

**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. 98 of 2022**

M/s. K.V. Finance and Investments **Complainant**

Vs.

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

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

Respondent : Exparte

Heard on : 28/03/2023

Delivered on : 31/03/2023

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:

The Complainant booked 4 flats in the respondents project and registered the sale deed on 23/10/2017 and construction agreement was also executed on 23/10/2017. The complainant has paid a sum of Rs.2,54,56,384/-. The agreed date of delivery, as per the construction agreement was projected in 30 months from the date of the agreement thus on April 2020. The complainant avers that the respondent failed to deliver the units as agreed on the due date. Aggrieved, the complainant seeks refund of the amount paid by him under section 18 of the TNRERA Act along with interest and litigation cost.

A.J.
31/3/23

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3. In spite of service of notice, the respondent remained absent all through the proceedings and hence was treated as ex-parte.

4. In evidence to prove their claim, the complainant has filed proof affidavit with documents.

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

(i) Is the complainant entitled to relief as claimed by him?

(ii) What are the reliefs made out?

6. Answer to Point No. (i)

The complainant entered into sale agreement and the sale deed was signed on 23/10/2017 with the respondent (EX-A4). The sale consideration of Rs.1,52,25,750/- was paid by the respondents following which the sale deed was registered. The construction agreement was entered on 23/10/2017 (EX-A3). The agreement was for the construction of 4 apartments as specified in the sale agreement at page 4 of the complainants typeset. The construction agreement stipulated the total cost of construction for the 4 units as Rs.1,84,39,250/-. Clause (4) of the construction agreement projected the delivery of the completed units within 30 months from the date of agreement, therefore setting the final date of delivery to April 2020. The complainant has failed to hand over the delivery by the due date for which the complainant seeks refund of the amount paid to the tune of Rs.2,54,56,384/-. It is clearly exhibited that the units have not been handed over on the due date. Hence, the complainant is entitled to the relief claimed by him u/s 18 of the TNRERA Act. Thus, point is answered accordingly.

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7. Answer for Point No (ii):

(a) In view of the answer for Point No. (i), the complainant are entitled for refund of amount for a sum of Rs.2,54,56,384/- from the respondent.

(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 respondent.

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

(i) The respondent shall pay the amount at the interest rate, as per the findings in answer for Point No. (ii), Para No.7 of this order within 30 days of issue of this order.

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

(iii) The charge of the aforesaid amount as encumbrance shall be on the apartments booked by the complainant 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.

(iv) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondents.

Sd/- 31/3/23
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

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31/3/23

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LIST OF WITNESSES

CW-1 --- Mr. Ashok M.Jain

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	----	Bank Statement
Ex.A2	----	TDS Certificate
Ex.A3	23/10/2017	Construction Agreement
Ex.A4	23/10/2017	Sale Deed

sd/- 31/3/23.
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

