

**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. 43 of 2023 and  
RCP No.44 of 2023**

1) Soundararajan P .....(RCP No. 43 of 2023)

1) Soundararajan P .....(RCP No. 44 of 2023)

..... Complainants

**Vs.**

1) Sri. K.Mahesh, S/o P.Kumarasamy,

Managing Director,

DVS Developers Private Limited

2) Smt.M.Shanthi Mahesh,

Managing Director,

Sri Vignesh Builders

.....(RCP No. 43 & 44 of 2023)

.... Respondents

**Complainant** : Mr. P.Soundararajan (PIP)

**Respondent** : Ex-parte

**Heard on** : 13/07/2023

**Delivered on** : 17/07/2023

**ORDER**

All the complaints by the complainants are filed under Section 31 of the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred to as RERA Act) read with Rule 38 of the Tamil Nadu Real Estate (Regulation and

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Development), Rules, 2017 (hereinafter referred to as TNRERA Rules). The above complaints are filed claiming refund of the amounts paid by the complainants to the respondent towards the purchase and construction of the respective booked flats, compensation and costs.

2. Since all the complaints are relating to the same project of the respondent and same points arise for determination, the complaints are heard together and disposed of by common order.

**3. Averments of the complainants, in brief, as follows:**

The complainants booked a flat in respondents project in "DVS Dharshin Park" on payment of Rs.1,00,000/-. The complainants have paid a total of Rs.19,00,000/- each for their allotted flat in which the complainants aver that receipt shall be in duly issued in both the RCPs. In both the RCPs the sale deed was executed on 28/11/2011. The respondent had assured to complete the construction and hand over the flat within 24 months from date of registration of UDS. The complainant were advised that a separate construction agreement was not required as registration of the UDS was already done and that construction work would be starting soon. The complainants aver that despite making of the required payments as agreed, the respondent has failed to deliver the units in both the RCPs. Aggrieved, the complainants prayed to withdraw from the project and seek all the money paid by them with interest.

3. The respondent remained absent, in spite of opportunity given to him and was hence treated as ex-parte.

4. In evidence to prove their claim, the complainant has filed proof affidavit with documents.

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

(i) Is the delay in handing over the villa to the complainant and seeking refund of the money paid by him made out?

(ii) What are the reliefs made out?

**6. Answer to Point No. (i)**

(a) The complainants in RCPs 43 of 2023 and 44 of 2023 have paid sum of Rs.1,00,000/- on 21/04/2011 for purchase of flat in the 3<sup>rd</sup> floor in the respondents project. Subsequently, the complainants have paid sum of Rs.7,00,000/- on 24/04/2011 (EX-A1). In both the RCPs, subsequently the sale deed was executed and UDS registered while the sale deed dated 28/11/2011. In both the RCPs, the total consideration for the unit paid by the complainants in the 2 RCPs was Rs.19,00,000/- in RCP 43 of 2023 and was also Rs.19,00,000/- in RCP 44 of 2023. The complainants have completed the payment of the remaining consideration as per the table shown as below:-

S.No.	Date	RCP 43 of 2023	RCP 44 of 2023
1	21/04/2011	Rs.1,00,000/-	Rs.1,00,000/-
2	25/04/2011	Rs.7,00,000	Rs.7,00,000/-
3	25/04/2011	Rs.8,00,000/-	Rs.8,00,000/-
4	01/02/2012	Rs.3,00,000/-	Rs.3,00,000/-
	<b>Total</b>	<b>Rs.19,00,000/-</b>	<b>Rs.19,00,000/-</b>

(b) The complainant were informed by the respondent that there was no need to execute the construction agreement and that they would start the construction too. However, the respondent has failed to complete the construction due to which the complainants have sought refund of the monies paid by them under section 18(1) of the RERA Act. Since, the respondents has failed to hand over the unit to the complainants and since the complainants



have chosen to cancel and come out of project. The respondent is left with no choice, but to refund the money paid by them to the tune of Rs.19,00,000/- in RCP 43 of 2023 and also Rs.19,00,000/- in RCP 44 of 2023 with interest and thus the first point is answered.

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

(a) In view of the answer for point No.(i), (ii), the complainants are entitled for refund of amount with interest.

(b) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainants are entitled for the interest at the rate of 7.40% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 9.40% per annum for the amounts payable under the order from the date of respective payments till repayment by the respondent.

**(c) RCP No.43/2023:**

The complainant is entitled to get Rs.19,00,000/- from the respondent with interest @ 7.40% which is the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% i.e., 9.40% per annum for the amounts paid from the date of respective payments till repayment by the respondent. Apart from the above, the complainants are entitled to a sum of Rs.25,000/- towards the legal expenses.

**(d) RCP No.44/2023:**

The complainant is entitled to get Rs.19,00,000/- from the respondent with interest @ 7.40% which is the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% i.e., 9.40% per annum for the amounts paid from the date of respective payments till repayment by the

respondent. Apart from the above, the complainants are entitled to a sum of Rs.25,000/- towards the legal expenses.

**8. In the result, the respondents 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 Para No. 7 of this order within 30 days of issue of this order.
- (ii) The charge of the aforesaid amount as encumbrance, if any, shall be on the flat booked by the complainants till 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 complainants shall execute the cancellation of the sale deed, as the case may be, at the expense of the respondent.

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

**RCP No. 43/2023**

**LIST OF WITNESSES**

CW-1 --- Mr. Soundararajan P

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Receipt
Ex.A2	28/11/2011	Sale Deed
Ex.A3	---	Project land details
Ex.A4	---	Form-I of DVS Developers
Ex.A5	12/06/2023	Encumbrance Certificate

Ex.A6	---	Order for CCP 108 of 2019 of TNRERA
Ex.A7	10/07/2021	Encumbrance Certificate

**LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL**

**RCP No. 44/2023**

**LIST OF WITNESSES**

CW-1 --- Mr. Soundararajan P

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Receipt
Ex.A2	28/11/2011	Sale Deed
Ex.A3	---	Project land details
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**LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL**

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

