

**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. 135 of 2023**

S. Sudharsan

... Complainant

Vs.

M/s. Pacifica (Chennai Project) Infrastructure  
Company Pvt Ltd.,  
Rep. by its Managing Director

..... Respondent

**Complainant** : Rep by M/s. Raj & Raj Associates, Advocates.

**Respondent** : Ex-Parte

**Heard on : 21.11.2023**

**Delivered on : 28.11.2023**

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of the 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. Averments of the complainant, in brief, as follows:**

(a) The complainant entered into the respondent's project situated at Padur Village, Chengalpet Taluk, Kancheepuram District. The agreement for sale was executed on 16.06.2013 for a total sale consideration of Rs.10,75,200/-. The complainant had paid an advance of Rs.1,00,000/- on 06.01.2013 as the first payment. The complainant entered into an unregistered construction agreement with the respondent on 16.06.2013.

(b) The complainant was allotted an apartment in Block A203 on the 2<sup>nd</sup> floor in the building by name, "*Pride Towers*" in Phase 02 of the said township by name, "*Pacifia Aurum*", for a consideration of Rs.48,27,674/- for the construction thus making the total consideration to be of

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Rs.61,92,572/- which included the total consideration as also the government taxes. The complainant had paid a payment of Rs.5,09,129/- on 16.06.2013. As per Annexure 'D' of the said construction agreement, a balance sum of Rs.43,18,545/- was agreed to be paid as per the construction linked in the plan.

(c) The complainant had approached the respondent to register the sale deed and the construction agreement. The respondent, however, did not complete this obligation required of him. The complainant avers that as on date, he had paid a sum of Rs.49,69,262/- to the respondent which was duly acknowledged by the respondent. The agreed date of handing over was 30.06.2015 with a grace period of 6 months projecting the final delivery to 30.12.2015.

(d) The complainant avers that the project remains incomplete and not fit for habitation even till date. The complainant avers that a sum of Rs.49,69,262/- paid by him to the respondent is lying with him for more than 9 years and 9 months and that the construction has only been partially completed, thereby violating the terms and conditions of the construction agreement dated 16.06.2013. The complainant has been paying interest of this bank loan that he had obtained.

(e) The complainant further avers that the project is still not registered with the TNRERA even though it qualified the conditions required to be so registered. The complainant avers that the issue had been taken up to the Hon'ble Authority by a similar group of home buyers in the project where the Hon'ble Authority had ordered the project to be registered vide its order dated 06.11.2019. The project was registered with Registration No. TN/01/Building/0181/2019 dated 30.10.2019. The said registration mentions the completion of the project by 30.04.2021.

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(f) The complainant avers that while so registering the project with TNRERA, the complainant has made out as if it was a new project and has failed to honour all of the commitment given in the agreement entered between the 2 parties on 16.06.2013. Aggrieved, the complainant seeks refund of amount Rs.49,69,262/- with interest along with compensation.

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

4. In evidence to prove their claim, the complainant 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 eligible for the refund of money paid by him to the respondent with interest as he had failed to deliver the complainant's unit as agreed?

(ii) What are the reliefs made out?

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

(a) The complainant came up as a part of the respondent's project and the sale agreement was executed on 16.06.2013 (Ex.A1). The construction agreement for the said transactions was also executed on the same date i.e. 16.06.2013 (Ex.A2). The sale consideration for UDS of Rs.10,75,200/- (Annexure 'B' of Ex.A1). The complainant was allotted an apartment in Block A203 on the 2<sup>nd</sup> floor in the building name, "*Pride Towers*" in Phase 02 in the said township by name, "*Pacifia Aurum*" (Schedule 'E' of the construction agreement Ex.A2).

(b) The total agreed consideration for the construction has been enumerated in the Annexure 'D' of the construction agreement (Ex.A2) as

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Rs.43,18,545/- making a total consideration of Rs.53,93,745/- and Rs.61,92,572/- including the taxes to be paid to the Government. The complainant has paid a sum of Rs.49,69,262/- of which a sum of Rs.33,63,287/- had been sanctioned by the bank as loan (Ex.A5).

(c) The project was started in the year 2013, however, it remained as an ongoing project due to which on direction from the Hon'ble Authority it was registered with the TNRERA vide Registration No. TN/01/Building/0181/2019 dated 30.10.2019 (Ex.A6 and Ex.A7). The projected date of delivery as per the original agreement entered between the two parties was 30.06.2015 with a grace period of 6 months thus projecting the final handing over by 30.12.2015.

(d) The complainant has submitted that while registering the project it had done so as if it was a new project, even though, it was an ongoing project at the time when the RERA Act came into force. Thus, being an ongoing project registration was a requirement under Section 3 of the RERA Act. This would make the RERA Act to be applicable to the project. The respondent has failed to hand over the complainant's unit by 30.12.2015 as per the promise made.

(e) The complainant has decided to withdraw from the project and seeks refund under the provisions of Section 18 of the RERA Act. Section 18 are as follows:-

***"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*

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*(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 respondent has failed to hand over the apartment in accordance with the agreement on the date specified. The complainant has decided to

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withdraw from the project and has sought refund. Accordingly, the complainant is entitled to refund of amount paid by him to the tune of Rs.49,69,262/- with interest. Thus, the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.49,69,262/- 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 8.75% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +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) The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (i) The respondent shall pay the 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 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 apartment booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the

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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 sale agreement, at the expense of the respondent, if any.

Sd/- 28.11.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- S. Sudharsan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	16.06.2013	Agreement for sale
Ex.A2	16.06.2013	Construction agreement
Ex.A3	13.09.2013 to 02.09.2015	Axis bank loan statement
Ex.A4	10.04.2015	Consolidated receipt
Ex.A5	---	Payment summary
Ex.A6	08.02.2019	Order of TNRERA
Ex.A7	06.11.2019	Order of TNREAT

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

NIL

Sd/- 28.11.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

