project which was not completed within 30 months from the date of entering the agreement at the rate of 30% per annum. The respondent reiterates that he had applied for revised construction plan because of FSI benefits and was yet to be approved by the CMDA. The respondent avers that the complainant had obtained 2 sale and construction agreements mentioning amount at Rs.45,00,000/- each as advance sale consideration and got the sale registration done on 08/03/2021, promising to make the said payments through bank transactions later so that, the same could be shown in Income Tax returns. The respondent submits that believing the complainant they had agreed to affix their signatures with regard to document nos. 1021 and 1022 of 2021 at Sub-Registrar, Kodambakkam.

(d) The respondent avers that it was for this reason that the mode of payment were not mentioned in both registered sale agreements as payments for the same apartments was to be made through bank transactions since, the complainant had failed to pay the advance, the construction agreement were not registered. It was only taking advantage of the registered sale agreement that the complainant had come up before this forum. The respondent goes on to submit though does not admit that even if it was assumed to be true the date of handing over would be August 2023. The prayer is still not maintainable as even this does not entitled the complainant to get refund with interest. The respondent also denies having committed any inability to complete the project and hand it over by August 2023. The respondent submits that should the complainant want to withdraw from the project, they could seek the refund of the amount paid in the agreement alone and not interest as there is no undertaking to refund the amount together with interest

at 30% per annum and thus the respondent submits that there is no anticipatory breach of the agreement and prays for dismissing the complaint.

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) In the given situation whether there is promoter allottee relationship between the complainant and the respondent and as also whether the amount said to have been extended as business loan would fall in the jurisdiction of this Forum?

(ii) What are the reliefs made out?

7. Answer for the Point No. (i)

(a) The complainant admits to have extended a loan of Rs.20,00,000/- on 11/04/2018 (EX-A2) and Rs.75,00,000/- on 23/05/2018 (EX-A3) to the respondent. The respondent has denied the same. However, by his own admittance, the complainant has accepted that these loans are given for business purpose. These have been denied by the respondent who refuses to have taken any loan from the complainant. The complainant's own acceptance that the money was extended as a loan towards business is shown by the following excerpts from the complainant at para 4 (iii) as reproduced below:

"The Respondent had approached the Complainant and have availed loan for a sum of Rs.20,00,000/- on 11/04/2018 and Rs.75,00,000/- on 23/05/2018., totaling to a sum of Rs.95,00,000/- (Rupees Ninety-Five Lakhs Only) towards its business. The Respondent had agreed to pay the principal amount of Rs.20,00,000/- by 31/12/2018. Similarly, the

Respondent had agreed to pay monthly interest at 30% per annum and agreed to repay the principal amount of Rs.75,00,000/- by 23/07/2018. The respondent through its directors had duly acknowledged the receipt of the amount received and the terms of repayment and interest by letters dated 11/04/2018 and 23/05/2018."

(b) The complainant further avers that since the respondent was unable to repay the loan in their Board Resolution. The respondent company resolved to partly discharge the loan borrowed from the complainant by offering 2 flats in return (EX-A5).

(c) It is determined, with evidence so extended, that the loan had been received by the respondent as shown at EX-A1 and A2. However, by his own admittance the same was for business.

(d) This being so, the relief sought by the complainant would not lie in this forum as it relates to money transaction which would not fall within the scope of the RERA Act. This being so the complainant is dismissed as not maintainable with liberty to the complainant to seek remedy at the appropriate forum.

8. Answer for Point No (ii):

In view of the findings to the 1st question, no relief is made out.

9. In the result, the complainant is dismissed as not maintainable.

Sd/- 17/05/2023
SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER
TNRERA, CHENNAI

TRUE COPY

SJ
17/5/23

LIST OF WITNESSES

CW-1 --- Mr. Ashok M.Jain
RW-1 --- Mr. Riyaz Ahamed Khan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	17/07/2017	Acknowledgement of Registration of Firm
Ex.A2	11/04/2018	Receipt
Ex.A3	23/05/2018	Receipt
Ex.A4	06/12/2019	Legal Notice
Ex.A5	10/02/2021	Minutes of the meeting of the Respondent
Ex.A6	03/03/2021	Construction Agreement of Flat No.10 A
Ex.A7	03/03/2021	Agreement of sale of Flat No.10A
Ex.A8	03/03/2021	Construction Agreement of Flat No.10D
Ex.A9	03/03/2021	Agreement of sale of Flat No.10D
Ex.A10	---	Statement of Accounts

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL

Sd/- 17/05/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

