

**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. 103 of 2023

1. Navneet Kumar Ranka
 2. Babulal Ranka & Sons (HUF)
Rep. by its Karta Babulal Ranka
- Complainants

Vs.

M/s. Lokaa Developers Private Limited
Rep. by its Managing Director P. Santhosh Sharma

..... Respondent

Complainant : Rep by M/s. CS K. Gaurav Kumar &
Associates, Advocates

Respondent : Exparte

Heard on : 19/10/2023

Delivered on : 25/10/2023

ORDER

The above complaint by the complainants 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 complainants, in brief, as follows:

(a) The learned counsel for the complainants avers that they entered into the sale and construction agreement with the respondent on 16/11/2017. The complainants were allotted a 2BHK apartment bearing no. 1906 in the complex named as "M One" being undertaken by the respondent on the 200 feet road, (Jawaharlal Nehru Salai), Nagalakshmi Nagar, Ponniammanmedu, Madhavaram, Chennai-600 110. The construction agreement was signed on

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16/11/2017 and the sale agreement was also signed on the same day. The total consideration agreed was Rs.7,24,019/- for the UDS and Rs.42,75,981/- for the construction. The agreed date of delivery as per the construction agreement was October, 2019 with a grace period of 6 months projecting the final delivery to March, 2020.

(b) The complainants submit that he had paid the entire consideration of Rs.50,00,000/- on 15/11/2017. The complainants aver that despite having made the full payment, the respondent has failed to hand over the completed apartment on the agreed date and submits that by October, 2019, the construction was neither complete nor appeared to be near completion. The complainants refer to clause 5(b) of the construction agreement which essentially lays down that in case default by the promoter, the complainant had the option of terminating the agreement in which case the promoter shall be liable to refund the entire money paid by the complainants along with interest at the rate specified in the rules within 45 days of receiving the termination notice. The clause also provided that in case the complainants did not wish to withdraw from the project or terminate the agreement; he shall be paid the interest at the rates specified in the rules.

(c) The complainants finally submit that the respondent has not executed the sale and the construction agreements even till now, even though it was envisaged that the execution shall be completed on the receipt of all moneys due from the complainant to the respondent. The complainants avers that despite completing his part of the obligation he has still not been approached by the respondent for the execution of the sale deed. The complainant's effort to contact the respondent did not received any response. Aggrieved, the

complainant does not wish to have the possession of the apartment and prays for refund of the money paid by them with interest along with compensation.

3. The respondent was issued with the notice, however, despite receiving the same, the respondent remained absent and hence was treated ex-parte.

4. In evidence to prove their claim, the complainants have filed proof affidavit with documents.

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

(i) Are the complainants entitled to refund of the money with interest as prayed by him?

(ii) What are the reliefs made out?

6. Answer to Point No. (i)

(a) The complainants entered into the respondent's project advertised in the name of Lokaa (EX-A3) and entered into the agreement for sale on 16/11/2017 (EX-A1). The construction agreement between the two parties was entered on same day viz. 16/11/2017, however the agreements were not registered. The sale agreement laid down the agreed consideration for the UDS to be Rs.7,24,019/-. The construction agreement specified the cost of construction in clause 2(a) to be Rs.42,75,981/-. Clause 3(a) of the construction agreement clearly lays down that the complainant has paid a sum of Rs.24,00,000/- vide cheque no. 349687 dated 15/11/2017 drawn on State Bank of Patiala. The complainants further paid a sum of Rs.25,00,000/- vide cheque no. 000091 dated 15/11/2017 drawn on the HDFC Bank. Clause 1 of the sale agreement lays down that the complainants had paid a sum of Rs.1,00,000/- vide cheque no. 349687 dated 15/11/2017 drawn on State Bank

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of Patiala, thereby the complainants had completed his obligation of making the agreed payment of the consideration of Rs.50,00,000/- as on 15/11/2017.

(b) However, the respondent failed to register the agreements despite having received more than 10% of the consideration and in fact he did not do so even after he had received the full consideration on 15/11/2017 itself, which is a clear violation of Section 13 of the *Real Estate (Regulation and Development) Act, 2016* for which penalty shall be imposed on the respondent. Clause 4(a) of the construction agreement stipulated the construction to be completed within 23 months with a grace period of 6 months from the date of the construction agreement, projecting the delivery to be by 16/04/2020. The construction agreement vide clause 5(b)(3) had even laid down conditions in case of default by the promoter and included giving the options to the complainant vide clause 5(b)(3)(ii)

(ii) The Allottee shall have the option of terminating the agreement in which case the Promoter shall be liable to refund the entire money paid by the Allottee under any head whatsoever towards the purchase of the Apartment, along with interest at the rate specified in the Rules within 45 days of receiving the termination notice, simultaneous to the execution of cancellation agreement and registration thereof, if required provided that where an Allottee does not intend to withdraw from the project or terminate the Agreement, he/she shall be paid, by the promoter, interest at the rate specified in the Rules, for every month of delay till the handing over of the possession of the Apartment.

(c) The complainants have failed to deliver the unit as promised on the agreed date and thus as per Section 18 the complainants get the option to

either continue with the project or to withdraw. In the instant case, the complainants seek to withdraw from the project allowing them the liberty offered to them vide Section 18(1): -

Section 18:-

18. Return of amount and compensation.—(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:

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.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

The complainants are therefore entitled to refund of the money paid by him with interest and thus the first point is so determined.

7. Answer for the Point No.(ii): -

(a) Therefore, the complainant is entitled for refund amount of Rs.50,00,000/- from the respondent with interest.

(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 8.70% 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., 10.70% p.a for the entire amount paid from the date of respective payment till repayment by the respondents.

(c) A penalty under section 61 of the RERA Act for Rs.50,000/- is imposed on the respondent for violation section 3 of the RERA Act.

8. In the result, the respondent 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. 7 of this order within 30 days of issue of this order.
- (ii) The charge of the aforesaid amount as encumbrance, if any, shall be on the flat 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.
- (iii) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale agreement, as the case may be, at the expense of the respondents.

- (iv) The complainants is at liberty to move the appropriate forum for seeking compensation.

Sd/- 25/10/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- Navneet Kumar Ranka
CW-2 --- Babulal Ranka & Sons

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	16/11/2017	Agreement for Sale
Ex.A2	16/11/2017	Construction Agreement
Ex.A3	---	Picture of Building Complex
Ex.A4	---	Receipts
Ex.A5	---	Working Sheet

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL

Sd/- 25/10/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

