

**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. 56 of 2023**

V.Chandrasekhar **Complainant**

Vs.

M/s KLF Foundation Pvt. Ltd., **Respondent**

Complainant : Rep by M/s. Ganesh V Aranala, Advocates

Respondent : Ex-parte

Heard on: 10/10/2023

Delivered on: 12/10/2023

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of a plot 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 made a booking of a 2 BHK apartment in the respondent project by name Sai Vikas apartment located in Ayyancheri Village, Chengalpet Taluk, Chengalpet district. The complainant was allotted apartment no. FF5 with the super built up area of 975 sq.ft. and undivided share of 409.5 sq.ft. along with one covered car park. The UDS was registered in the name of the complainant on 03/02/2016 vide sale deed in document no. 1051 of 2016 at Sub-Registrar Office, Guduvanchery after payment of Rs.6,14,250/- by the complainant. The construction agreement between the two parties was entered on 19/11/2015 and registered as

document no. 1050/2016 with the same Sub-Registrar. The complainant has made payment thereafter paying a sum total of Rs.31,37,250/- from 21/12/2015 to 19/08/2016. The agreed consideration for the apartment was agreed at Rs.36,77,500/-.

(b) The complainant avers that despite having paid 80% of the total consideration, he did not make progress in the construction as per the schedule and in fact the construction even stopped, but the respondent continued to collect the payments from the complainant. The agreed date of delivery was 24 months from the date of obtaining the sanctioned plan approved from the appropriate authority, but the completion has still not taken place. The complainant avers that he had written several E-Mails and had also made personal visits to the respondent's office but to no avail. The respondent finally send an E-Mail to the complainant on 03/07/2018 promising to complete the construction and hand over the flat on or before 12/08/2018, but that too did not happened and the construction remained stalled.

(c) The complainant further pleads that since the completion certificate for the unit has not been given to him. He has suffered furthermore as he could not claim the income tax relief on the principle interest paid by him and pleads to be compensated for the same. Aggrieved, the complainant pleads for refund of Rs.31,37,250/- with interest.

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:

- (i) Is the complainant entitled to refund as claimed by him due to delay in delivery?
- (ii) What are the reliefs made out?

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

(a) The complainant entered into the respondent's project on payment of Rs.10,000/- as token advance and was allotted apartment bearing no. FF5 in the respondent's project. The complainant entered into agreement for sale on 19/09/2015 (EX-A2) and the same was registered vide sale deed dated 03/02/2016 (EX-A5). The construction agreement between the two parties was entered on 19/09/2015. The agreed consideration for the UDS was Rs.6,14,250/-. The construction agreement clearly lays down the total cost to be Rs.39,45,750/- inclusive of the cost of the UDS. The complainant has paid a sum of Rs.31,37,250/- as follows: -

Date	Amount
Token Advance	10,000
21/12/2015	6,00,000
10/02/2016	20,000
10/02/2016	24,22,250
19/08/2016	85,000
Total	31,37,250

The agreed date for handing over as laid down as clause 8 of the construction agreement was 24 months from the date of approval and sanction of the building plan. The sanctioned plan by the Urapakkam First Grade Panchayat

(EX-A1) shows the date of approval to be 15.05.2013 projecting the final handing over to 15.05.2015.

(b) The complainant has submitted photos of the project (EX-A8 Series) to show that the construction has started but remains to be completed.

(c) Two issues emerge from the above fact:

1) That the date of handing over falls on 15.05.2015 which is before the date on which the RERA Act came into being.

2) However, the statement of the complainant as well as the photos submitted by the complainant as evidence to show that the apartment has not been handed over till date.

The above two facts make the project as an on-going project requiring registration. This also satisfies the conditions for the RERA Act to be applicable on the issue. Since, the complainant has not been handed over his apartment as agreed upon in the construction agreement, it brings the RCP within the purview of section 18(1) of the RERA Act.

Section 18(1):-

18. Return of amount and compensation.—(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of

delay, till the handing over of the possession, at such rate as may be prescribed.

The respondent has failed to hand over his apartment on the agreed date and since the project remains incomplete at the time of the RERA Act coming into force the project becomes an ongoing project entitling the complainant to refund of Rs.31,37,250/- with interest and thus the first point is determined.

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

a) Therefore, the complainant is entitled for the refund of an amount of Rs.31,37,250/- from the Respondent with interest.

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 for the entire amount paid from the date of respective payment till repayment by the respondent.

9. 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 aforementioned amount as encumbrance, if any, shall be on the flat booked by the complainants until repayment of the claim as per this order. The office of this Forum is directed to inform 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 the sale deed as the case may be, at the expense of the respondent.

Sd/- 12/10/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- V.Chandrasekhar

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	15/05/2013	Sanctioned Plan
Ex.A2	19/09/2015	Agreement Sale
Ex.A3	19/09/2015	Construction Agreement
Ex.A4	05/11/2015	Loan Sanction Letter
Ex.A5	03/02/2016	Sale Deed
Ex.A6	05/08/2021	Loan Details
Ex.A7	---	Statement of Account
Ex.A8	---	Photographs (Nine)
Ex.A9	---	Payment Receipt

LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL

Sd/- 12/10/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

