

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.79 of 2022**

1. C.G. Vasantha
2. Dr. D. Srinivasan
3. G. Kavitha
4. S. Hiran Mayi

.... COMPLAINANTS

Vs.

M/s. Cybercity Housing Pvt. Ltd.
Rep. by its Authorized Signatory, R. Murugesan.
(Regn.No.TN/01/Building/0178/2018)

..... RESPONDENT

Complainants : Rep. by Mr. D. Suresh Kumar, Advocate
Respondent : Rep. by Mr. Aravind Raj, Advocate

Heard on : 06.03.2023
Delivered on : 27.03.2023

ORDER

The complaint by the above complainants claiming compensation on the ground of delay in construction and delivery of the booked villa / row house by the respondent and other reliefs is filed under Section 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016 (hereinafter referred as RERA Act).

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

(a). The complainants booked a residential villa / row house in the project of the respondent, namely, "SHREEJA MEADOWS @ DIVINE CITY" at Mangadu Village, Kundrathur Taluk, Kancheepuram District. The cost of the villa including the GST is Rs.1,48,57,459/- and other charges. On 30.10.2019, the complainants and the respondent entered into a sale agreement and also a construction agreement for purchase of the villa. Under the construction

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agreement, the respondent undertook to handover possession of the constructed villa in a habitable condition with all amenities on or before 31.12.2020. The complainants made a total payment of Rs.1,24,68,907/-.

(b). As on date, the respondent has completed the structure of the building and the internal works such as plumbing, electrical, flooring, painting and fittings are not completed. Apart from the above, the respondent also failed to complete other works in the project such as laying of roads, creation of parks, club house, construction of culvert across the channel, etc. that are vital to live in the villa of the project. The respondent has not answered to the letters, emails and legal notice sent by the complainant for completion and handing over of the villa. The respondent has not even bothered to call the complainants for discussion. Hence the complainants are entitled for compensation and other reliefs.

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

(a). Except admitted, all averments in the complaint are denied by the respondent. The construction agreement, entered between the complainants and the respondent, provides for force majeure clause under which, if the completion of the project is delayed due to force majeure conditions, the respondent is entitled to extension of time for delivery of possession of row house / villa. Due to Covid-19 pandemic, there was national wide lockdowns from 24.03.2020 and all the industries including the real estate industries were affected. There was series of lockdowns and restrictions which continued well into 2022. The respondent continued to struggle even after the pandemic started rescinding as the ground reality was that the industry was finding it difficult to pick up, since the cost of raw materials, labor and equipments has soared.

(b). The completion date of the villa/row house in the project was 31.12.2020, a date which was well after the respondent had been affected by covid-19 pandemic which was considered as a force majeure by the Government of India. The facts and circumstances of the present case have to be considered and this is a genuine case of delay due to the ongoing after effects of the Covid-19 pandemic. The respondent was not able to deliver the project on the dates promised by them due to the above reasons. Hence the respondent is

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entitled for extension of time. The complaint is liable to be dismissed for the above reasons and in consideration of the plight of the respondent. The respondent prays for the dismissal of the complaint.

4. An attempt to settle the matter amicably has failed.

5. Both the parties have filed their respective evidence on affidavit with documents.

6. On the basis of the contentions of the complainant, the following points arise for determination;

- i. Whether the complainants are entitled for compensation on the ground of delay in handing over and delivery of the villa / row house by the respondent and other reliefs?
- ii. What are the reliefs, the complainant is entitled for?

7. **Answer for Point No: (i) :**

(a). The learned counsel for the complainants filed written notes of arguments and submitted that the complainants booked the villa in the project of the respondent and entered into the sale and construction agreements with the respondent on 30.10.2019 and the respondent undertook to complete the villa and handover possession of the same in a habitable condition with all amenities on or before 31.12.2020 and timely delivery of the villa is the essence of the contract and as per the terms of the agreements, the payment of the sale consideration to be made promptly as per the schedule attached to the agreements and the complainants made payment of Rs.1,24,68,907/- out of the total sale consideration of Rs.1,48,57,459/- and the complainants have paid nearly 80% of the sale consideration as on date and the villa is still far from completion and the reason stated by the respondent as force majeure condition is unwarranted and the respondent was not able to complete construction and was only keen on collecting the stage wise payments and the respondent is simply taking reasons to hide the delay in handing over and therefore, the complainants are entitled for compensation for the delay in construction and delivery of the villa and also other reliefs.

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(b). The learned counsel for the respondent also filed written notes of arguments and contended that the respondent developed the project with world class amenities and infrastructures and the construction agreement entered with the complainants by the respondent contains force majeure clause on period of completion and handing over possession under which the respondent is entitled for extension of time for delivery of the possession of the constructed row house and the works were affected by Covid-19 pandemic and there was lockdown in the year 2020 and series of lockdowns and restrictions continued well into 2022 and the respondent struggled due to lack of materials and labor and the industry found it difficult to pick up, since the costs of raw materials, labor and equipments soared and the completion date as per the agreement was 31.12.2020, the date which was well after the respondent had been affected by Covid-19 pandemic and it is a genuine case of delay due to the ongoing after effects of the Covid-19 pandemic and the respondent had no choice but to extend the date of delivery and possession of the villa, and the villa of the complainants is ready for soft handover to the complainants for commencing interior works and the respondent is putting its best efforts forward to conclude the amenities and therefore the complaint is liable to be dismissed.

(c). It is not in dispute that the complainants booked a villa / row house in the project of the respondent and on 30.10.2019, entered into agreements for sale and for construction of the villa / row house for a sale consideration of Rs.1,48,57,459/- and the respondent undertook to complete the construction and to deliver the villa / row house on 31.12.2020. It is also not in dispute that the complainants have paid Rs.1,24,68,907/- out of the total sale consideration of the villa.

(d). Ex.A1 is the construction agreement dated 30.10.2019 entered between the complainant and the respondent. The respondent relies on clause 4 of the agreement for extension on the period for completion and handing over possession of the row house / villa due to the delay caused by force majeure condition i.e., the Covid-19 pandemic and the after effects. Admittedly, the respondent is not able to complete the construction to effect delivery of the row house / villa to the complainant till date. The respondent has not mentioned as any specific period for which the works could not be carried out

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due to the pandemic by them. The reasons are vague and not specific. The respondent is taking advantage of the Covid-19 pandemic situation to escape liability on payment of compensation to the complainants due to the delay in completion of construction and delivery of the row house / villa to the complainants.

(e). Considering all the above circumstances, it is held that the complainants have made out a case for compensation on the ground of delay in completion and delivery of the constructed villa / row house to them. Thus, the point is answered accordingly.

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

(a). The complainants have sought many reliefs including various directions to the respondent seeking to refrain from raising any demand from the complainants until the completion of the project and to commit a date for handing over the delivery of the villa. Under the provisions of the RERA Act, this Forum is considering only the claim of compensation alone. It is open to the complainants to seek the reliefs for the directions from the Authority. Therefore, the claim of compensation alone is considered by this Forum.

(b). For compensation for the delay, section 18 of the RERA Act provides that the allottee is entitled to be paid, by the promoter, interest for every month of delay from the respective dates of payments till the handing over possession of the villa. Therefore, the complainants are entitled for compensation for the delay as provided under Section 18 of the RERA Act. As per Rule 18 of the TNRERA Rules, the rate payable by the promoter to the allottee shall be the highest marginal cost of lending rate of SBI plus 2%. Hence the complainants are entitled for interest @ 7.30%, which was the highest marginal cost of lending rate of S.B.I.at the time of filing of the complaint plus 2% per annum, i.e., 9.30% p.a. for the amounts paid by them from the dates of respective payments till the delivery of the constructed villa/row house.

(c). Apart from the above compensation for the delay in handing over of the row house/villa, the complainants are also entitled for a sum of Rs.1,00,000/- towards mental agony and hardship caused by the respondent and a sum of Rs.25,000/- towards litigation expenses.

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(d). The complainants claimed compensation under the head of rental compensation and other incidental expenses. In view of the compensation under Rule 18 of the RERA Act, the claim of rental compensation and other reliefs are rejected. The complainants are entitled for the reliefs as stated above.

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

The respondent shall pay the compensation and cost to the complainants as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

Sd/- 27.03.2023
G. SARAVANAN
ADJUDICATING OFFICER

CCP.NO. 79 of 2022

LIST OF WITNESSES

CW-1 --- C.G. Vasantha
RW-1 --- R. Murugesan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	30.10.2019	Construction Agreement
Ex.A2	30.10.2019	Agreement for Sale
Ex.A3(Series)	....	Payment Receipts
Ex.A4(Series)	....	Email Correspondence
Ex.A5(Series)	30.06.2021	Letter Correspondence
Ex.A6	....	Ledger Account of the Complainant
Ex.A7	12.11.2021	Legal Notice issued to Respondent
Ex.A8	....	Photographs of the 'Villa'
Ex.A9	....	Brochure and Advertisement of the site

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	19.02.2020	Office Memorandum dated 19.02.2020
Ex.B2	....	L.A. Bill No.7/2022

Sd/- 27.03.2023
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

