

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

Present: Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member

RCP No. 36 of 2024

(i) R.Palanisamy

(ii) B.Radha

Rep by Power Agent,

K.M. Balasubramaniam

.....

Complainants

Vs.

M/s. Sare Shelters Projects Private Limited,

Formerly know M/s. Sare Jubilee Shelters Pvt Ltd.,

Rep. by its Managing Director,

Srinivasan Sivanandan

.....

Respondent

Complainants: Rep.by M/s. Vigneshwar Elango, Advocates

Respondent : Ex-Parte

Heard on: 02.07.2024

Delivered on: 02.09.2024

ORDER

The above complaint by the complainants seeking refund from the respondent towards purchase of a flat with interest and cost is filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Averments of the complainants, in brief, as follows:

(a) The learned counsel for the complainants avers that the respondent had developed a project by name "**Crescent ParC Dewy Terraces**" situated at Thiruporur Village, Chengalpet Taluk, Kancheepuram District. The complainants decided to purchase a flat in the said project. The

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complainants aver that the total sale consideration of the flat selected by them for the super build-up area of 907 square feet was Rs.27,92,528/-.

(b) The complainants were allotted with Flat No: M-6302 in the respondent's project. The complainants aver that on 11.06.2012 the sale and construction agreement were entered between the two parties. The complainants further aver that the respondent had offered to hand over the final possession of the flat within a period of 24 months with a grace period of 3 months projecting the final delivery to be by 11.09.2014 including a grace period of 3 months. The complainants further go on to submit that the respondent had obtained the plan approval by 11.06.2012. The respondent executed the sale deed in favor of the complainants on 15.04.2015 at SRO, Thiruporur. The complainants had availed loan from HDFC Bank for a sum of Rs.23,00,000/- for getting finance for the project.

(c) The complainants aver that the respondent had sent a letter dated 28.11.2014 wherein he had falsely claimed to have completed the construction of his flat. The respondent had thus obtained the entire sale consideration for the flat based on this false letter through the Bank from the loan sanctioned to the complainants. The reality was that even after having received prompt payments from the complainants, the respondent had failed to complete the project within the stipulated time mentioned in the agreement dated 11.06.2012. The complainants aver that even after a lapse of more than 7 years the project was yet to see the light of day.

(d) The complainants aver that they had been consistently requesting the respondent to complete the project and hand over the property but without any response. The complainants therefore aver that they had to file an application before the Hon'ble NCLT in C.P./1274/(IB)/CB/2018 along with six similar home buyers. However, in pursuance of the decision

of the Hon'ble Supreme Court in *W.P.(c) No.26 of 2020 in Manish Kumar vs. Union of India*, the petition became infructuous and stood withdrawn. The complainants further pray that the respondent ought to have registered the project under the RERA Act since the project was yet to be completed and would thus fall in the category of ongoing project and would be covered under the Section 3 of the RERA Act.

(e) The complaint would thus be maintainable and arbitration clause in the agreement, if any, would not prevent the rights of the complainants from seeking relief from the Authority as was held in the Judgement of the Hon'ble Supreme Court in *M/s Emaar MGF Lano Limited vs. Aftab Singh (2019) CPJ 5 (SC)*. The complainants go on to further plead and draws attention to the Rule 4(1) of the RERA Rules, which provide that any agreement already executed between the promoter and the allottee before the commencement of the Rules shall not be affected even after the new Rules coming to force. The complainants thus submit that the application made by them was maintainable in terms of the RERA Act 2016 and Rules and Regulations framed there under. Aggrieved, the complainants pray for the refund of Rs.27,92,528/- with interest along with cost.

3. The complainants have filed the evidence on Affidavit with documents while the respondent remained absent and was treated as Ex-Parte.

4. On the basis of contentions of the complainants, following points arise for determination:

- (i) To determine whether the complainants are entitled to the refund of the monies paid by them to the respondent with interest due to the delay in handing over the complainant's apartment as agreed?
- (ii) What are the reliefs made out?

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5. Answer to Point No. (i)

(a) The facts of the complaint would reveal that the complainants had entered into the respondent projects and were allotted Flat No.M-6302 in the respondent's project. The sale agreement between the two parties was executed on 11.06.2012 (Ex.A1) with an UDS of 505.14 square feet and as laid down in the agreement at Annexure 1 of the agreement with the total consideration being Rs.27,92,528/-. The payment was to be made in stages which was also elaborated in the agreement. The complainants had paid the entire sum of Rs.27,92,528/-.

(b) The complainants have submitted evidence to show the payment of the consideration which lies as the account statement (Ex.A6). The complainants have entered into the respondent's project and paid the required consideration despite which the respondent failed to hand over the complainant's unit by the agreed date 11.09.2014 (including the grace period of 3 months). The delay in handing over had continued even after more than 7 years, the respondent has failed to complete the handing over process. It is thus, determined that the respondent's project would fall in the category of ongoing project and would require registration under Section 3 on the RERA Act which has not been done by the respondent. The respondent would be directed to register the project and penalty for the same shall be imposed on the respondent Under Section 59 of the RERA Act.

(c) The dispute started between the two parties after the complainants had received a letter dated 28.11.2014 from the respondent wherein the respondent had informed about the completion of the complainant's unit and had offered to the complainants to take possession of the same (Ex. A3). The respondent had registered the UDS promised to the

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complainants vide sale deed in documentation No.4993/2015 dated 15.04.2015 (Ex.A4) on payment of the agreed consideration.

(d) The complainants have accordingly prayed for the refund of the monies paid by him with interest Under Section 18 of the RERA Act which reads as follows.

"18. Return of amount and compensation.—(1) *If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for

compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made there under or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act"

As a result, it is established that the respondent has failed to deliver the complainant's units as agreed in the terms of agreement for sale.

(e) Section 18 is clear in allowing the choice to the complainants whether to continue with the delayed project and seek interest for the delayed delivery. The Section 18 also offers the choice to the allottee to withdraw from the project and seek refund with interest. In the instant case, the complainants have chosen for the refund of the money paid with interest. Section 18 also provides that should the allottee choose to withdraw as stated, the respondent has no choice but to refund the money with interest. It is clearly determined, that there has been a delay in handing over the complainant's flat as agreed entitling the complainants for the refund of Rs.27,92,528/- with interest and thus the first point is so determined.

6. Answer for point No.(ii):

(a) Therefore, the complainants are entitled for the refund of an amount of Rs.27,92,528/- from the respondent with interest.

(b) The rate of interest payable shall be current highest marginal cost lending rate of interest of State Bank of India (SBI) +2% per annum. Hence the complainants are entitled for interest at the rate of 8.75% per annum marginal cost of lending rate of interest of SBI at the time of filing the

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complaint +2% per annum i.e.10.75% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- is fixed towards the litigation expenses. The complainants are entitled for the reliefs detailed above. Thus, the second point is so determined.

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

(i) The respondent shall pay the amount at the interest rate and cost as per the findings in answer for Point No. (ii) In Para No. 6 of this order within 30 days of issue of this order.

(ii) On repayment of the claim as per the order, the complainants shall execute the cancellation of the sale agreement, construction agreement and sale deed at the expense of the respondent, if any.

(iii) The respondent is directed to register the project and submit application for the same within 30 days on the issue of this order to the TNRERA for registration.

(iv) A Penalty of Rs.1,00,000/- is imposed on the respondent under Section 59 for violation of Section 3 of the RERA Act.

Sd/- 02.09.2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

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LIST OF WITNESSES

CW-1 ---K.M.Balasubramanium

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	11/06/2012	Agreement for Sale and Construction
Ex.A2	11/06/2012	Plan Approval
Ex.A3	28/11/2014	Letter issued by the Respondent
Ex.A4	15/04/2015	Sale Deed
Ex.A5	---	Loan Disbursement Letter
Ex.A6	25/11/2014	Customer Account Statement
Ex.A7	31/01/2020	Order passed by Hon'ble NCLT
Ex.A8	14/10/2020	Order in C.C.P.No.130 of 2019
Ex.A9	24/05/2023	Power of Attorney

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Copy to:
The Additional Director,
(TNRERA)

Sd/- 02.09.2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

