



**BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Egmore, Chennai – 600 008**

[Under the Real Estate (Regulation and Development) Act, 2016]

C.No.369/2019

5th day of November, 2020

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson
Er. S. Manohar, Member
Adv. V. Jeyakumar, Member**

1. Thiru Haresh N. Badani ... Complainants
2. Falguna H.Badani
(Represented by the 1st Petitioner/Husband)
No.B/8/4, Pricol Crimson Dawn Apartments
Nava India, Peelamedu,
Coimbatore – 641 004

Versus

M/s. True Value Homes India Pvt. Ltd. ... Respondent
Rep. by its Director,
1126, Trichy Road,
Opp. Perks Arch,
Coimbatore – 641 005.

This Complaint came up for final hearing before the Authority in the presence of Thiru S.Vimalanath – Counsel for Complainants and of M/s. A.A.V.Partners – Counsel for Respondent and upon hearing the arguments of both the parties, this Authority pass the following order:

FINAL ORDER

The Complainants have stated that the Complainants entered into a Sale Agreement on 26.07.2011 with the Respondent Promoter for a sale consideration of Rs.6,85,080/- against the purchase of the undivided share of the land i.e. 685.08 sq.ft. and on the said date the Complainant has paid a sum of Rs.50,000/- towards advance. Subsequently, after paying the entire sale consideration of Rs.7,57,100/- towards the undivided share of land, the Respondent herein on 30.11.2011 executed a registered sale deed in favour of the complainant, with respect to the land only.

2. The Complainant has further stated that he has also entered into a construction Agreement with the Respondent on 26.07.2011 against the purchase of apartment bearing No.06/0703 in the 7th floor of Tower-6 of TVH Vista Heights, measuring about 2158 sq.ft. for a sale consideration of Rs.48,02,020/-

3. The Complainant has also stated that against the sale consideration, the Complainant has so far paid a sum of Rs.66,88,175/- and the Respondent is supposed to handover possession of the property within 24 months and a grace period of 6 months totaling 30 months from the date of Construction Agreement. The Respondent has not yet completed the project till date.

4. The Complainant also stated that the period as per the terms of contract ends in the year 2013. The Respondent ought to have handed over possession in the year 2013 completing the contract. But till date they have not completed the project.

5. The Respondent demanded a sum of Rs.6,71,002.06 towards interest for delay in payments but it is due to their delay in construction and not due to the Complainant's delay in payment. While so, the opposite party demanded a sum of Rs.2,51,800/- for amenity charges which is also not viable at this stage since the project is incomplete.

6. The Complainant has also stated that the last payment was made by him on 10.08.2015 and there is a delay of 5 years in handing over possession of the property. The said delay is due to the construction delay by the Respondent and the Complainant has promptly paid the dues.

7. The Complainant has prayed for the following relief:

- To handover the flat with all amenities in livable condition with Common amenities and Car parking

8. In the Counter Affidavit filed by the Respondent it is stated that the Respondent had commenced the project by name "TVH Vista Heights" consisting of 12 blocks of Residential apartments at Uppilipalayam village, Coimbatore Corporation.

9. The Respondent further stated that subsequent to the execution of sale deed, the complainant had not paid the further amount according to the stages of construction. The Respondent has duly reminded them for the balance amount towards the cost of the construction and the Respondent has been duly keeping the complainant updated with regard to the status and progress of the construction. The Complainant has not paid the construction amount as per the stages of construction.

10. The Respondent has further submitted that the Complainant has not paid the final payment to a sum of Rs.16,76,641/- (Rupees sixteen lakhs seventy six thousand six hundred and forty one only) inclusive of interest @ 10.25% for the delayed payment as per the observation of this Authority to the Respondent to take possession of the said flat. In spite of repeated requests and demands from the Respondent, the Complainant has not come forward to make the balance payments to the Respondent and take possession of the said flat. Except the Complainant, all other customers have taken possession of their Respective flats in the said Tower-6 of the said project TVH Vista Heights without any demur. Though the Respondent had informed about the readiness of their flat, the Complainant had not taken possession of their flat. Moreover the Complainant has not chosen to make the final payment to the Respondent.

11. The Respondent also stated that he had constructed the said flat as per the agreement and completed the same in all aspects. The Respondent had also informed the Complainant about the readiness of the apartment to take possession but the Complainant has not taken possession of the said flat.

12. In the rejoinder, the Complainant has questioned the accuracy of the calculation of the balance due indicated by the Respondent and has admitted that he has dues to a sum of Rs.13,53,554/- and he did not make payments since there was a dispute and he was ready to pay the balance and settle the dispute. At this stage, the Complainant herein has already paid a sum of Rs.66,88,175/- and the remaining is only a meager amount which the Complainant was ready and willing to pay but for the

Respondent's actions which led to unreasonable delay. The Complainant has furnished the breakup of the balance due as below:

CALCULATION FILED ON BEHALF OF THE COMPLAINANT

1. Due as per the opposite party	:	Rs.16,76,641
2. Actual due as per the complainant		
i) Corpus fund, Maintenance Deposit, EB and Service Tax	:	Rs. 6,34,529
ii) Balance due to be paid to the opposite party	:	Rs. 7,19,525
Total Due		Rs.13,54,554

13. In the written arguments, the Complainants have stated that the Respondent has been enjoying the huge sum of Rs.66,88,175/- of the Complainants without any reason of the Complainant and the last installment was paid on 10.08.2015. The Respondent chose to give pre-inspection intimation only on 05.02.2018.

14. The Complainant has contended that the amenity and other charges towards EB and Corporation have to be paid only while handing over and at this stage that does not arise at all.

15. The Complainant has also stated that the delay compensation works out to Rs.8,67,516/- at the rate of Rs.5/- per sq.ft. for 2158 sq.ft. for 6 years and 7 months. Therefore, the net liability of the Complainant is Rs.4,86,038/- only.

16. In the written arguments, the Respondent has submitted that the Respondent has been dutifully reminding the Complainants towards payment of the balance amount towards the cost of the construction and the Respondent has regularly updating the Complainant with regard to the

status and progress of the construction. The Respondent has also submitted that despite giving timely reminders to the Complainant, the Complainant has failed to make payments in accordance with the demand letters issued to the Complainant. He has also stated that the Complainant was intimated of the pre inspection of the apartment vide letter dated 05.02.2018 itself.

17. The interest on delay in payments has accrued totaling to Rs.6,97,307/- The Respondent has further submitted that the Complainant is not entitled to any compensation as the Complainant has failed in making stage-wise payment promptly to the Respondent. All other customers have taken possession of their respective flats in the said Tower-6 of the project without any demur. The Respondent has also submitted that although work on the project had commenced on time, due to various reasons such as demonetization, trucker strikes, shortage of input material and skilled labour, factors which were not within the control of the Appellant, there was slight delay in completion of the project.

17. The Authority has examined the Complaint, Counter Affidavit of the Respondent, Rejoinder of the Complainant and written submission of arguments of both the parties carefully.

- i) As per the construction agreement, the apartment should have been completed and handed over by 26.01.2014. However, the pre-inspection intimation letter as admitted by the Respondent Promoter is only on 05.02.2018. The Respondent has admitted to the delay due to various factors in the written arguments.

- ii) It is clear that there has been a long delay in constructing and completing the Tower-6 in which the Complainant has booked flat in the 7th Floor.
- iii) It is also seen from the various demand letters for payment against the agreed milestone construction as per the construction agreement (typed set of papers filed by the Respondent), that even 3rd floor slab of Tower-6 has reached and intimated for making stage-wise payment only on 03.05.2014 as against the promised date of 26.01.2014. The 9th floor slab has been intimated only on 30.10.2014, 12th floor slab only on 21.01.2015 and 15th floor slab on 12.05.2015.
- iv) Therefore, it is clear that there has been delay in construction and completion of Tower-6 and the apartment booked by the Complainant in the 7th floor. Similarly there has been delay on the part of the Complainant in making payments even after receipt of intimation of completion of various floors as per the payment schedule in the construction agreement.
- v) Therefore, the Complainant cannot contend that the Respondent has not intimated the various stages of construction and demanded payment as per the schedule of payment indicated in the construction agreement.

Thus the Authority concludes that while the Respondent Promoter is responsible for the delay in construction and completion of the booked apartment in Tower-6, the Complainant is also responsible for the delay in making payments as per the payment schedule based on the Construction milestones.

- vi) Therefore, the Authority directs that the Complainant is at liberty to make the claims for interest on delayed construction by filing Form-N with the Adjudicating Officer, TNRERA and the Respondent can make claims for the interest on delayed payments before the Adjudicating Officer, TNRERA.
- vii) The Authority directs the Respondent to hand over the apartment allotted to the Complainant completed in all respects including all amenities promised in the construction agreement before 31.12.2020.
- viii) The Complainant shall pay the balance amount strictly as per the construction agreement and the Respondent Promoter shall collect balance due of the construction cost strictly as per the construction agreement before handing over possession of the apartment to the Complainant before 31.12.2020.
- ix) The Authority makes abundantly clear that both sides shall make their respective claims on interest on delayed construction as well as interest on delayed payments before the Adjudicating Officer, TNRERA.

18. With these directions, this complaint is disposed of.

Sd/-...05.11.2020

MEMBER (M), TNRERA

Sd/-...05.11.2020

MEMBER (J), TNRERA

Sd/-...05.11.2020

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

olc

N. Nimmone
5/11/2020
ADMINISTRATIVE OFFICER