

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

**Quorum : Hon'ble Tmt. N. Uma Maheswari, M.A., M.L.,
Adjudicating Officer**

CCP No.151 of 2022

1. Ragothaman Sankar **Complainants**
2. Saradha Sankar
Rep. by their PoA P. Venkat Rayudu

Vs.

M/s. TATA Value Homes Ltd. (TVHL)
Rep. by its Managing Director/C.E.O. **Respondent**
(Project not registered)

Complainants : Rep. by Mr. D. Daniel, Advocate
Respondent : Rep. by Mr. Shardul Amarchand Mangaldas, Advocate

Heard on : 04.09.2024
Delivered on : 08.10.2024

ORDER

This complaint is filed by the above complainants through their Power Agent U/s 31 r/w Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act) praying this Forum to direct the respondent to pay a compensation of Rs.8,35,683/- for the delay with 10% interest, Rs.30,00,000/- as compensation for mental agony and inconvenience and Rs.4,00,000/- as costs.

A short summary of the complaint:

The respondent commenced "**TATA SANTORINI**" by M/s. TATA Value Homes Ltd. in Kuthambakkam, Chennai. It consisted 1136 dwelling houses. As per the

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advertisement, the complainants booked a 3 BHK small apartment by paying Rs.30,000/- as advance on 07.05.2014. The cost of the flat was accepted as Rs.79,66,957/- (including covered car park). The complainants paid all amounts as per the payment schedule. The agreements for sale and construction were entered into on 19.01.2016.

The sale deed was registered on 17.08.2017. The contents of both deeds were one sided favouring the respondent. The flat should be handed over by November 2016. But the possession information was given through a letter dated 23.12.2017. At the time of taking possession in 1st week of March 2017, certain defects were highlighted by the complainants.

After taking possession it was found out that sub-standard quality materials were used for the construction with defective workmanship. There was water stagnation in all 3 bathroom floors and water seepages in walls of the building. Over and above the false ceiling, plastering and painting were not done properly. Around 12 floor tiles were rearranged by the respondent.

There was a deficit of carpet area and saleable area than mentioned in the agreements. Now this complaint is filed for compensation towards delay in handing over, variation in area and price escalation.

The Gist of the counter:

At the outset, the complaint does not contain any truth in its averments. The agreements for sale and construction and registered sale deed for UDS, the sale value are all admitted. If at all, any deficiencies in service were identified by the complainants, they are bound to intimate this issue to the respondent. But they have taken possession and merely highlighted them in the complaint only. The complainants are in continuous possession of the flat for the last seven years and raise objections at a later stage. The then and there reported defects were adequately addressed by the respondent. As per the specification and amenities mentioned in the sale deed, all of them have been attended to by the respondent. After a check over these amenities and specifications, the Completion Certificate was issued followed by a Possession Certificate. There is no legal basis for claim of 10% interest.

The construction agreement expressively clarifies that if any compensation is payable by the developer, it should be before the Occupation Certificate date; and nothing beyond that. The claim for price escalation is not at all sustainable. The agreed extent of UDS only is sold to the complainant. The complaint lacks merits and to be dismissed.

The complainants side has filed the proof affidavit of CW1 with Ex.A1 to A21. On the other hand, the respondent has filed the proof affidavit of RW1 with Ex.B1 to B10.

Heard both sides.

The learned counsel for the complainants argued that there was an unexplained delay in handing over the possession contrary to the promise of handover as assured in the construction agreement. There was only partial Completion Certificate issued by the CMDA.

There is a price escalation also as claimed by the respondent side. Mentioning these factors, he prayed to allow the reliefs sought for in the complaint.

The learned counsel for respondent side argued that the entire contents of the complaint are all false. Absolutely there is no mental agony sustained by the complainants to claim any compensation. As per Clause 11(b) of the construction agreement, if the possession is delayed beyond the agreed period, the respondent is entitled for an extension of two months for giving possession of the unit. The purchaser shall be also entitled to seek compensation from the expiry of the extended date at a rate of 6% per annum on the amounts paid till the date of sale of the unit. Like that it is also payable / adjustable only at the time of handing over the possession of the said unit. As per this condition, the complainants are estopped from claiming any compensation at this later stage. Hence, the complaint is to be dismissed.

In the light of proof affidavits, documents and arguments, this Forum has to adjudicate this complaint on the following points:

- (i) Whether the complainants are entitled for a compensation for the mental agony for the alleged delay as stated by them?
- (ii) Any other reliefs?

Answer for Point No.(i):

Before going to the discussion it is clear from the records that already these complainants have filed Complaints No.75, 84, 85 & 86 of 2020 before the TNRERA for a prayer of refund of the amounts paid for covered car park, the lesser extent of UDS, deposits paid towards water / electricity connections, legal charges, DG charges, etc.

Now, the compensation sought for by the complainants in (a) & (b) of prayer are in terms of interest which cannot be entertained by this Forum.

So, it is to be found out whether there was any mental agony towards any delay in handover and whether it is to be compensated. The construction agreement was dated 18.01.2018. In Page 64 of the typed set of the complainant side, in Para 11, the developer undertook to give possession of the unit before November 2016 with two months grace period. So by January 2017, the unit should be ready for occupation.

Ex.A11 is the Possession Letter addressed to the complainants showing that it is ready for handing over from 23.12.2017. So there has been a delay of 13 months contra to the promise. In the construction agreement itself, there is a clear Clause that in case of any delay, the purchaser shall be entitled to seek compensation from the expiry of extended date at a rate of 6% per annum and this compensation shall be payable till the date of receipt of Occupation Certificate or any other Certificate required for occupation of the unit. It is also payable only at the time of handing over the possession of the said unit. It is expressly clarified that no compensation shall be payable by the developer for any time period beyond the Occupation Certificate date irrespective of purchaser not taking possession of the unit.

The arguments of the respondent side is that after taking possession by 1st week of March 2017, the complainants are barred from claiming any sort of compensation. They have taken possession of the unit as early as by March 2017 and if at all there were any grievances, they should have intimated the same to the respondent before their occupation.

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At the same time, eventhough there is prohibitory clause for claiming damages, there has been a delay of 13 months in handing over the unit. Even as per the terms of the agreement, the respondent is liable to pay a compensation of 6% per annum on the amounts paid till date towards the sales price.

There is a condition to pay the same on the date of handing over the unit. But there is no such payment on the date of handover or any such endorsements by the respondent side in the possession notice. It is clear that even the admitted quantum of compensation also was not paid on the date of occupation to the complainants. Hence it is answered that the complainants are eligible to claim compensation for the delay through this complaint.

As far as the claim for interest is concerned, as per the judgement by the Hon'ble Supreme Court in the case of M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Others, the complainants are at liberty to approach the appropriate Authority.

Like that the plea towards shortage of carpet area is concerned, it has been already dealt with and ordered by the Authority and needs no more discussion or consideration.

Based upon above discussion, it will be fit and proper to fix the compensation for the delay and handing over of the unit, and for mental agony and hardship.

While fixing the compensation, the period of delay, the amount already paid by the complainants, the purpose of purchasing the unit, all to be taken into account. On this basis, it is ordered that the complainants are entitled for a compensation of Rs.2,00,000/- for the delay in handing over the unit and Rs.1,00,000/- towards mental agony.

Answer for the Point No.(ii):

The complainants are entitled for Rs.50,000/- towards the costs of litigation.

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In the result, it is ordered that the respondent should pay a compensation of Rs.3,00,000/- totally for all compensations and Rs.50,000/- towards costs to the complainants. These amounts should be paid within 90 days from the date of this order.

Dictated by me to the Stenographer directly and typed by her in the computer, corrected and pronounced by me in the open court on this 8th Day of October 2024.

Sd/- 08.10.2024
N. UMA MAHESWARI
ADJUDICATING OFFICER

CCP.NO.151/2022
LIST OF WITNESSES

CW-1 --- P. Venkatarayudu (PoA)
RW-1 --- Senthil R.

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.No.	Date	Documents Name
Ex.A1	07.05.2014	Payment Schedule by Respondent
Ex.A2	...	Application Form
Ex.A3	18.01.2016	Agreement for Sale
Ex.A4	18.01.2016	Construction Agreement
Ex.A5	28.07.2017	Sale Deed
Ex.A6	13.06.2013	Environmental Clearance by SEIAA
Ex.A7	27.01.2014	Proceedings of Planning Permit by CMDA
Ex.A8	27.01.2014	Planning Permit with Annexures
Ex.A9(Series)	...	Payment Receipts
Ex.A10	27.06.2017	Offer of Possession Letter with Annexures
Ex.A11	23.12.2017	Possession Letter
Ex.A12	15.03.2022	Email from Respondent regarding compensation
Ex.A13	...	Wholesale Price Index – by RBI
Ex.A14	...	Price Escalation claim of Construction Agreement
Ex.A15	16.01.2021	Actual Carpet Area measurement sheet

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Ex.A16	29.09.2020	UDS Calculation by Respondent
Ex.A17	11.02.2021	Planning Permission dated 11.02.2021
Ex.A18	25.01.2022	Copy of the Order in C.C.No.763/2020 by NCDRC, New Delhi
Ex.A19	24.09.2021	Copy of the Order in A.P.No.31/2021 by TANGEDCO Ombudsman
Ex.A20	11.01.2021	Copy of Judgement in Civil Appeal 5785/2019 by Hon'ble Supreme Court
Ex.A21	...	Photos of Incomplete Compound walls

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	15.09.2021	Letter of Authorisation
Ex.B2	07.05.2014	Application Form
Ex.B3	18.01.2016	Agreement for Sale
Ex.B4	18.01.2016	Construction Agreement
Ex.B5	18.05.2017	Partial Completion Certificate
Ex.B6	28.07.2017	Sale Deed
Ex.B7	28.12.2017	Possession Letter
Ex.B8	10.06.2022	Copy of the Common Order in C.No.75, 84, 85 & 86/2020
Ex.B9	03.03.2023	Registration Certificate issued by TNRERA
Ex.B10	12.06.2024	Copy of the Order in CMSA No.59 of 2023

Sd/- 08.10.2024
N. UMA MAHESWARI
ADJUDICATING OFFICER
TNRERA, CHENNAI.

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N. Uma Maheswari
LAW OFFICER

TN REAL ESTATE REGULATORY AUTHORITY