

**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. 91 of 2023**

1. Mr. S. Mohammed Asif

2. Mrs. Ayesha Seerin

..... Complainants

Vs.

M/s. VGN Projects Estates Pvt. Ltd.,

(formerly M/s VGN Developers Pvt. Ltd)

..... Respondent

Complainant : Rep by party in - person

Respondent : Ex-parte

Heard on : 24.08.2023

Delivered on : 25.08.2023

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. The complainant avers that he had booked and was allotted apartment no. B-111 in the respondent's project "VGN TEMPLE TOWN". The construction agreement was entered on 27.08.2015 which was registered along with the sale deed on 30.11.2015. The agreed consideration for the apartment was Rs.39,00,000/- all inclusive.

(b) The complainant avers that he had paid for the registration of the construction agreement and sale agreement even though the understanding

was for the agreements to be registered at the cost to be borne by the respondent. Accordingly the respondent had agreed to deduct both the registration cost for the construction agreement and the sale agreement from the total sale value. The complainant had accordingly paid all the amounts due, leaving the last Rs.1,40,310/- to be paid by the complainants who had paid Rs.37,59,690/- out of Rs.39,00,000/-. These payments were completed before 08.10.2015. The complainant avers that after 55 months delay they were handed over possession after being forced to pay Rs.3,45,359/- on 28.05.2022 as against the balance which should have been Rs.1,40,310/-. The complainant took possession of his apartment on 01.06.2022 under protest. Aggrieved the complainant prays for refund of Rs.2,05,049.02/- charged extra from him over and above the agreed amount.

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

4. The complainant has filed his evidence on affidavit with documents. No evidence has been filed for the respondent who has been treated as Ex-parte.

5. On the basis of the complainant's contention the following points arise for determination.

(i) Whether the complainant is entitled to refund of Rs.2,05,049.02/- as excess amount charged from him by the respondent?

(ii) What are the reliefs made out?

6. Answer for point no.(i):

(a) The complainant was allotted apartment no. B-111 in the respondent's project by name VGN Temple Town vide allotment letter dated 15.07.2015 (Ex.A4). The total consideration detailed in clause 3 of the allotment letter stated that the complainant had to pay Rs.37,82,827/- (total residential cost).

The construction agreement was entered on 27.08.2015 (Ex. A7). The sale deed was executed on 30.11.2015. Clause 4 of the construction agreement lays down the cost of construction to be Rs.29,43,075/-. The clause 6(b) of the construction agreement lays down the all registration expenses including registration charges, stamp duty and other incidental expenses relating to registration of the construction agreement, sale deed etc., shall be borne by the allottee to be paid directly to the concerned authorities. The sale agreement put the cost of the UDS to Rs.6,61,500/-. The complainant has paid all the amounts and was left with a balance payment of Rs.1,40,310/- which was to be paid at the time of handing over. However, the respondent was issued a demand letter by the respondent indicating the total balance to be paid Rs. 3,45,352.02/- (Ex. A9). The complainant had paid Rs.3,45,359.02/- as demanded by the respondent under the protest and had communicated the same to the respondent through an e-mail (Ex. A7). This would be clearly established that the complainant has paid Rs.349359.02/- as against the required payment of Rs.1,40,310/- as the final payment to the respondent (page no.65 of the complainant's type set). This amounts to the respondent having collected excess payment of Rs.2,05,049.02/- to which the complainant is entitled to receive from the respondent and thus the 1st point is answered.

7. Answer for point no.(ii):

(a) Therefore, the complainant is entitled to receive the excess payment of Rs. 2,05,049.02/- from the respondent.

(b) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

8. In the result, the respondent is directed as follows:-

(i) The respondent shall pay the excess 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.

SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER,
TNRERA, CHENNAI

List of witness and documents by the complainants (RCP.91 of 2023)

CW-1 --- S. Mohammed Asif
CW-2 --- Ayesha Seerin

Ex.Nos	Date	Documents Name
Ex.A1	----	Power of Attorney
Ex.A2	----	Filed personal details
Ex.A3	13.07.2005	E-mail
Ex.A4	15.07.2015	Allotment Letter
Ex.A5	----	Payment schedule
Ex.A6 (series)	----	Payment Receipts
Ex.A7	27.08.2015	Construction Agreement
Ex.A8	----	Payment Schedule
Ex.A9 (series)	----	Demand Letter
Ex.A10	26.05.2022	Protest letter of complainant
Ex.A11	28.05.2022	Complainant's final payment letter
Ex.A12	31.05.2022	Possession Letter
Ex.A13	01.06.2022	Letter by complainant
Ex.A14	05.04.2023	Order in CCP.96/2022 by Adjudicating officer
Ex.A15 (series)	----	E-mail

Ex.A16	19.01.2023	Reply by respondent
Ex.A17	19.01.2023	Reply by complainant

List of witness and documents by the Respondent

NIL

Sd/- 25/8/2023.

SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

