

**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. 162 of 2023**

SEP M Servaran

... Complainant

Vs.

M/s. Army Welfare Housing Organisation,
Rep. by its Managing Director (AWHO)

..... Respondent

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

Respondent : Ex-Parte

**Heard on : 04.01.2024
Delivered on : 05.01.2024**

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of an 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 learned counsel for the complainant avers that a residential apartment was booked by him in the respondent's project named as, "*TURNKEY GROUP HOUSING PROJECT*", AWHO – CHENNAI (*DINESH VIHAR*) situated at Thazhampur, Chengalpattu District, Chennai. The complainant was allotted a dwelling Unit No. C-291, 29th Floor, Block C with the car parking under the stilt. The complainant avers that the respondent's project had not been registered with TNRERA despite orders on the issue by the Hon'ble Authority vide Order dated 21.12.2022 in C. No. 291 of 2019.

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(b) The complainant was allotted a unit vide booking letter dated 08.08.2012 at a total consideration of Rs.34,27,179/- excluding the parking space. The said booking letter dated 08.08.2012 projecting the handing over of the apartment by December 2015. The complainant had made a full payment of Rs.34,97,286/-. The complainant avers that as per the booking letter, the total consideration had been projected to Rs.34,27,179/-. However, the complainant avers that instead he had to pay a sum of Rs.41,78,367/- the break up of which is as shown below:-

Name of the allottee & Allotted DU No.	Price agreed (Rs.) in Lakhs	Facility management charges	Risk and cost	Car parking charges	Total amount paid as per statement of Accts (Rs.) as on 06.04.2021	Due date for delivery of the DU
Sep M Servaran	Rs.34,27,179/-	Rs.40,500/-	Rs. /-	Rs.2,63,000/-	34,97,286/-	Dec 2015

(c) The complainant avers that the break up of the money paid by him would show that Rs.6,81,081/- had been collected from him as society charges, interest of delayed payment and facility management charges, car parking charges + 5% construction charges. The complainant avers that the projected date of delivery was December, 2015 as indicated in the booking letter while the actual handing over was delay and postponed several times then finally, the complainant's apartment was handed over to him on 09.10.2021.

(d) The complainant avers that the respondent has not executed the sale deed in the complainant's favour and that the survey numbers in which the project existed had been blocked by the SRO on account of the same being

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Anadheenam Lands. Aggrieved, the complainant prays for interest for the delay in handing over, refund of car parking charges to the tune of Rs.2,63,000/- and litigation charges.

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

4. In evidence to prove his 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 entitle to the refund of amount paid for car park and interest for delay in handing over of the complainant's unit from the agreed date?

(ii) What are the reliefs made out?

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

(a) The respondent is the Army Welfare Housing Organisation and the complainant being a service person entered into the respondent's project and was allotted a unit through booking letter issued on 08.08.2012 (Ex.A1). The agreed consideration for the unit has been indicated as Rs.34,27,179/- in the booking letter. However, as per his own submission the complainant has not given details of payment of society corpus fund Rs.30,000/-, interest on delayed payment of Rs.71,588/- and facility management charges of Rs.40,500/-. Thereby, he has failed to submit the evidence of having paid a sum of Rs.1,42,088/- out of the total amount claim to the tune of Rs.41,78,367/- hence evidence has been given only to a payment of Rs.40,36,279/-. The booking letter vide Clause 8 indicated the probable date of completion as December 2015.

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(b) The possession certificate issued by the respondent (Ex.A4) exhibits the handing over of the complainant's unit on 09.10.2021.

" The dwelling Unit No. C-291 with car parking No. CPS2: C282 & OCPF: 156 has been handed over to the above allottee on 09.10.2021"

(c) This would clearly indicate that as against the promised date of handing over in December 2015, the unit was handed over only on 09.10.2021 entitling the complainant's to be eligible to receive interest from the respondent for the period from the promised date of delivery i.e. December 2015 to the actual date of delivery i.e. 09.10.2021 on the amount paid by him to the tune of Rs.40,36,279/-.

(d) The complainant thereafter also prayed for refund of cost of car parking. The allotment letter issued by the respondent has clearly mentioned that the cost indicated in the booking letter did not include the cost of car park which would be clearly exhibited from Clause 3 of the booking letter which speaks as follows:

3. The tentative cost of the allotted type of dwelling unit (DU) including the land cost share, but excluding the cost of car parking is approx 34,27,179.00/-. You are therefore, required to remit the payment in installments as per schedule below which is towards the tentative cost of the DU allotted to you

<i>Approx Estimated Cost</i>	<i>Registration and Commitment Money already paid Including interest</i>	<i>balance to be paid</i>
<i>(a)</i>	<i>(b)</i>	<i>(c)</i>
<i>34,27,179.00/-</i>	<i>2,00,500.00/-</i>	<i>32,26,679.00/-</i>

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(e) In this regard, it is to be seen that the project was initiated prior to the RERA Act coming into force at which time the definition of carpet area under Section 2 (k) would not be applicable and would be limited to the agreements between the two parties. In view of this, when the cost of the car park has been clearly indicated to be not included in the cost indicated in the booking letter, the respondent could not be made to refund the money for an additional amenities provided subsequent to a clear indication to this additional amenities at a cost raised later after the allotment letter was issued. Hence, the prayer for refund of car parking amount to the tune of Rs.2,63,000/- with interest is not made out. In the end, the complainant is entitled to the payment of interest for the delayed delivery from December 2015 which is the projected date of delivery till 09.10.2021 when the unit was finally handed over to the complainant. Thus, the point is answered accordingly.

7. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for interest on an amount of Rs. 40,36,279/- from the respondent for a period from 01.01.2016 to 09.10.2021 being eligible from the time the respective payments were made on or after the due date of delivery viz. 31st December 2015.

(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 from the time the payments were made on or after the due date of delivery viz. 31st December 2015 till 09.10.2021.

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(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.

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

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.

Sd/- 05.01.2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

LIST OF WITNESSES

CW-1 --- SEP M Servaran

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	08.08.2012	Booking letter
Ex.A2	22.10.2018	Allotment letter
Ex.A3	08.04.2021	Handing taking over instructions and statement of accounts
Ex.A4	09.10.2021	Possession certificate

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 05.01.2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

