

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 96 of 2022**

1. S. Mohamed Asif
2. Ayesha Seerin
(Both rep. by Power of Attorney Holder,
K.P. Shahul Hameed) **Complainants**

Vs.

M/s. VGN Projects Estates Pvt. Ltd.,
Formerly M/s. VGN Developers Pvt. Ltd,
Rep. by its Managing Director V. Pratish Devadoss **Respondent**
(Regn. No.TN/002/Building/0012/2018)

Complainants : Rep. by Mr. K.P. Shahul Hameed , PoA

Respondent : Rep. by Mr. K. Harishankar, Advocate.

Heard on : 15.03.2023

Delivered on : 05.04.2023

ORDER

The complaint by the above complainants claiming compensation for the delay in construction and delivery of the booked apartment by the respondent and other reliefs 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 complainants, in brief, as follows:**

(a) The complainants booked an apartment with the respondent in their project, namely, "VGN TEMPLE TOWN" at Thiruverkadu in Thiruvallur District and entered into agreements for sale and construction with the respondent on 27.08.2015. The total sale consideration of the apartment was Rs.39,00,000/-.The respondent undertook to handover the constructed flat by the end of October 2017 inclusive of grace period. On 30.11.2015, the sale deed for the UDS was executed by the respondent in favor of the complainants.

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(b) The complainants paid Rs.37,00,000/- out of Rs.39,00,000/- as agreed by them and the balance was Rs.2,00,000/- to be paid at the time of handing over possession. The complainants were asked to bear the registration cost with a promise to deduct the cost of the registration in the balance amount payable by them. The cost of the registration of the documents was Rs.59,690/-. The respondent handed over the constructed apartment only on 01.06.2022 i.e. after a delay of 55 months. At the time of handing over, the complainants were forced to pay Rs.3,45,359/-. The complainants are entitled for compensation for the delay and other reliefs.

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

(a) Except admitted, all the allegations are denied. The complainants booked the apartment in the project of the respondent and entered into agreements for construction and sale of UDS on 27.10.2017. The respondent undertook to handover the constructed flat by 27.10.2017 including 6 months grace period. The total sale consideration of the flat was Rs.39,83,369/- which includes customization and excludes registration charges. The complainants paid in total of Rs.39,83,369/-.

(b) The respondent completed the construction and handed over the flat on 31.05.2022 to the complainants. There was a delay of 5 years in delivery of possession of the constructed flat. Under Clause 11(e) of the construction agreement, the respondent agreed to pay delay charges at 12% per annum on the value of the pending construction work. The respondent initiated talks for settlement with the complainants several times. But the complainants had shown unwillingness for the settlement proposals.

(c) The registration cost was to be borne by the complainants as per the clause 12 of the agreement for sale. Under clause 4(a) of the construction agreement, the respondent was entitled for extension of time due to reasons beyond their control. Due to pandemic, i.e., Covid 19 in March 2020, all the works related to the project was stopped for almost one year which was totally inevitable. The respondent is not liable for delay for the said reasons which are beyond the control of the respondent.

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Even assuming that the complainants are entitled for any compensation, the same shall be calculated only as per clause 11(e) of the agreement for construction. Hence the respondent prays for the dismissal of the complaint with cost.

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 rival contentions of the parties, the following points arise for determination:-
 - i. Whether the complainants are entitled for compensation and other reliefs on the ground of delay on the part of the respondent to deliver possession of the flat booked by them in accordance with the date and terms agreed by the respondent?
 - ii. What are the reliefs, the complainants are entitled to?

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

(a) The power agent of the complainants submitted that the complainants and the respondent entered into agreements for sale of UDS land and construction of the apartment in the project of the respondent on 27.08.2015 and the respondent undertook to complete the construction and to deliver the possession of the constructed flat by the end of October 2017 including the grace period and the complainants paid the entire sale consideration and the possession of the apartment was taken by the complainants only on 01.06.2022 and the complainants are entitled for compensation for delay in handing over delivery of the constructed flat and other reliefs.

(b) The learned counsel for the respondent contended that the complainants and the respondent entered into agreements for construction and sale of UDS land on 27.08.2015 and the proposed handover date was 27.10.2017 including six months grace period and the respondent handed over the flat on 31.05.2022 and there was a delay of 5 years in

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handing over the flat and with regard to compensation as per the clause 11(e) of the agreement for construction, the respondent initiated talks for settlement and the complainants had shown unwillingness for the settlement proposals of the respondent and when the project was in its final stage of completion, due to Covid 19 pandemic and stringent lock downs, all the works related to the project had to be stopped and almost one year went unproductive which was totally inevitable and beyond the control of the respondent and under clause 4(a) of the construction agreement, the respondent was entitled for extension of time if the delay was due to reasons beyond the control of the respondent and even assuming the respondent is liable to pay compensation, the same shall be calculated as per clause 11(e) of the agreement of construction between the parties.

(c) It is not in dispute that on 27.08.2015, the complainants and the respondent entered into Ex.A4, the construction agreement and as per clause 11(e) of the agreement, the respondent undertook to complete construction and handover the constructed flat by the end of April 2017, plus an additional grace period of 6 months, i.e., by the end of October 2017. The respondent contended that they are entitled for extension of time under the agreement in case of delay due to force majeure conditions. In the proof affidavit of RW1-A.Rangappan, even though it was stated that due to pandemic crisis, all the works related to the project had to be stopped and further almost one year went unproductive which was totally inevitable and beyond the control of the respondent company, no specific period with dates for which the work was stopped are mentioned in the affidavit of the respondent. Therefore, the reasons for the delay and handing over possession of the flat for 5 years are vague and unacceptable. Admittedly, the agreement provides for the compensation for the delay in handing over the constructed flat by the respondent. Considering the facts and circumstances of the case, it is held that the complainants are entitled for compensation for delay in handing over possession of the flat by the respondent and other reliefs. Thus, the point is answered accordingly.

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

(a) In their counter, the respondent diligently stated that even assuming the compensation had to be paid by the respondent, the same shall be duly calculated as per clause 11(e) of the agreement of construction signed and entered by both the parties. Under Clause 11(e), the respondent agreed to pay delay charges at the rate of 12% per annum on the value of the pending construction work yet to be completed inside the said residential unit and the delay charges payable is to be calculated from the proposed latest handing over date till the date of intimation of readiness to handover possession. It is clear that the term on delay charges is one sided and only in favor of the respondent. Nowhere in the counter of the respondent or the proof affidavit of RW-1, the respondent mentioned the value of the pending construction work and assessment of compensation as per their calculation. Therefore, such a contention is not sustainable. Since the project was an ongoing project registered under the RERA Act and Rules, the complainants are entitled for compensation as per section 18 of the RERA Act for the delay in handing over possession of the constructed flat i.e. from 01.11.2017 to 31.05.2022.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) at the time of filing of the complaint, plus 2% per annum. Hence, the complainants are entitled for the interest on the amounts paid at the rate of 7.70% per annum which was currently the highest marginal cost of lending rate of interest of SBI at the time of filing of the complaint, plus 2% per annum, i.e., 9.70% p.a. from 01.11.2017 to 31.05.2022 for the amounts paid by them.

(c) Apart from the above, towards compensation for mental agony and inconvenience caused to the complainants, a sum of Rs.50,000/- and towards the legal expenses, a sum of Rs.25,000/-are fixed. The complainants are entitled for reliefs as detailed above. Thus, the point is answered accordingly.

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

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

Sd/- 05.04.2023
G. SARAVANAN
ADJUDICATING OFFICER

CCP.NO. 96 of 2022**LIST OF WITNESSES**

CW-1 --- K.P. Shahul Hameed (PoA)

RW-1 --- A. Rangappan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	06.05.2015	Initial and Final Working Sheet and Drawing
Ex.A2	15.07.2015	Allotment Letter
Ex.A3(Series)	Payment Receipts
Ex.A4	27.08.2015	Construction Agreement
Ex.A5	30.11.2015	Sale Deed
Ex.A6(Series)	Email Communications
Ex.A7(Series)	Letter Correspondence

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	Statement of Account (Interest Calculation Sheet)

Sd/- 05.04.2023
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

