

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 56 of 2018

S. Sridhar COMPLAINANT

Vs.

1. M/s. Real Value Promoters (P) Ltd.,
Rep. by Authorized Signatory M. Manohar
2. M/s. Real Value Promoters (P) Ltd.,
Rep. by Managing Director
(Regn. No.TN/01/Building/0157/2018) RESPONDENTS

Complainant : Represented by Mr. J. Pachaiyappan,
Advocate

1st Respondent : Given up by the complainant

2nd Respondent : Represented by Mr. A. Palaniappan,
Advocate

Heard on : 24.01.2019

Delivered on: 07.02.2019

ORDER

The above complaint claiming the amount paid by the complainant to the Respondents towards the purchase and construction of the flat with interest, compensation and costs 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 in their project, namely, "**NEEL KAMAL**", at Kazhipattur Village, Chengalpat Taluk, Kancheepuram District. The Respondents allotted a float at No.5A, in the 5th Floor in Block – Annexe

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with built up area of 1060 sq.ft and undivided share of land of 249 sq.ft in the project. The total cost of the flat is Rs.48,29,100/-.

(b) The complainant entered into an agreement for construction with the 1st Respondent on 01.03.2014. Out of the total amount, the complainant paid Rs.39,44,567/-. The 1st Respondent also executed sale deed in respect of the undivided share of land on 12.03.2014. As per the agreement of construction, the due date for completion of construction was on or before December 2015 subject to force majeure condition from the date of the agreement. Till date, the flat has not been handed over to the complainant.

(c) The complainant requested for the return of the amount paid by him from the Respondents. But the Respondents have not returned the amount. As per the provisions of the RERA Act, the Respondents are liable to return the amount with interest, compensation and costs to the complainant. Hence the complainant withdraws from the project seeking full refund of entire amount, interest, compensation and costs to the construction.

3. Memo filed by the 2nd Respondent stating that the 1st Respondent, who was an employee of the 2nd Respondent company, resigned from the job. The Memo was recorded. The Counsel for the complainant also made endorsement giving up the case as against R1.

4. **Counter averments of the 2nd Respondent in brief as follows:**

(a) All the allegations and averments except admitted are denied. The complainant is put to strict proof of the same. The complaint is not maintainable in law. The complainant approached the Respondents to

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purchase a flat and booked the flat No.5A in the 5th Floor in Block Annexe in the project of the Respondent namely "NEEL KAMAL" with a built up area of 1050 sq.ft and UDS land of 249 sq.ft. On 01.03.2014, a construction agreement was entered between the complainant and the Respondents. The total cost of the flat is Rs.51,22,814/-. Subsequently, at the time of registration of UDS land on 12.03.2014, the complainant paid only Rs.39,44,567 and Rs.11,78,247 is due.

(b) The Respondent promised possession of the flat once entire amount of sale consideration is paid by the complainant. From the date of initiation, the construction was completed in spite of non-payment of the complainant. Without paying the entire sale consideration, the complainant has no locus standi to claim interest or compensation. In spite of the same, the Respondent is duly gone ahead of the schedule to complete the construction. There is no deficiency of service. The complainant is a defaulter. Hence the Respondent prays for the dismissal of the complaint.

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 the rival contentions of the parties, the following points arise for determination:

- i. Whether the complainant is entitled to get back the amounts paid to the Respondents with interest and compensation on the ground of failure on the part of the Respondents to give

possession of the apartment booked by them in accordance with the date and terms of agreements for construction?

- ii. Whether the complainant is entitled for all the reliefs as prayed for?

8. Answer for Point No.(i)

The Learned Counsel for the complainant filed written notes of argument and also orally submitted that the complainant entered into agreement for the purchase of the flat for a sale consideration of Rs.48,29,100/- and also paid Rs.39,44,567/- out of the total amount and the Respondents also executed sale deed for UDS in favour of the complainant and the complainant was ready to pay the balance amount, but the Respondents neglected and failed to hand over the flat as per the due date of delivery in the construction agreement and the complainant availed loan to invest for the flat and was paying EMI every month to the bank and also contacted the Respondent over phone and in person, but the Respondents did not respond and the failure of the Respondents caused mental agony and hardship to the complainant and the Respondents further promised to hand over the flat by July 2017 but till date are unable to deliver possession and therefore, the complainant is entitled for reliefs.

9. However, the Learned Counsel for the Respondent contented that while the construction of the project was in progress, the government authorities stopped the project and now the project is cleared by the authorities and the Respondents are proceeding with the construction and the complainant has not paid the entire agreed amount and paid only Rs.39,44,567/- in several installments and the complainant was playing all

types of tactics to delay the payment and stopped the payment and is in due of Rs.11,78,247/- towards stage-wise payment and the complainant has no locus standi to claim interest and compensation and the complaint is liable to be dismissed with costs.

10. Section 18 of the RERA Act gives an option to the allottees/buyers to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails to complete or is unable to give possession of the flat on the dates specified in the agreement. As per Clause 4 (a) of the Ex.A1 agreement for project promotion and construction, the Respondents undertook to complete the construction of the flat on or before December 2014 subject to force majeure conditions as mentioned in Clause 15 of the agreement. Under Clause 15 of the same agreement, the force majeure conditions are detailed as such circumstances beyond the control of their agents of the Respondents and others and/or due to non-availability of steel, sand, cement, blue metal and/or any other building materials/men power and by reason of war, civil commotion, riots, epidemics, fire, floods, seismic forces, acts of God etc. Admittedly, the Respondents have not completed the construction of the flat allotted to the complainant by the due date mentioned in the agreement.

11. It is not in dispute that Ex.A4, e-mail letter was sent by the Respondents to the complainant wherein the Respondents conveyed apology for not handing over the flat as per the schedule and appreciated the cooperation and support by the complainant and further promised to hand over the flat by July 2017. Neither in Ex.A4 nor in the Counter, the



Respondent pleaded any of the force majeure conditions mentioned in Clause 15 of the Ex.A1 Agreement as the reasons for the delay in completing the project. In his evidence RW1 stated that there was delay in payment of consideration by the complainant. No such allegation or averment was made by the Respondent in Ex.A4, letter sent by them to the complainant. From Ex.A4, it is clear that the complainant was all along cooperative with the Respondents for the completion of the project. However, the Respondents were not able to complete the project even according to the extended time limit as per Ex.A4 letter.

12. In the above circumstances, it is held that the complainant is entitled to get back the amounts paid by him to 2nd Respondent with interest and compensation on the ground of failure on the part of the 2nd Respondent to give possession of the flat booked by him in accordance with the terms and conditions of the agreement for project promotion and construction. Thus, the point is answered accordingly.

Answer for Point No. (ii)


13. It is not in dispute that the complainant paid Rs.39,44,567/- to the 2nd Respondent. In view of the answer for Point No.(i), the complainant is entitled for refund of Rs.39,44,567/- from the 2nd Respondent. However, the complainant claimed interest at the rate of 20% annual interest for the amount liable to be returned by the 2nd Respondent. Such a claim is not acceptable since as per Rule 18 of the TNRERA Rules, the rate of interest shall be the SBI's highest marginal cost of lending rate of interest plus 2% per annum. Therefore, the complainant is entitled for interest on the refund amount at the rate of 8.70% which is



currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum from the dates of respective payments till repayment by the 2nd Respondent. Towards the compensation, for mental agony and delinquency of service, the complainant claimed Rs.20,00,000/-. Admittedly, the amount of Rs.39,44,567/- paid by the complainant was used by the 2nd Respondent in the construction of the project. Considering the circumstances, it is held that the complainant is entitled to get compensation at the rate of 9% per annum on the amount paid by him to the Respondents from the respective dates of payment till repayment towards mental agony, inconvenience and deficiency of service. Towards litigation expenses, a sum of Rs.10,000/- is fixed as payable by the 2nd Respondent. Thus, the point is answered accordingly.


In the result, the 2nd Respondent is directed as follows;-

- (1) The 2nd Respondent shall pay the complainant the amounts with interest at the rate, compensation and costs as per the findings in the answer for Point No.(ii), Para 13 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 flat booked by the complainant till the repayment.
- (3) The complainant shall execute the cancellation of agreement and sale deed, as the case may be, on satisfaction of his claims at Respondent's cost.


G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

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