



**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.143/2021

30th day of December, 2021

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

Tvl. M. Kumaresan & A. Lavanya ... Complainants

Versus

M/s. Malles Constructions Pvt. Ltd.]
Represented by its Director] Respondent
Thiru U. Chandraprakasam]

This Complaint came up for final hearing before this Authority in the presence of Mr.G.Poonkundran, Mrs.Indiraa Poonkundran and Mr.T.Dakshinamoorthy – Counsel for the Complainants and of M/s.Ganesh and Ganesh – Counsel for Respondent and upon hearing the arguments of both the parties, this Authority passes the following orders:

FINAL ORDER

The Complainants have submitted in the Complaint that the property being Villas of lands in Schedule-A and Schedule-B comprising in various survey numbers in Perumbakkam Village, now Sholinganallur Taluk, (previously Tambaram Taluk) Kancheepuram District and situated within the Sub Registration District of Selaiyur and Registration District of Kancheepuram is owned by Respondent herein. The Respondents also formulated a scheme of Villas in the property including amenities like Club House which will be a part of "MALLES AKANKSSHA" project. The Respondent has jointly proposed to promote and develop the said "MALLES AKANKSSHA" project.

2. The Complainants have further submitted that they were approached by the Respondent in the month of August 2017 and requested the Complainants to see the project details and decide on the purchase of a Villa developed by them and they also promised to complete the construction on or before June 2019. On the assurance of the Respondent the payments to the tune of Rs.61,38,436/- were paid by the Complainants.

3. The Complainants have further stated that they also entered into Agreement for Sale and Construction for the project on 16.12.2017 with the Respondents. Thereafter, there was inordinate delay in handing over the project yet to be completed. Further, the Respondent registered the construction agreement on 18.04.2018 for constructing a Villa with a total saleable area of 1977 sq.ft. in "MALLES AKANKSSHA" for a total consideration shown in the construction agreement of Rs.49,29,401/- then the Complainants paid the above said amounts and got the receipts and

the same was reflected in the payment schedule also. The Complainants have further submitted that the parties executed an absolute deed of sale on 18.04.2018 vide Document No.3687 of 2018 in the Sub Register office, Selaiyur for the sale of undivided share of 1120 sq.ft. land measuring out of a total extent of 9592 sq.ft. for a total sale consideration of Rs.18,76,000/-, construction cost of Rs.49,29,401/- as per the terms the Respondent undertook to complete the construction of villa by June, 2019. Admittedly the Complainants Apartment was not completed and not handed over to the Complainants till date and therefore there is an abnormal delay of nearly 18 months in handing over the above said Villa. The entire construction of the total project along with the club amenities is yet to be started and is pending till this date. The Complainants have also stated that they have completed remitting installments without any default as per the time schedule given by the Respondent as stated above. The Respondent has also not provided proper electricity connection or proper sewage treatment plant and on account of which the Complainants are unable to get the possession of the said Villa.

4. The Complainants have sought the following relief in the Complaint:

To direct the Respondent to hand over the completed Apartment with all other facilities/infrastructures to the Complainants.

5. In the Counter Affidavit, the Respondent has submitted that the Complainants were allotted with a Villa bearing No.B4, in Malles Akanksha project measuring a total built up area of 1977 sq.ft and conveyed an

extent of 1120 sq.ft. of land share. The Respondent has further stated that the Complainants had made the payments of Rs.61,38,436/- as detailed in the Complaint, however, the said payments were not in accordance with the schedule of payment and the Complainants have falsely alleged that there is a delay in completion and handing over of the Villa.

6. The Respondent has further submitted that as per the agreed terms of the contract, the handing over was promised in the month of July, 2019 and as promised the Respondent was constructing and updating the site progress to the Complainants vide e-mails and calls periodically. The Complainants who had sought for additional modifications with regard to the subject Villa which was also recorded vide email dated 21.08.2018 sent by the Complainants. Upon such request for the additional modifications, the Respondent had to place order for the same and arrange for the materials to arrive and to be used for the subject Villa which had caused a short delay in completion of the said Villa and the same reason was communicated to the Complainants and they have accepted the above fact. Further, the Respondent had arranged and provided the requirements of the Complainants with respect to interior works and to perform house warming function.

7. The Respondent has further submitted that with respect to the allegation of EB connection, the Respondent has submitted that the EB connection was provided and the representation made by the Respondent to the concerned Authority was attached in the typed set filed along with this Counter. The Respondent has also submitted that the Complainants have taken the possession of the Villa on 25.09.2020. The circulars passed by the Tamil Nadu Real Estate Regulatory Authority dated 06.04.2020 and

22.05.2020 provides the extension of time frame for 6 months for completion of projects due to Covid-19 Pandemic.

8. The Respondent has also submitted that the primary construction was completed on November, 2019 itself and in fact the Respondent has even applied for the EB connection on 18.10.2019.

9. The Respondent has also stated that it had provided all amenities and other promised facilities as per the agreed terms of the contract. The sewage treatment plant was provided even prior to the handing over of the project to the Complainants. The Respondent has further submitted that the allegation that they were forced to sign the condone delay letter on delivery of possession was false. The Respondent had explained every circumstance which they were undergoing as well as informed the Complainant regarding the additional modification which was sought by them.

10. In the written submission of arguments, the Complainants have submitted that the Respondent/Builder has not handed over the possession to the Complainants till date. Civil works are pending for the villa. The Complainants wanted to do carpentry work inside the villa; hence the Complainants got the permission from the Respondent. The Complainants has also submitted that a sum of Rs.7,22,000/- has been paid towards final payment by the Complainants on 02.07.2021 and got the receipt from the Respondent. Till date the Completion Certificate has not been obtained by the Respondent and same was not handed over to the Complainants. The road also not been laid down properly even to park the car in the portico.

11. The Complainants have further submitted that the T.D.S. amount was deducted by the Complainants at the time of making payment to the Respondent and the above T.D.S. amount lying in the hands of the Complainants.

12. The Complainants have further stated that as per the construction Agreement Clause 4(b) not followed and it is implied that the possession was not handed over by the Respondent to the Complainants herein. As per the Respondent's email dated 10.08.2017, the Respondent has assured the Complainants to handover the Villa in the month of February, 2019. But the same was not followed by the Respondent/Builder and some civil works are pending yet to be completed but for this pending proceedings want only to escape from the RERA proceeding, the Respondent has taken the stand that as if he has handed over the possession herein. The Respondent did not state anywhere in its counter that when and where the Respondent has handed over the possession and fulfilled the formalities as prescribed in the Clauses 4(b), 4(c) and 4(d) of the Construction Agreement.

13. In the written submission of arguments, the Respondent has reiterated its submissions made in the Counter Affidavit.

14. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter and the written submission of arguments filed by both sides carefully.

15. The prayer of the Complainant is to direct the Respondent to handover the completed apartment with all facilities and infrastructures to the Complainant Allottees.

16. In the Counter Affidavit, the Respondent has stated that the Complainant has taken possession of the Villa on 25.09.2020. In the written submission of arguments, the Complainants have submitted that the Respondent has not handed over possession to the Complainant till date. Civil works have been pending in the Villa. The Complainant wanted to do carpentry works inside the Villa; hence the Complainant got permission from the Respondent.

17. The Respondent has also stated that the primary construction was completed in November, 2019 itself and the Respondent has applied for electricity connection on 18.10.2019.

18. It is seen from the copy of the letter dated 16.09.2021 issued by the Complainants to the Respondent Promoter along with written submission of arguments that the Complainant Allottee Thiru Kumaresan has signed this letter stating that civil works, carpentry works, plumbing and sanitary works, painting and plastering works, Electrical and tile works, compound wall and car parking works have been completed in all aspects and the premises have been handed over to him to his satisfaction.

19. Similarly in another letter issued by the Director of the Respondent Promoter company dated 16.09.2021 to the Complainant Allottee stating that on receipt of full payment towards allotted house for which sale deed agreements have been executed, they are handing over vacant possession of Villa No.38 completed in all respects as per the Agreements along with main door and bed room key and duplicate keys. This letter has also been signed by the Complainant Allottee Thiru M.Kumaresan stating that he is confirming the contents and is

