



**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.010/2023

20th day of July, 2023

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

Tvl.

1. M.Krishnakumar
2. R. Anitha

... Complainants

Versus

Tamil Nadu Teachers Housing Welfare Trust
Represented by its Chairman
Thiru M. Viswanathan

]]]
Respondent

The above Complaint came up for final hearing before this Authority in the presence of M/s. Mothilal & Goda - Counsel for Complainants and of M/s. V. Manoharan - Counsel for Respondent. This Authority passes the following order.

FINAL ORDER

The Complainants have stated in the Complaint that they are the purchasers in the project "TTHWT" Phase II at Padappai Village developed by the Respondent Tamil Nadu Teachers Housing Welfare Trust. The complainants have further stated that in and around November 2006 the Complainants had approached the Respondent to purchase two plots each measuring 2,400 sq.ft., in their individual name and the Respondent had agreed to sell four plots for the said area bearing allotment Nos.126, 127, 128 and 129 for a total sale consideration of Rs.3,00,000/- lakhs per plot in all Rs.12,00,000/-

2. The Complainants have also stated that they had entered into two Sale Agreements (in their individual names) both dated 23rd November 2006 "Agreements of sale" for the purchase of the said Plots with the Respondent and the said Agreement was renewed every 6 months at the request of the Respondent over 25 times.

3. It is further submitted by the Complainants that the conditions of the said Agreements of Sale amongst others were that the said plots would be allotted within a period of 6-9 months and also that the sale consideration would be returned with Bank interest, at the request of the Complainants within 11 months. The Complainants have also submitted that despite 16 years have passed, no steps have been taken by the Respondent either allot the plots, obtain approvals or refund the moneys taken by way of consideration from the Complainants. Whereas, as per website of the Respondents, the Teachers Satellite Township Phase-II

project is shown as a completed project, however, the phase-II has not been completed.

4. The Complainants have prayed for the following reliefs in this Complaint.

- a. To direct the Respondent to allot the plots to the Complainants as per the Agreements of Sale and renewals made in respect of the said project and handover possession to the Complainants within a particular time as considered appropriate by this Authority.
- b. To restrain the Respondent from alienating any of their stakes in the said project, creating any interest, charge, encumbrance or mortgage over the said property either on their own or through their men, agents or anybody else in connection with them or the property pending disposal of this complaint.
- c. To direct the Respondent to register the instant project and other ongoing projects with the Tamil Nadu Real Estate Regulatory Authority.
- d. For costs of the present complaint.
- e. Any other relief that this Authority deems fit and proper in the circumstances of this case.

5. In the Counter/Reply statement, the Respondent has submitted that as admitted by the Complainants, the agreements entered into between both complainants and this Respondent were on 23.11.2006, nearly 10 years before the commencement of the Real Estate (Regulation and Development) Act, 2016. Hence this Authority has no jurisdiction to

enquire into the complaint and it is not maintainable and may be dismissed in limine.

6. It is also stated by the Respondent that under clause 7 of the agreement dated 23.11.2006. all the disputes between the complainants and Respondent shall be settled only under the Arbitration Act and therefore this complaint is not maintainable and liable to be dismissed in limine.

7. The Respondent has also submitted that this Phase II Padappai project involves about 75 to 100 acres of land owned by several persons and this Respondent is only Agreement Holder and Promoter/Developer and invested large sums of money into the project. Unfortunately layout approval could not be obtained on time due to several problems.

8. Regarding the averments at para 4.6 of the Complaint, the Respondent has submitted that the information stated to have obtained from the website is not in respect of the Phase II Padappai Project and also this Respondent had never stated that layout was already approved so far as Phase II Padappai Project.

9. It is also submitted by the Respondent that since the Respondent found that the approval would be delayed, on 26.09.2007 itself sent a letter to complainants offering plots in a different project. But the Complainants insisted to have plots only in Phase II Padappai and prepared to wait indefinitely. Only because of their attitude, several endorsements were made extending the time for completion, but till today approval was not obtained in spite of best efforts by this Respondent.

10. The Respondent has further submitted that as admitted by the Complainants, only on 28.07.2021, the complainants were ready to discontinue with the agreement dated 23.11.2006. Hence the Complainants are entitled to get back their amount paid that is Rs.12,00,000/- with interest at 7% only from 28.07.2021. When the Respondent openly declared in 2007 itself that the approval was delayed and offered to take plots in other projects, the Complainant ought to have demanded for return of the amount, but they deliberately and wantonly waited, against the advice of Respondent, for approval of plots in Phase II Padappai and demanded the amount only on 28.07.2021. They are entitled for interest only from 28.07.2021. The interest shall be at 7% Bank Rate calculated simple interest. It is also stated by the Respondent that though this Respondent in their letter dated 28.08.2021, offered to pay interest from the date of agreement that offer was turned down by the Complainants. Therefore, the Complainants are entitled to interest only from 27.07.2021 or 28.07.2021 and not from date of agreement.

11. In the Rejoinder, the Complainants have submitted that the Respondent has periodically made endorsements on the reverse side of the Sale Agreements extending the validity of the Sale Agreement until 01.07.2021 confirming the Sale of the plot in the said project as mentioned in the Sale Agreement. It is also submitted by the Complainants that since the message given by the Respondent was that the Projects were still in progress, the Complainants decided to continue with the Agreement and this can be evidenced by their letter dated 26-09-2007 and the reply letter of the Complainants dated 10-10-2007.

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

13. It is evident from the Counter Affidavit of the Respondent Promoter that the Respondent Promoter has not been able to obtain approval of the Planning Authority till date for the Phase-II Padappai project.

14. However, the Respondent Promoter has entered into an Agreement for sale with the Complainant Allottee on 23.11.2006 and has been making endorsements extending the validity of the Agreement for sale for a period as latest 01.07.2021.

15. The Respondent Promoter has indicated their willingness to repay the amount of Rs.12 lakhs paid by the Complainant Allottee with simple interest at 7% per annum from August, 2021 up to the date of payment.

16. The Respondent Promoter has also stated that this Authority has no jurisdiction since the Agreements were entered between the Complainants and the Respondent on 23.11.2006 nearly 10 years before the commencement of the Act, 2016.

17. The Hon'ble Supreme Court in its order dated 11.11.2021 in Civil Appeal Nos.6745 – 6749 of 2021 (Arising out of SLP (Civil) Nos.3711 – 3715 of 2021) in M/s. Newtech Promoters and Developers Private Limited versus State of UP and Others, etc. has observed that the RERA Act, 2016 is retroactive in character. Also the validity of agreements for sale has been extended upto 01.07.2021.

18. Therefore, this Authority holds that the Complaint is maintainable and accordingly proceeds to pass orders of this Complaint.

19. Regarding the contention of the Respondent Promoter that under Clause 7 of the Agreement dated 23.11.2006, the disputes between the complainant and the Respondent Promoter shall be settled only under the Arbitration Act.

20. The Hon'ble Supreme Court in M/s. EMMAR MGF Vs. Aftab Singh case has held that when there is a special statute in place, the arbitration cannot be taken recourse to.

21. Therefore, this Authority rejects the contention of the Respondent Promoter regarding arbitration on the ground that the Real Estate (Regulation and Development) Act, 2016 is a special Act for the resolution of disputes between the Allottees and the Promoters.

22. In the Rejoinder, the Complainants have stated that based on the message given by the Respondent Promoter that the projects were still in progress, the Complainants decided to continue with the Agreement which is evidenced by the letter of the Respondent Promoter dated 26-09-2007 (page No.36 of the typed set of papers filed by the Complainant).

23. This Authority accepts the above submission of the Complainant Allottees that the Complainant Allottees continued to wait for the plot in this real estate project based on the assurance given by the Respondent Promoter that the project is in progress.

24. Therefore, this Authority directs the Respondent Promoter to refund the amount of Rs.12 lakhs paid by the Complainants with interest at the RERA rate of interest from the date of payment by the Complainant i.e. 13.11.2006 till the date of settlement. The applicable RERA rate of interest is at 9.7% per annum. This shall be adopted for payment of interest.

25. With the above findings and direction, this Complaint is disposed of.

Sd/-...20.07.2023
MEMBER (M), TNRERA

Sd/-...20.07.2023
MEMBER (J), TNRERA

Sd/-...20.07.2023
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

N. Nimmay
20/7/2023
ADMINISTRATIVE OFFICER
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20-7-23