

**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. 155 of 2023

Wg Cdr T P Hari Prasad

..... Complainant

Vs.

M/s. Selene Estate Limited

..... Respondent

Complainant : Rep by M/s. R. Ramasubramaniam Raja, Advocates

Respondent : Ex-parte

Heard on: 02/04/2024

Delivered on: 14/05/2024

ORDER

1. The above complaint by the complainant seeking interest on amount paid to the respondent towards purchase of an apartment/flat due to the delay in handing over the complainant's unit by the agreed date 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 Learned counsel for the complainant avers that the complaint was running a proprietary concern by the name and style of 'Bharatheeyam Security Services' for respondent's project by name GREENS Phase II. The complainant avers that the respondent could not make payments to him for the security services rendered by him. The respondent thereby owed a sum of Rs.17,02,938/- to the complainant. The complainant avers that the respondent in lieu of the money owed to him had offered one residential unit in their project. The dues were calculated for the pending payment till June 2020 as

well as for the future continued services to be rendered by the complainant for a further period from July, 2020 to February 2021 working out to Rs.41,77,680/-. The complainant avers that respondent had agreed to offer a 2.5 BHK apartment in flat no. E41203 with an approximate cost of around Rs.61,90,099/- in lieu of such payments to be made by him to the complainant. The MOU between the two parties was entered on 21/07/2020 which laid down the understanding between the two parties including the commitment of the respondent to offer the said unit to the complainant for the services rendered by him. The projected date of handing over was agreed to be on or before 28/02/2021.

(b) The complainant avers that he had agreed to such terms and had continued to provide services for the extended period between July, 2020 and February, 2021. The complainant avers that in pursuant to the MOU, the construction agreement was entered between the two parties on 23/06/2021 for Rs.54,07,432/- and the sale agreement was entered on 23/05/2021 and the sale deed was registered on 01/07/2021 vide document no. 6863/2021 before the SRO, Chennai South for a sum of Rs.7,82,667/- making the total consideration to Rs.61,90,099/-. As per the construction agreement entered between the two parties, the respondent had agreed to hand over the complainant's apartment by 31/07/2021 with an additional grace period of 6 months, projecting the final handing over by 31/01/2022.

(c) The complainant avers that the respondent failed to hand over the complainant's unit as per the agreement by 31/07/2021 on which the complainant issued an E-mail dated 05/11/2021 to enquire about the handing over. The respondent replied vide his E-Mail dated 06/11/2021 wherein he informed about the handing over for fit out by January, 2022. The complainant

avers that the respondent has failed to hand over the complainant's unit even by January 2022 and avers that there was no substantial progress in the project as well. Aggrieved, the complainant prays for interest for delay in handing over of the apartment from the agreed date of delivery time till it is finally handed over to him along with litigation cost.

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

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

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

(i) Is the complainant entitled to the interest on the consideration paid by him for the period of delayed handing over of his unit by the respondent till it is finally handed over?

(ii) What are the reliefs made out?

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

The complainant was a service provider to the respondent rendering services related to security. The respondent owed monies to the tune of Rs.17,02,938/- to the complainant for the services provided by him to the respondent. The respondent had agreed to settle this amount by offering him a flat in his project. The agreed consideration for the flat so allotted was Rs.61,90,099/-. The agreement between the rival parties covered the said cost from the amount already due to the complainant being Rs.17,02,938/-. The balance amount was to be covered from the future dues that would accrue to the Complainant for the continued service to be provided by the complainant for a future period from that date (July 2020 to February 2021). The total

amount including the pending balance and the future payables worked out to Rs. 61,90,099/- The two parties had entered into the MOU (Memorandum of Understanding) on 21/07/2020 (Ex-A1). The total consideration for the construction of the unit no. E41203 was Rs.54,07,432/-. As per clause 2 of the construction agreement (Ex-A2) entered on 23/06/2021 and Rs.7,82,667/- as a sale consideration as per clause 1 of the sale deed entered on 01/07/2021 (Ex-A4). The total consideration therefore was Rs.61,90,099/-. The complainant would fall in the category of the allottee within the meaning of section 2 (d) with the amount due to him from the respondent as the sale consideration. The respondent would fall in the category of the allottee within the section of 2(z) (k). The agreed date of handing over as per clause 4 (a) of the construction agreement was 31/07/2021 with an additional grace period of 6 months. This would project the final delivery to 31/01/2022. The complainant has submitted that he has not been handed over the unit as promised and had enquired the same through an E-mail dated 05/11/2021 (Ex-A5 Series). The respondent vide his reply E-Mail dated 06/11/2021 (EX-A5 Series) as respondent responded that the complainant's unit was expected to be handed over for fit-out by January 2022. The complainant is contended that the unit has still not been handed over to him making in eligible to interest for the delayed period of delivery on the amount paid by him till the unit is handed over to him and thus the first point is determined.

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

a) Therefore, the complainant is entitled to interest on the amount paid by the complainant to the tune of Rs.61,90,099/- from the agreed date of handing over viz., 31/01/2022 restricted to Rs.8,97,479.41/- for a period up to 19/06/2023. The complainant is also entitled to interest on the amount paid by

him to the tune of Rs.61,90,099/- from 19/06/2023 till the date of actual realization of his unit from the respondent.

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 8.70% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 10.70% per annum restricted to 10.25% as prayed by the complainant for the entire amount paid from the date of respective payment till realisation from the respondent restricted to Rs.8,97,479.41/- till 19/06/2023 and thereafter for every month till realisation at the interest rate restricted to 10.25%.

(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.

8. In conclusion, 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 Paragraph No. 7 of this order within 30 days of issue of this order.
- (ii) On repayment of the claim as per the order, the complainants shall execute the cancellation of the Sale agreement, Construction Agreement and Sale Deed as the case may be, at the expense of the respondent.

Sd/- 14/05/2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

RCP No. 155 of 2023

LIST OF WITNESSES

CW-1 --- T P Hari Prasad

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	21/07/2020	Memorandum of Understanding
Ex.A2	23/06/2021	Construction Agreement
Ex.A3	23/06/2021	Agreement for Sale
Ex.A4	01/07/2021	Sale Deed
Ex.A5	---	E-Mail Communication

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL

Sd/- 14/05/2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

