

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

**Quorum :Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member  
CCP No. 298 of 2021**

**D.Narayanasami**

... **Complainant**

**Vs.**

**1) M/s. SAM Foundations,  
Represented by its Proprietor  
Mr. C. Sam Devadasan**

**2) Rita Abraham**

..... **Respondents**

**Complainant : Rep by M/s. Salai Varun, Advocates**

**1<sup>st</sup> Respondent : Rep by Mr. V. Suresh Kumar, Advocates**

**2<sup>nd</sup> Respondent : Rep by M/s. A.S. Kailasam & Associates, Advocates**

**Heard on: 05/09/2023**

**Delivered on: 19/06/2024**

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondents towards purchase of a villa/flat/apartment with interest, and costs is filed under section 31 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 Learned counsel for the complainant avers that the respondents had informed them about developing a project by name 'Lake Shore Apartments' at Korattur in the first week of June 2017. The complainant was allotted Flat

No. F1 with an area of 1550 sq.ft. which was inclusive of the common area. The Un-registered agreement for sale was entered between the two parties on 26/06/2017 for a consideration of Rs.12,31,259/- for land measuring 799 sq.ft. of Undivided Share. The unregistered construction agreement was also entered on the same day viz. 26/06/2017 for a construction cost of Rs.66,68,741/- thereby making the total consideration to Rs.79,00,000/-. The complainant avers that the consequently the sale deed was executed by the respondents on 27/09/2017 and the construction agreement was also registered on 27/09/2017 in which the cost of construction was indicated as Rs.21,80,000/- being lesser than the agreed amount in the unregistered construction agreement. The complainant avers that the said Rs.26,00,000/- was paid by him, for which the respondents issued receipt no. 118 dated 03/10/2017.

(b) The complainant avers that in all he has paid a sum of Rs.54,00,000/- to the respondents as shown in the table below:-

Amount Paid	Paid Date
Rs.10,00,000/-	26/06/2017
Rs.10,00,000/-	01/09/2017
Rs.3,00,000/-	25/09/2017
Rs.5,00,000/-	16/08/2018

The complainant avers that even after a lapse of 4 years of the execution of the construction agreement and sale deed remains elusive. The respondents had not made any progress in the construction of the flat which continues to lie at the foundation level. Aggrieved, the complainant prays for refund of Rs.54,00,000/- paid by him with interest along with compensation and litigation cost.

**3. Counter averments of the 1<sup>st</sup> respondent, in brief, as follows:**

The Learned counsel for the 1<sup>st</sup> respondent who is the proprietor of the 1<sup>st</sup> respondent company, denies all allegations except those that are specifically admitted. At the outset, the 1<sup>st</sup> respondent submits that the complainant has not come up with clean hands before the Hon'ble Forum as he has not performed the obligations that have been set upon him. The 1<sup>st</sup> respondent avers that extent on which the project has been developed for the flat was 294.5 sq.mts. and stilt floor + 2 floors with 6 dwelling units and thus does not fall within the ambit of the RERA Act, consequently the 1<sup>st</sup> respondent prays to dismiss the complaint.

**4. Counter averments of the 2<sup>nd</sup> respondent, in brief, as follows:**

(a) The Learned counsel for the 2<sup>nd</sup> respondent reiterates the stand of the 1<sup>st</sup> respondent submitting that the complaint made by the complainant was not maintainable against the 2<sup>nd</sup> respondent as she pleads that she had been impleaded in the complaint by the complainant in her capacity as the owner of the land on which the 1<sup>st</sup> respondent project was developed. The 2<sup>nd</sup> respondent avers that she did not have any privity with the complainant. The 2<sup>nd</sup> respondent avers that the 1<sup>st</sup> respondent had obtained power and was in charge of everything and thus the complaint cannot be made out against the owner. The 2<sup>nd</sup> respondent further avers that she had been cheated by the 1<sup>st</sup> respondent and that the subject matter of this complaint has taken place in the year 2013, much prior to the Act coming into force and this would be barred by limitation.

(b) The 2<sup>nd</sup> respondent submits that she had executed a power document in favour of the 1<sup>st</sup> respondent on 16/05/2013 and on the same day the



2<sup>nd</sup> respondent had entered into joint venture agreement as well with the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent submits that the joint venture agreement dated 16/05/2013 provided that in case any legal issues the same shall be defended by the 1<sup>st</sup> respondent and that the 2<sup>nd</sup> respondent's liability will also be incurred by the 1<sup>st</sup> respondent and thus prays that this complaint was unsustainable against her. Since, the 1<sup>st</sup> respondent had failed to perform his obligation as per the joint venture agreement dated 16/05/2013, all liabilities arising out of the delay would therefore fall in the 1<sup>st</sup> respondent alone and thus prays to dismiss the complaint against her.

5. An attempt to settle the matter amicably has failed.
6. To prove their claims, the complainant and the respondents have filed their respective evidence on affidavit with documents.
7. On the basis of rival contentions of the parties, the following points arise for determination:
  - (i) Is the complainant maintainable within the provisions of the RERA Act?
  - (ii) Is the complainant eligible for the refund of the money paid by him with interest to the complainant for having failed to hand over by the agreed date?
  - (ii) What are the reliefs made out?
8. **Answer for point No.(i):**
  - (a) Section 3 of the RERA Act lays down the following conditions for registration of the project with the RERA.

**Section 3 (2) (a):-**

***“(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—***

***(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:***

***Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;”***

It remains to be determined whether the project being developed by the respondents would consist of 8 or more than 8 apartments and 500 sq.mts. or more than 500 sq.mts. of land. The 1<sup>st</sup> respondent has contended that extend of the land on which the project was developed was 294.5 sq.mts. and consisted of stilt floor + 2 floors totalling 6 dwelling units. The 1<sup>st</sup> respondent accordingly pleaded that the project developed by him does not fall within the purview of Section 3 being lesser than 500 sq.mts in size and lesser than 8 dwelling units in number of units. However, the respondents have issued a brochure (Ex-A8) where it is clearly mentioned that the respondents was developing 22 luxury apartments built over an area of 5.35 grounds and 4 Blocks with stilt ground floors and apartments on the 1<sup>st</sup> and 2<sup>nd</sup> floors with ample breathing space extract drawn from the brochure is as below:-

***“Lake Shore Apartment is a community of 22 Luxury Apartments build over an area of 5.35 grounds and 4 blocks with stilt ground floor and apartments on the 1<sup>st</sup> and 2<sup>nd</sup> floors with ample breathing space all around and more than sufficient parking space in the ground floor. All apartments are enhanced with a lift and a generator (Power Back Up) for the lift and common areas. All apartments have provisions for***



***inverter. A 6 person lift, ceilings at 10.6 ft, basement at 4ft, separate water tanks for each apartment, modular switches, branded toilet and kitchen fittings, wooden windows and doors, car parking ceiling at a height of 11 ft etc are all a part of SAM FOUNDATIONS's expertise and execution."***

This would show that the project consisted of 22 units lying in 5.35 grounds which qualifies to fall within the provisions of Section 3 and hence is registerable project as it would fall within the ambit of the provisions of the RERA Act. The complainant shall register the project forthwith and shall also be liable for penalty for having violated Section 3 of the RERA Act.

Next it remains to be determined whether the 2<sup>nd</sup> respondent would fall in the category of promoter as she has contended to be only an owner of their land on which the 1<sup>st</sup> respondent developed the project. The 2<sup>nd</sup> respondent also contends that she has no privity of contract with the complainant. The 2<sup>nd</sup> respondent has also submitted that the agreement between the 1<sup>st</sup> and 2<sup>nd</sup> respondent clearly states that in case any legal issues arise the same shall be defended by the 1<sup>st</sup> respondent and that the 2<sup>nd</sup> respondents liability will also be incurred by the 1<sup>st</sup> respondent. It now needs to be determined whether the 2<sup>nd</sup> respondent would fall in the category of a promoter within the meaning of section 2(zk).

Section 2(zk) defines a promoter as follows:-

***(zk) "promoter" means,—***

***(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all***

***or some of the apartments to other persons and includes his assignees;  
or”***

It would thus be clear that the 2<sup>nd</sup> respondent had caused construction of project consisting of apartments for the purpose of selling and hence would fall in the category of **promoter**.

(b) Accordingly, it is determined that the complaint is maintainable and also that the 2<sup>nd</sup> respondent is also liable as a promoter. The contention that the agreement between the 1<sup>st</sup> and the 2<sup>nd</sup> respondent provided that in case any legal issues they shall be defended by the 1<sup>st</sup> respondent and that the 2<sup>nd</sup> respondent's liability would be incurred by the 1<sup>st</sup> respondent would provide no relief to the 2<sup>nd</sup> respondent under the RERA Act, 2016. At best this may only make the liabilities arising out of this complaint to be borne by the 1<sup>st</sup> respondent but shall not restrain liability being raised jointly and severally on both the respondents.

**9. Answer for point No.(ii):**

(a) The complainant has entered into agreement for sale on 26/06/2017 (Ex-A1) For a sale consideration of Rs.11,31,259/-. The construction agreement was entered on 26/06/2017 (Ex-A2) for a consideration of Rs.66,68,741/-. The sale deed was executed on 27/09/2017 wherein sale consideration is found to be entered as Rs.12,32,000/- (Ex-A4). The registered sale agreement was executed between the 2 parties on 20/09/2017 wherein at clause 1 the total consideration has been entered as Rs.21,80,000/-. The complainant has paid a sum of Rs.54,00,000/- as follows:-

S.No.	Date	Amount
1	26/06/2017	Rs.10,00,000/-



2	01/09/2017	Rs.10,00,000/-
3	25/09/2017	Rs.3,00,000/-
4	03/10/2017	Rs.26,00,000/-
5	16/08/2018	Rs.50,00,000/-

**(Ex-A5) series**

The above would show that the unregistered construction agreement between the two parties was for a sum of Rs.66,68,741/- as per clause 1 of the unregistered construction agreement whereas the registered construction agreement shows the consideration to be Rs.21,80,000/-. The complainant claims to have paid Rs.54,00,000/- and as is determined based on the receipts submitted for the same by the complainant.

(b) The complainant has submitted that as per clause 3 of the Construction agreement both in the registered as well as the unregistered agreement the handing over has been agreed within 10 months from the date of agreement which would project to 20/07/2018 (considering the 10 months from the registered agreement dated 20/09/2017). The complainant has submitted that the respondent has failed to hand over the completed flat, the photos of the project submitted by the complainant (Ex-A7) show the project in a condition far away from completion. Both the respondents too have not objected to the claim made by the complainant for the complainant's unit not been handed over and are totally silent on the issue. It is thus held that the respondents have to hand over the complainant's unit as per the agreement by 20/07/2018. The facts of the CCP also indicate the failure of the respondent in completing his commitment making the complainant eligible for the refund of Rs.54,00,000/- paid by him to the respondents with interest and thus the 2<sup>nd</sup> point is answered.

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**10. Answer for point No.(iii):**

a) Therefore, the complainants are entitled for refund amount of Rs.54,00,000/- from the Respondents 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 complainant is entitled for interest at the rate of 7.30% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 9.30% per annum for the entire amount paid from the date of respective payment till repayment by the respondents.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

**11. In the result, the respondents are directed as follows: -**

- (i) The respondents shall pay the entire amount at the interest rate and cost as per the findings in answer for Point No. (iii) in Paragraph No. 10 of this order within 30 days of issue of this order.
- (ii) On repayment of the claim as per the order, the complainant shall reconveyed the subject property to the respondent at cost to be borne by the respondent.
- (iii) On repayment of the claim as per the order, the complainant shall execute the cancellation of the Sale agreement and the Construction Agreement as the case may be, at the expense of the respondents.
- (iv) A penalty of Rs.1,00,000/- is imposed on the respondents for violation of Section 3 of the Real Estate (Regulation and

Development) Act under Section 59 of the Real Estate (Regulation and Development) Act.

Sd/- 19/06/2024  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

**LIST OF WITNESSES**

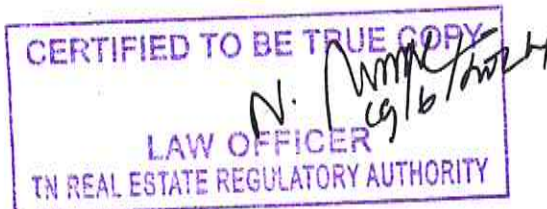
CW-1 ---Narayanasami  
RW-2 ---Rita Abraham

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	26/06/2017	(unregistered) Agreement for Sale
Ex.A2	26/06/2017	(unregistered) Construction Agreement
Ex.A3	20/09/2017	Construction Agreement
Ex.A4	27/09/2017	Sale Deed
Ex.A5	---	Receipts
Ex.A6	20/01/2023	Survey Report
Ex.A7	---	Photographs
Ex.A8	---	Brochure

**LIST OF DOCUMENTS FILED BY THE RESPONDENTS**

Ex.Nos	Date	Documents Name
Ex.B1	16/05/2013	General Power of Attorney
Ex.B2	16/05/2013	Joint Venture Agreement
Ex.B3	21/09/2021	Deed of cancellation of General Power of Attorney
Ex.B4	---	Encumbrance Certificate



Sd/- 19/06/2024  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI