

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

**Quorum : Thiru. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
RCP Nos. 124 and 125 of 2023**

1. Chitra Manoharan ... (RCP No. 124 of 2023)
2. Amirtham Subramanian ... (RCP No. 125 of 2023)
..... Complainants

Vs.

M/s. RVS Developers Pvt Ltd.,
Rep. by its Managing Director,
Senthilazhagan Respondent

Complainants : Rep. by M/s. TN. Buvaneshwaran, Advocates.

Respondent : Ex-Parte

Heard on : 09.11.2023

Delivered on : 16.11.2023

ORDER

Both the complaints by the complainants seeking refund with interest from the respondent towards purchase of the flats 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 both the RCP's Nos. 124 of 2023 and 125 of 2023, in brief, as follows:-

(a) The complainants have entered into the respondent's project by name, "RVSD MONTANA", at Ninnakarai Village, Chengalpattu Taluk, Kancheepuram District. The complainants were allotted a Flat Nos. 408 and 409 in RCP No. 124 of 2023 and Flat Nos. 410 and 411 in RCP No. 125 of 2023. The complainants in the two RCPs have booked two flats each in the respondent's project. The respondent agreed to sell the Flat No. 408 for Rs.18,46,780/- and Flat No. 409 for Rs.20,66,880/- in RCP No. 124 of 2023 making the total sale

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consideration to Rs.39,16,660/- for the two flats put together. Similarly, the respondent agreed to sell the Flat No. 410 for Rs.20,45,040/- and Flat No. 411 for Rs.18,73,640/- in RCP No. 125 of 2023 making the total sale consideration to Rs.39,18,680/- for the two flats put together.

(b) The complainants have paid a total sum of Rs.30,37,100/- in RCP No. 124 of 2023 for the two flats allotted and a total sum of Rs.30,41,800/- in RCP No. 125 of 2023 again for the two flats put together. The Memorandum of Agreement was entered on 08.08.2014 in RCP No. 124 of 2023 and 11.08.2014 in RCP No. 125 of 2023. The respondent had undertaken to get the building plan approval from the concerned authority and thereafter execute a separate sale and the construction agreements.

(c) The complainants have submitted that since the construction work for the said project was yet to start, they pray to withdraw from the project and seek refund of the amount paid by them with interest. The complainants also submit that even as per the Memorandum of Agreement entered between them, the respondent had agreed to return back the payment received from the complainants with an interest at the rate of 18% per annum in case of delay being beyond 6 months. Aggrieved, the complainants in both the RCP's pray for refund of money paid by them with interest.

3. In spite of service of notice, the respondent remained absent in both the RCP No. 124 of 2023 and RCP No. 125 of 2023 and hence treated as ex-parte.

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

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

- (i) Are the complainants are entitled to refund of the money as claimed by them with interest?
- (ii) What are the reliefs made out?

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

(a) The complainants entered into the respondent's project by name, "RVSD MONTANA", and entered into the Memorandum of Agreement on 08.08.2014 (Ex.A1) in RCP No. 124 of 2023 and 11.08.2014 (Ex.A1) in RCP No. 125 of 2023. The complainants were allotted Flat Nos. 408 and 409 in RCP No. 124 of 2023 and Flat Nos. 410 and 411 in RCP No. 125 of 2023. The Clause 3 of the Memorandum of Agreement laid down the total cost as Rs.18,46,780/- for Flat No. 408 and Rs.20,66,880/- for Flat No. 409 in RCP No. 124 of 2023. Similarly, the total cost stipulated in Clause 3 of the Memorandum of Agreement indicated a sum of Rs.20,45,040/- for Flat No. 410 and Rs.18,73,640/- for Flat No. 411 in RCP No. 125 of 2023.

(b) The complainant in RCP No. 124 of 2023, as per Clause 4 of the Memorandum of Agreement, has paid a sum of Rs.14,11,500/- for Flat No. 408 and Rs.16,25,600/- for Flat No. 409 making the total payment to Rs.30,37,100/-.

(c) The complainant in RCP No. 125 of 2023, as per Clause 4 of the Memorandum of Agreement, has paid a sum of Rs.16,04,800/- for Flat No. 410 and Rs.14,37,000/- for Flat No. 411 making the total payment to Rs.30,41,800/-.

(d) The Clause 6 of the Memorandum of Agreement in both the RCP's finds a mention that the sale and the construction agreement would be signed at the time of getting the building plan approval from the concerned authority. The complainants have not been handed over their respective flats even after a lapse of more than 9 years. This, entitles them to the refund of the money that they had paid to the respondent with interest as per Section 18 of the RERA Act, where, even after the receipt of consideration, the respondent has failed to provide the apartment and the complainants in both the RCP's have chosen to withdraw from the project and seek refund. This leaves no option for the respondent but to refund that he has received from the complainants to the tune of Rs. 30,37,100/- in RCP No. 124 of 2023 and Rs. 30,41,800/- in RCP No.

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125 of 2023 with interest in both the cases and thus, the point is answered accordingly.

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

(a) In view of the answer for Point No.(i), the complainants are entitled for the refund of the amounts paid and other reliefs as discussed below.

(b) RCP No.124/2023:

(i) The complainant is entitled for refund of the amount of Rs.30,37,100/- from the respondent with interest.

(ii) 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 8.75% 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., 10.75% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) RCP No.125/2023:

(i) The complainant is entitled for refund of the amount of Rs.30,41,800/- from the respondent with interest.

(ii) 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 8.75% 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., 10.75% per annum for the entire amount paid from the date of respective payment till repayment by the respondent. Therefore, the complainants are entitled for the relief as detailed above. Thus, the point is answered accordingly.

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

- (i) The respondent shall pay the amounts 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 respondent is directed to register the project by submitting an application for registration with the TNRERA within 30 days from the date of this order.
- (iii) The charge of the aforesaid amount as encumbrance if any 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.
- (iv) On repayment of the claim as per the order, the complainants shall execute the cancellation of the memorandum of agreement, at the expense of the respondent if any.

**SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER**

LIST OF WITNESSES

RCP No. 124 of 2023

CW-1 ---- Chitra Manoharan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	08.08.2014	Memorandum of agreement
Ex.A2	10.02.2022	Order issued by the Hon'ble Authority for the same project

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

RCP No. 125 of 2023

CW-1 ---- Amirtham Subramanian

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	11.08.2014	Memorandum of agreement
Ex.A2	10.02.2022	Order issued by the Hon'ble Authority for the same project

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/-16.11.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

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CERTIFIED TO BE TRUE COPY
[Signature]
For ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY