

**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 Nos. 83 and 84 of 2022**

1. Mr. Alla Venkata Srikrishna Pulakith (RCP No. 83/2022)
2. Mr. Bhimaraju Venkata Hanuma Sai Kiran (RCP No. 84/2022)

.... Complainants

Vs.

M/s. Sterling Estates and Properties Ltd.,

Represented by its Managing Director,

.... Respondent

Complainant : Rep. by M/s. T. Raghavan, Advocates

Respondent : Ex-parte

Heard on : 28/04/2023

Delivered on : 19/05/2023

ORDER

1. The above complaints by the complainants seeking refund of amount paid to the respondent 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. Since all the complaints are relating to the same project of the respondent and same points arise for determination, the complaints are heard together and disposed of by common order.

3. Averments of the complainants, in brief, as follows:

(a) The complainant in RCP 83/2022 and RCP 84/2022 entered into the respondent project by the name "Sterling Gateway" the details with regard to allotment and payments etc. are and table given below:

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RCP Nos.	Construction Agreement	Sale Deed	Total Cost Rs.	Amount Paid Rs.	Date for delivery
(1)	(2)	(3)	(4)	(5)	(6)
83/2022	03.08.2018 (ex.A2)	03.08.2018 (ex.A3)	30,00,000/-	24,00,000/-	03.05.2021 (with a grace period of 3 months)
84/2022	13.08.2018 (ex.A2)	13.08.2018 (ex.A3)	30,00,000/-	25,00,000/-	13.05.2021 (with a grace period of 3 months)

In Both the RCPs 83 of 2022 and 84 of 2022, the agreed time for construction and delivery of the completed flat was 30 months from the date of registration with a grace period of 3 months. The projected completion would accordingly fall on 03/05/2021 for RCP 83 of 2022 and 13/05/2021 for RCP 84 of 2022.

(b) The complainants in both the RCPs aver that the respondent failed to hand over the apartment to the complainant as agreed. The complainants had followed up with the respondent several times too had failed to receive any proper response from them. The complainant has paid a sum of Rs.24,00,000/- in RCP 83 of 2022 and Rs.25,00,000/- in RCP 84 of 2022. Aggrieved, since they did not get possession of their flats, the complainants seek refund of the moneys paid by them with interest and cost.

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

5. To prove their claims the complainants in all the RCP's have filed their evidence on affidavit with documents. The respondent did not file any counter, proof affidavit from beginning of the case till the last stage.

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

- i. To determine whether the claims made by the complainant for refund of money with interest due to delay in delivery is made out?

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ii. What are the reliefs made out?

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

(a) The complainants in RCP 83 of 2022 and 84 of 2022 have entered into the sale and construction agreement on date as shown in table above (EX-A2 and Ex-A3 in both the RCPs). The complainants have paid a sum of Rs.24,00,000/- in RCP 83 of 2022 and Rs.25,00,000/- in RCP 84 of 2022. In both the RCPs as per the clause 5 of the construction agreement, the agreed date of delivery was 33 months which includes 3 months of grace period for delivery which would fall on 03/05/2021 for RCP 83 of 2022 and 13/05/2021 for RCP 84 of 2022. In both the RCPs, the respondent has failed to deliver the unit as agreed. Both the complainants seeks withdrawal from the project and seek refund of the amount paid by them with interest, under section 18(1) of the RERA Act which lays down as follows:

Sec 18(1):-

(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:

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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.

(b) In a situation, such as this, where the respondent has failed to deliver the possession of the flat as agreed, the complainants have a choice to continue with the project and seek interest for the delayed delivery or to withdraw from the project and be entitled to refund of the money paid by them with interest. In both the RCPs 83 of 2022 and 84 of 2022, the complaints seek to withdraw from the project and want refund of the money with interest. In view of the Section 18(1) the claim for refund with interest is made out in RCPs 83 of 2022 and 84 of 2022 and thus the first point is answered accordingly.

8. Answer for Point No: (ii) in RCP 83 of 2022

a) Therefore, the complainant is entitled for refund amount of Rs. 24,00,000/- 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 7.50% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 9.50% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

(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.

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9. Answer for Point No: (ii) in RCP 84 of 2022

a) Therefore, the complainant is entitled for refund amount of Rs. 25,00,000/- 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 7.50% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 9.50% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

(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.

10. In the result, the respondent is directed as follows:-

1. The respondent shall pay the amounts at the interest rate, as per the findings in answer for Point No.(ii), Para No.8 and 9 of this order within 30 days of issue of this order.

2. The charge of the aforesaid amount as encumbrance 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.

3. 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.

Sd/- 19/5/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

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Sd/-
19/5/23

RCP.No. 83/2022**LIST OF WITNESSES**

CW-1 --- Mr. Alla Venkata Srikrishna

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	15/04/2018	Memorandum of Agreement
Ex.A2	03/08/2018	Construction Agreement
Ex.A3	03/08/2018	Sale deed
Ex.A4	03/08/2018	Agreement of deposit of title deeds
Ex.A5	---	Transactions
Ex.A6	27/07/2021	Loan status report

RCP.No. 84/2022**LIST OF WITNESSES**

CW-1 --- Mr. Bhimaraju Venkata

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	02/08/2018	Memorandum of Agreement
Ex.A2	13/08/2018	Construction Agreement
Ex.A3	13/08/2018	Sale deed
Ex.A4	13/08/2018	Agreement of deposit of title deeds
Ex.A5	---	Transactions
Ex.A6	27/07/2021	Loan status report

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL

Sd/- 19/5/23
 Mr. SUNIL KUMAR, I.P.S (Retd)
 SINGLE MEMBER BENCH
 TNRERA, CHENNAI

