



**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.002/2023**

**30<sup>th</sup> day of October, 2023**

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

Thiru M Jacob ... Complainant

Versus

M/s. Akshaya Pvt. Ltd. ... Respondent

The above Complaint came up for final hearing before this authority in the presence of M/s. Anita Thomas - Counsel for Complainant and of Thiru Manisundar Gopal - Counsel for Respondent. This Authority passes the following order.

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**FINAL ORDER**

The Complainant has submitted in the Complaint that he had booked an Apartment No.804, 8<sup>th</sup> floor, Tower D-5 with built up area of 1254 sq.ft. with UDS of 457.42 sq.ft. and with proportionate share of all the common areas and amenities together with exclusive right to one covered car park in the basement in the project "Akshaya Today" developed by the

Respondent Promoter M/s. Akshaya Private Ltd. at Thaiyur Village, Chengalpattu Taluk, Kancheepuram District.

2. It is also submitted that the Complainant entered into a Construction Agreement dated 05.02.2013 with the Respondent. The date of delivery as mentioned in the Construction Agreement at Clause 2 on page 4 states that 'the Second Party (Respondent) agrees to deliver the Schedule C property within 36 months commencing from Bhoomi Pooja on 18.01.2013 with grace period of 180 days subject to any force majeure event.' In that case the Apartment should have been handed over by 17.01.2016 and with the grace period by 16.07.2016. As per Clause 3 of the Construction Agreement, the Complainant was to pay a total sum of Rs.30,58,400/- for the apartment with an undertaking to pay as per the Schedule of payment in Annexure I to enable the Respondent to complete the construction of the apartment in time.

3. The Complainant has further submitted that the Respondent refuses to state a date of handing over and the Respondent has not registered the UDS in favour of the Complainant even after receiving Rs.20,83,554/- as early as November, 2013.

4. The Complainant has prayed for the following reliefs in the Complaints.

- a) To direct the Respondent to complete the construction and handover possession to the Complainant in a period that is deemed appropriate by this Authority;

- b) To restrain the Respondent from alienating any of their stake 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) For costs of the present complaint;
- d) Any other relief that this Authority deems fit and proper in the circumstances of this case.

5. In the Counter Affidavit, the Respondent Promoter has submitted that the Complainant and the Respondent entered into a Construction Agreement and Agreement for Sale of the undivided share of land vide documents dated 05.02.2013, for the construction of a residential apartment with a total built-up area measuring 1254 sq.ft. bearing apartment No.804, 8<sup>th</sup> Floor, Tower D5 in Block D for a total sale consideration of Rs.39,98,900/- excluding Service Tax, GST, Levies and other statutory charges.

6. The Respondent has also stated that the Complainant has committed several defaults in making the periodical stage wise payments and the interest accrued thereon amounts to Rs.14,33,533/- apart from the outstanding amount of Rs.19,58,396/- The Respondent has also pointed out that even though the Complainant had paid only a sum of Rs.20,83,554/- till date, the Respondent had completed 90% of

construction of the Complainant's apartment, to the tune of Rs.40,41,550/-

7. It is further submitted by the Respondent that the Respondent had informed the Complainant about the specific factors such as the Moulivakkam Building Collapse in 2014, the December 2015 Floods, the implementation of GST in 2017 which caused the NBFC/Banks to go into an internal risk assessment causing a huge delay in procuring loans to fund the said project, the long standing sand crisis, price escalation of building materials, the Vardha Cyclone, COVID-19 pandemic etc. and the consequential unforeseeable circumstances beyond the control of the Respondent that led to the delay in delivery of the apartment.

8. The Respondent is making sincere efforts to complete the project and the Respondent has arranged sufficient funds from other sources to complete the Project by end of third quarter 2023.

9. In the Affidavit filed by the Respondent, it is submitted regarding the status of construction of Tower D5 and with specific reference to apartment No.804 is concerned, the Block work, Internal & External Plastering has been fully completed. The balance work of flooring and finishing is progressing at a fast pace. The apartment will be ready for handing over in October 2023.

10. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter, the Affidavit filed by the Respondent Promoter indicating the status of construction of likely date of completion,

the Memo filed by the Complainant on 09.05.2023 and the arguments and written submission of arguments carefully.

11. This Authority has already held in its order dated 07.11.2019 in Complaint No.169 of 2018 that the Blocks B, C & D of the project "Today" have to be registered with this Authority as an ongoing project. This has also been upheld by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal.

12. The Respondent Promoter has filed 2<sup>nd</sup> Appeal by way of CMSA in the Hon'ble High Court of Madras and this 2<sup>nd</sup> Appeal is pending. However, no stay has been granted by the Hon'ble High Court so far.

13. As this real estate project is registrable project, this Authority has jurisdiction to adjudicate this Complaint.

14. This apartment which should have been completed and handed over by 16.07.2016 is yet to be completed and handed over.

15. The Respondent Promoter has stated that the apartment will be ready for handing over in October, 2023.

16. As the construction and completion of the apartment is very badly delayed, this Authority directs the Respondent Promoter to complete the construction of this apartment by October, 2023 and hand over the same to the Complainant Allottee on receipt of balance sale consideration, if any, strictly as per the construction agreement.

17. As this project has been badly delayed, the Complainant allottee is at liberty to claim interest on delayed construction by moving the Hon'ble single Member Bench of this Authority.

18. Therefore, this Authority directs the Respondent Promoter not to charge interest on delayed payments at the time of handing over of the apartment and the Respondent is at liberty to make its claim for interest on delayed payments, if any, with the Hon'ble Single Member Bench of this Authority.

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

Sd/-...30.10.2023

MEMBER (M), TNRERA

Sd/-...30.10.2023

MEMBER (J), TNRERA

Sd/-...30.10.2023

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

*N. Nimmayya*  
30/10/2023  
LAW OFFICER, TNRERA

*m*  
30.10.23