

**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. 21 of 2023**

P. Adhilakshmi

..... Complainant

**Vs.**

1. M/s. Thiru Arunchala Annamalaiyan Builders  
Represented by its Proprietor,
2. M/s. Lalit Kumar Bhandari (HUF)  
Represented by its Karta
3. Smt. Sangeetha Bhandari  
W/o Lalit Kumar Bhandari
4. Mr. Sundreasan  
S/o Govindarajan

..... Respondents

**Complainants** : M/s K.N. Parthasarathy, Advocates.

**Respondents** : Ex-parte

**Heard on** : 13.07.2023  
**Delivered on** : 17.07.2023

**ORDER**

The above complaint by the complainant seeking refund with interest from the respondents towards purchase of the apartments 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 brief, as follows:**

(a) The complainant avers that he had entered into the respondent's project and was allotted Flat bearing No. 8. The complainant paid a booking advance of Rs.14,00,000/- in various stages in different modes including cash and cheques. The respondent avers that the sale consideration payable for the said flat was agreed for Rs.35,62,400/-. It was agreed that the unit would be completed in 300 days from the date of registration at the Sub-Registrar Office. The construction agreement was executed on 24.02.2016.

**TRUE COPY**

(b) The complainant avers that on 04.04.2019 he received a notice from the respondent cancelling the booking and also requiring the complainant to make full payment of the said flat within a week. The complainant thereafter on failing to get proper response from the respondent give a police complainant on 13.04.2019 against the 1<sup>st</sup> and 4<sup>th</sup> respondents. The complainant further avers that the respondent thereafter issued 2 cheques in favour of the complainant drawn on Indian Overseas Bank, which could not be encashed as they were returned as unpaid due to insufficient of funds.

(c) The respondent in the mean time had sold the said unit to another buyer and registered the same to the new buyer on 29.11.2021. The complainant avers that on 06.07.2022, the complainant made a request for the Inspector General of Registration, Chennai South to cancel the said registered documents, which are still pending for cancellation. The complainant avers that he already filed a complaint under section 138 of Negotiable Instruments Act, 1881 at Allikulam Chennai in Fast Track Court-I vide S.R. No. 941 of 2022 on 27.10.2022.

(d) The complainant had also issued a legal notice dated 14.10.2022 to all respondents for payment of amount received to the tune of Rs.14,00,000/- with interest and compensation. The complainant prays for refund of Rs.14,00,000/- with interest and litigation charges.

3. The respondent failed to appear, despite being given opportunity hence he has been treated as exparte.

4. An attempt to settle the matter amicably has failed.

5. The complainant has filed his evidence on affidavit with documents. The respondents did not file any documents and were treated as Ex-parte.

6. On the basis of the complainant contentions, the following points arise for determination:

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(i) Is the complainant is entitled to seek refund of the advance paid by him with interest due to cancellation and reselling the complainant's unit to a new buyer by the respondent?

(ii) What are the reliefs made out?

**7. Answer for point no.(i) :-**

(a) The complainant had entered into a construction agreement with the respondent (Ex. A1) on 24.02.2016. The total consideration agreed was Rs. 34,62,400/-, which was required to be paid on or before 06.01.2021, unless otherwise mutually agreed in writing.

(b) The complaint admits that he had paid a sum of Rs. 14,00,000/- as booking advance and had not paid any money thereafter even till the time of notice issued on 04.04.2019 by the respondent. The complainant after receiving the legal notice had made a complaint to the Anna Nagar Police Station, which was registered in CSR No. 305 of 2019 (Ex. A7). The complainant was thereafter given 2 cheques of Rs.7,00,000/- each on 30.06.2022 (Ex. A5), which on presentation in the bank were returned due to insufficient funds as per report of the State Bank of India (Ex.A6).

(c) The complainant moved the appropriate forum seeking redressal under section 138 of the Negotiable Instruments Act, 1881 at Allikulam Chennai in at Allikulam Chennai in Fast Track Court-I vide S.R. No. 941 of 2022 on 27.10.2022.

(d) This would indicate that the complainant had defaulted making payments required as per the agreements. The respondent issued a legal notice to the complainant requiring payment to be made in a week's time. The respondent followed the notice by selling the unit to a new buyer on 29.11.2021 (Ex. A3) without refunding advance of Rs.14,00,000/- paid by the complainant. The

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respondent was within his right to have cancelled the allotment for the complainant for non-follow up after paying the initial advance amount. However, the cancellation of the allotment by the respondent and reselling it to another buyer and registering it on 29.11.2021 and cancellation of the allotment to the complainant makes the complainant entitled to refund of the money paid by him to the respondent with interest from 29.11.2021 the date on which the said unit was sold to a new a new buyer till the payment of the same to the complainant and thus the 1<sup>st</sup> point is answered.

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

(a) The complainant is entitled for refund of booking advance amount of Rs.14,00,000/- with interest from 29.11.2021 till repayment of the same to the complainant.

(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 complainant is entitled for the interest at the rate of 8.160% 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., 10.160% p.a interest from 29.11.2021 to the date on which the said unit was sold to a new a new buyer. Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed.

**9. In the result, the respondents are directed as follows:-**

- (i) The respondent shall refund the advance amount at the interest rate and cost as per the findings in answer for Point No. (b) in Para No. 8 of this order within 30 days of issue of this order.

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- (ii) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement at the expense of the respondents.
- (iii) The complainant is entitled to a sum of Rs.25,000/- towards the litigation cost.

Sd/- 17/07/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**List of witness and documents by the complainant**

CW-1 --- P.Adhilakshmi

Ex.Nos.	Date	Documents Name
Ex.A1	24.02.2016	Construction Agreement
Ex.A2	29.11.2021	Construction Agreement
Ex.A3	29.11.2021	Sale Deed
Ex.A4	04.04.2019	Legal Notice
Ex.A5	30.06.2022	Two Cheques
Ex.A6	22.09.2022	Return Memo from Bank
Ex.A7	13.04.2019	Receipt from Police station
Ex.A8	06.07.2022	Complaint copies of IG of Registration
Ex.A9	14.10.2022	Legal Notice

**List of witness and documents by the Respondent**

Nil



Sd/- 17/07/2023  
SUNIL KUMAR, I.P.S (Retd.)  
SINGLE MEMBER,  
TNRERA, CHENNAI.