

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**

**CCP No. 128 of 2018**

V. Venkateswaran

..... COMPLAINANT

**Vs.**

M/s. Real Value Promoters Pvt Ltd.,  
(Regn. No.TN/01/Building/0316/2018)

..... RESPONDENT

Complainant : Represented by Mr. K. Chandrasekaran, Advocate

Respondent : Represented by A. Palaniappan, Advocate

Heard on : 30.01.2019

Delivered on: 12.02.2019

**ORDER**

The above complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent is filed under section 31 read with Section 71 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 booked a flat with the respondent in their project, namely '**PADMASRI**' (**PADMALAYA**) at Pudupakkam Village, Thiruporur Panchayat Union, Chengalpattu Taluk, Kancheepuram District.

(b) The respondent allotted flat No.2A, in 'Q' Block to an extent of 1209 sq.ft in the 2<sup>nd</sup> floor on payment of the advance amount. The complainant entered into agreements for sale and construction on 20.08.2014 and made further payments. The complainant made a total sum of Rs.15,00,000/- to the respondent.



// TRUE COPY //

  
12/2/2019

(c) As per the construction agreement, the due date for completion of construction is 36 months from the date of agreement. There was no progress of construction. Hence, the complainant made a request on 19.08.2015 for cancellation of the booking and refund of the amount.

(d) The respondent accepted the letter and promised to repay amount in six months but so far paid only Rs.7,15,000/-. In spite of several requests, the respondent failed to refund the balance amount of Rs.8,35,000/-. Hence the complaint.

3. **Counter Averments of the respondent in brief as follows:**

All the allegations except admitted specifically are denied and the complainant is put to strict proof of all the allegations. The complaint is not maintainable. There is no deficiency of service on the part of the respondent. The complainant opted for purchase of a flat from the respondent in their project for a total consideration of Rs.37,97,150/- on payment of advance of Rs.100/- on 03.08.2014. Subsequently, the complainant paid Rs.15,50,000/-.

4. In the event of cancellation of the booked flat, the complainant is entitled to get the refund of the amount after deduction of Rs.25,000/- with necessary taxes and also on resale of the booked apartment. The project is going on in full swing. However, the complainant cancelled the booking and sought the refund. The respondent already refunded a sum of Rs.7,15,000/- to the complainant. There is no deficiency of service. Hence the respondent prays for the dismissal of the complaint with exemplary cost.



117RVE COPY 11



12/2/2019

5. An attempt to settle the matter amicably has failed.
6. Both the parties have filed their respective evidence on affidavit with documents.
7. On the basis of rival contentions of the parties, the following point arises for determination:-
  - i. Whether the complainant is entitled to get the balance amount of Rs.8,35,000/- from the respondent?
  - ii. Whether the complainant is entitled for any reliefs?
8. **Answer for Point No: (i)**

The Learned Counsel for the complainant submitted that the complainant booked flat in the project namely, 'PADMASRI' of the respondent and was also allotted a flat on receiving booking amount and further amounts and as per the construction agreement entered between the complainant and the respondent, the respondent undertook to complete the construction within 36 months from the date 14.01.2014 and even after the expiry of the period, the respondent was not able to commence the construction and therefore the complainant made a request for refund of the amount on cancellation of the booking and the respondent also repaid the part of the amount cancelling the booking, but failed to pay the balance amount in spite of repeated requests and hence the complainant preferred the complaint before this Forum and he is entitled for the relief as prayed for.



||TRVE COPY||



12/2/2019

9. However, it was contented by the respondent that the amount paid by the complainant is not disputed and the respondent also refunded to the complainant a sum of Rs.7,15,000/- and the allegations of the complainant for the delay of the completion of the project is not true and the payments received from the buyers were utilized for construction of flats and the amount will be refunded only after the flat booked is resold to any other person and in spite of the same the part of the amount was returned to the complainant and the complaint is liable to be dismissed with cost.

10. Section 18 of the RERA Act gives an option to the allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the flat on the dates specified in the agreement. It is not in dispute that on the grounds of delay in construction, the complainant sought cancellation of the agreements and refund of the amount. The respondent also cancelled the agreement on the request of the complainant and also refunded part of the amount i.e., Rs.7,15,000/-. Therefore, it is obvious that the complainant is entitled to get the balance amount of Rs.8,35,000/- from the respondent. The contention of the respondent that the amount is repayable only after the flat booked by the complainant is resold to third party is not acceptable since the respondent already refunded part of the amount to the complainant and not disputed the liability to refund the balance amount. Considering all the above circumstances, it is held that the complainant is entitled to get the balance amount of Rs.8,35,000/- from the respondent. Thus the point is answered accordingly.



117RVE COPY 11

8  
12/12/2019



11. **Answer for Point No: (ii)**

The amount paid by the complainant was utilized by the respondent in the construction of the project. The amounts were paid by the complainant vide Ex.A3, A4, and A5 in the year 2014 on various installments. Considering all the above circumstances, it is held that the complainant is entitled to get the refund of the balance amount of Rs.8,35,000/- together with interest at the rate of 8.70% which is currently the highest marginal cost of lending rate of interest of SBI plus 2% from the dates of respective payments till repayment by the respondent and also cost of the litigation of Rs.10,000/-.

The complainant is entitled to the reliefs as discussed above. Thus the point is answered accordingly.


**In the result, the respondent is directed as follows:-**

- (1) The respondent shall pay the complainant the amount at the interest rate, compensation and cost as per the findings in the answer for Point No.(ii), Para 11 of this order within 30 days from the date of issue of this order.
- (2) The charge of the aforesaid amount shall be on the flats booked by the complainant till their repayment.

  
**G. SARAVANAN**  
 ADJUDICATING OFFICER  
 TNRERA, CHENNAI

//CERTIFIED TO BE TRUE COPY//

  
**ADMINISTRATIVE OFFICER**  
**TN REAL ESTATE REGULATORY AUTHORITY**

  
 12/2/2019