

**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 No. 163 of 2023**

1. Krishna Venkata Rao,
2. Bhanupriya Krishna  
Rep by its POA Agent

**Vs.**

**..... Complainant(s)**

M/s. Lokaa Developers Pvt. Limited,  
Represented by its Managing Director.

**..... Respondent (s)**

**Complainants** : M/s Ralph V. Manohar, Advocates

**Respondents** : Ex-parte

**Heard on : 25.04.2024  
Delivered on : 15.05.2024**

**ORDER**

The above complaint by the complainants seeking refund with interest from 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 learned counsel for the complainant avers that they booked residential apartment in the Respondent's project. The complainant was

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allotted the apartment no. 1503 on the 15<sup>th</sup> floor with a built up area of 2020 sq.ft. and UDS of 460.36 Sq.ft.

**(b)** The sale agreement and the construction agreement were executed on 04/03/2017. The agreed date of handing over was 36 months with a grace period of 6 months from the date of receipt of the approval of the building plans from the competent authority, which was issued on 05/01/2017. Accordingly the project ought to have been completed and handed over by July, 2020.

**(c)** The agreed consideration for the complainants units was Rs. 1,46,93,409/-. The complainants had obtained the house building loan and entered into a tripartite agreement dated 25/05/2017. The tripartite agreement stipulated the Pre-EMI's to be paid by the Respondent to the bank till the date of handing over. The Respondent failed to keep up his commitment of paying Pre-EMI compelling the complainant to pay the same from 01/10/2018 to 31/03/2023. The total amount so paid as EMI's sums up to Rs.25,89,618/-.

**(d)** The complainants submits that they had paid a total sum of Rs. 1,05,97,720/- including Rs. 90,00,000/- disbursed by the bank. The complainants aver that the Respondent had failed to complete the construction and hand it over by the stipulated time. The complainants avers that the Respondent had even transfer the ownership of the flat allotted to the complainants to 3<sup>rd</sup> party for which he had entered into a construction and sale agreement registered as document no. 936 of 2021 and 937 of 2021 respectively at the SRO, Madhavaram.

**(e)** The complainants aver that despite the payments having been made by him, the complainants does not own any flat in the project. The complainants aver that due to his financial situation he was not able to repay the bank loan

leading to the bank initiating SARFAESI proceedings against him. The complainant avers that even after more than 6 years of the expiry of the date of handing over the project was still incomplete.

(f) Aggrieved the complainants prays for refund of Rs. 1,31,87,338/- with interest along with litigation charges.

3. In spite of service of notice, the respondent remained absent and hence he was 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 parties, the following points arise for determination.

(i) Is the complainants are entitled to the payment of Rs.1,05,97,720/- in the respondent's project with interest?

(ii) What are the reliefs made out?

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

(a) The complainants were allotted the apartment no. 1503 in the project M-ONE situated at Madhavaram vide allotment letter dated 24/11/2016 (Ex. A1). The construction agreement between the complainants and the Respondent was entered on 04/03/2017 (Ex.A2). The sale agreement was also entered on 04/03/2017 (Ex.A3). The total consideration as made out in the cost sheet and payment schedule amounts to a total of Rs. 1,31,36,519/-. The cost of construction was fixed at Rs. 97,18,055/- including all charges which

summed up to Rs.1,30,82,464/- as enumerated in the Annexure –A of construction agreement. The sale price of the UDS was fixed at Rs.16,10,945/-.

**(b)** The complainants had obtained loan from the Housing Development Finance Corporation, Limited and tripartite agreement was signed between the complainants, the Respondent and the bank on 25/05/2017 (Ex-A6). The bank loan was accordingly sanctioned by the HDFC bank (Ex-A7). The complainant has paid a sum of Rs. 1,05,97,720/-, which includes Rs.90,00,000/- disbursed by the bank. The agreed date of handing over as per the Clause 10 of the construction agreement was 36 months from the date of receipt of approved building plan from the competent authorities. The complainants have submitted that the building plan approval had been obtained on 05/01/2017. The final delivery, including the grace period of 6 months gets projected to 05/07/2020. The Respondent has failed to hand over the possession of the building to the complainants by the agreed date due to which the complainant has prayed for refund of the money paid by him. The complainants are eligible to the refund of the money paid by them if they decide to withdraw from the project. However, if they wish to continue with the project the allottee will be eligible to interest for every month of delay till the handing over of the possession, on the amount paid by him under provisions of Section 18 of RERA Act. The complainants have chosen to seek refund as the Respondent has not been able to hand over the complainant's unit as agreed. Hence, the complainants are eligible to the refund of Rs.1,05,97,720/- paid by them with interest and thus the first point is so determined.

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

(a) Therefore, the complainants are entitled for refund of an amount of Rs.1,05,97,720/- with interest from the respondent.

(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 complainants are 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% p.a for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainants are entitled for the relief as detailed above. Thus the second point is so determined.

**8. In the result, the respondent is 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 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 the 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 deed, as the case may be, at the expense of the respondent.

Sd/- 15/5/2024  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

**LIST OF WITNESSES**

CW-1 --- Krishna Venkat Rao

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos.	Date	Documents Name
Ex.A1	24/11/2016	Allotment letter sent by the Respondent to the complainant
Ex.A2	04/03/2017	Construction Agreement
Ex.A3	04/03/2017	Agreement for sale
Ex. A4	23/05/2017	NOC for sale of flat to the complainant given by LIC HFL
Ex. A5	25/05/2017	Draft memorandum of Deposit of the Title deeds
Ex.A6	25/05/2017	Tripartite Agreement
Ex.A7	25/05/2017	HDFC Housing Loan sanction Order
Ex. A8	04/05/2018	Demand raised by the Respondent
Ex. A9	25/05/2018	Permission to mortgage
Ex.A10	---	Draft Sale Deed
Ex.A11	---	Pre-EMI details
Ex.A12	24.11.2016 to 30.12.2017	Statement of payments
Ex.A13	24/08/2023	SARFAESI Notice issued under 13(2) by HSPC to HDFC Bank

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