

**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. 70 of 2023**

**K.Jayashree** ..... **Complainant**

**Vs.**

**1) M/s. DVS Developers Private Limited,  
Represented by its Managing Director  
Sri. K. Mahesh**

**2) M/s. Sri Vignesh Builders  
Represented by its Managing Director  
Sri. M. Shanthi Mahesh**

..... **Respondents**

**Complainant : Authorized representation by B.Rajashree**

**Respondent : Ex-Parte**

**Heard on :07/11/2023  
Delivered on :09/11/2023**

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondents 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 complainant appeared in person and submitted that she was allotted a flat in the respondents project located at DVS Dharshin Park, Karanai, Guduvanchery. The complainant executed the sale deed on 20/06/2012. The complainant avers that the market value of the property was Rs.3,71,000/-. The complainant avers that the respondent had orally assured to complete the construction and hand over the flat within 24 months from the

date of registration of the UDS. The complainant avers that the respondent had informed her that there was no need to enter into separate construction agreement as the UDS was already executed and that the construction work was to be started shortly. The complainant avers that as agreed the flat should have been handed over by 28/11/2012. However, the complainant avers that the respondent has yet not completed the flat and no handing over has taken place. The complainant avers that they had made a payment to the tune of Rs.9,50,000/- to the respondent. The complainant avers that even after 11 years from the date of UDS registration, the construction of the project was yet to start. Aggrieved, the complainant prays to withdraw from the project seeking refund of the money paid by her with interest and litigation cost.

3. The respondents have failed to appear despite being given opportunity hence have been treated as ex-parte.
4. An attempt to settle the matter amicably has failed.
5. The complainant has filed her evidence on affidavit with documents. The respondents did not file any documents as they 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 the refund of Rs.9,50,000/- paid by her with interest due to non-delivery of the flat?
  - (ii) What are the reliefs made out?

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

(a) The complainant had entered into the respondent's project for purchase of a flat. The sale deed was executed on 21/06/2012 which was registered in S.No. 2738/2012. The agreed consideration for the UDS amounting to

Rs.3,71,000/- was paid by the complainant to the respondent and the sale deed was executed (EX-A2). The complainant has paid a total sum of Rs.9,50,000/-(EX-A1). The complainant submits that despite passage of several years the project has still not been started and thereby the complainant has not been able to get possession of the flat. No construction agreement was entered into between the two parties, however, the complainant was orally informed by the respondent that the handing over of the flat would take place within 24 months from the date of registration of the UDS, projecting the completion by 20/06/2014.

Following facts would emerge: -

- 1) That the project would qualify for registration under section 3 of the RERA Act as it would be an ongoing project within the definition of section 3 which reads as follows:-

**“Provided that project is ongoing on the date of commencement of this Act and from which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of 3 months from the date of commencement of this Act.”**

The project was started in the year 2012 and has yet not been completed even though the UDS has been registered vide sale deed dated 21/06/2012(EX-A2). This would clearly show that at the time of commencement of the Act, the respondent had not obtained the completion certificate. This would make the project an ongoing project under section 3 of the RERA Act which would be required to be registered. Non-registration on a Suo-Motu cognizance hereby shows violation of section 3 of the RERA Act warranting penalty under Section 59 of the RERA Act besides requiring registration of the project forthwith.

The project ought to have been completed on or before 20/06/2014. The complainant as still not been handed over her unit thereby causing a delay of more than 9 years entitling the complainant to relief under section 18 of the RERA Act where the handing over of the completed project has not taken place and the complainant wishes to withdraw from the project and thus entitles the complainant to refund of the money paid by her with interest and litigation cost, thus the 1<sup>st</sup> point is answered.

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

- a) Therefore, the complainant is entitled for the refund of an amount of Rs. 9,50,000/- from the Respondents 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.
- c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- is fixed towards the litigation expenses. The complainant is entitled for the reliefs detailed above. Thus, the point is answered accordingly.

**9. In conclusion, 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 Paragraph No. 8 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 complainants shall execute the cancellation of the sale deed, as the case may be, at the expense of the respondent.
- (iv) A penalty of Rs.50,000/- is imposed on the respondent for violation of section 3 of the Real Estate (Regulation and Development) Act under section 59 of the Real Estate (Regulation and Development) Act. With direction to the respondent to register the project within 30 days of the issue of this order.

Sd/- 09/11/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

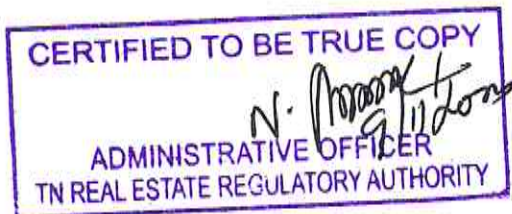
**LIST OF WITNESSES**

CW-1 --- Jayashree.K

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	19/06/2012	Receipt
Ex.A2	21/06/2012	Sale Deed
Ex.A3	---	Project Land Details
Ex.A4	---	DVS Developers Pvt Ltd. Form 1
Ex.A5	---	Land Details

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



Sd/- 09/11/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI