



**BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Egmore, Chennai – 600 008**

[Under the Real Estate (Regulation and Development) Act, 2016]

C.No. 149/2020

30th day of June, 2021

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson
Er. S. Manohar, Member
Adv. V. Jeyakumar, Member**

Thiru P.M.S. Nazeerudeen Complainant

Versus

M/s. Akshaya pvt. Ltd. Respondent
Rep. by its Director J.Ravi

This Complaint came up for final hearing before this Authority in the presence of M/s.Rahul J.Krishnan – Counsel for the Complainant and of M/s. Mani Sundargopal and Shree Aadya.S – Counsel for Respondent and upon hearing the arguments of all the parties, this Authority passes the following order.

FINAL ORDER

The Complainant has submitted that he has paid an advance of Rs.2,00,000/- towards advance by way of booking form to the Respondent

for the sale of a flat which is more fully described herein as Flat No.C-1105 Smart Tango Projects situated at 11th Floor, Block-C, Tango Project, Old Mahabalipuram Road, OMR, Okkiyam Thuraipakkam, Chennai-600 096. A sale agreement was entered into between the parties and had also entered into a Construction Agreement dated 05.06.2017.

2. The Complainant has also stated that a consideration of Rs.45,74,220/- had been paid vide bank transfers, etc. towards the total said consideration of Rs.54,56,264/- to the Respondent which was admitted and acknowledged vide receipts issued by the Respondent: The Respondent had given assurance to the Complainant that the possession of the apartment would be handed over within 6 months, i.e. December, 2017 from the date of payment. There has been an unwarranted delay in construction and handing over the possession of the apartment. The Respondent started delivering possession of apartments in November, 2020 without completing the amenities as mentioned in the Brochure. The Complainant has paid a grand total of Rs.49,07,966/- to the Respondent towards registration and part payment.

3. The Complainant has also submitted that they had entered into a Construction Agreement which clearly stipulated that the possession of the premises would be handed over within 6 months of entering into the agreement. The Complainant has also stated that nearly 3.5 years have passed, the possession of the said apartment is yet to be handed over to the Complainant.

4. The Complainant has sought the following reliefs.

- i. Direction to penalize the Respondent for non compliance of the Rules and Regulations as stipulated under the RERA Act.

- ii. Direction to the Respondent to construct and complete all the amenities as advertised in their Brochure.
- iii. Direction to the Respondent to hand over possession of the aforementioned properties to the Complainant.
- iv. Direction to the Respondent to register the property in favour of the Complainant.
- v. Direction to the Respondent to register the project which is mandatory as stipulated under the RERA Act.
- vi. Direction to the Respondent to provide the Building completion certificate to the Complainant in order for the bankers to release the remainder of the house loan to the Complainant.

5. In the Counter Affidavit, the Respondent has submitted that the Project "TANGO" was launched in 2014 and consists of 250 apartments comprised of five Blocks A,B,C,D and E. The Complainant had booked an apartment in the "TANGO" project promoted by the Respondent, on 30.04.2017 by making a payment of Rs.2,00,000/- towards Booking Advance. The Complainant was allotted Apartment "C-1105" with 699 sq.ft. Super Built up Area and 235.24 sq.ft. undivided share of land. The Complainant and the Respondent entered into an Agreement for Sale for UDS, Construction Agreement and Supplementary Construction Agreement on 05.06.2017. Subsequently, on 28.06.2017, a Sale Deed was executed and registered for the sale of 235.24 sq.ft. of undivided share of land. The total cost of the Apartment was Rs.55,23,957/-

6. The Respondent has also submitted that for the purpose of making payments towards the cost of the Apartment, the Complainant availed a loan amount of Rs.43,10,035/- with Axis Bank. The Complainant could not

avail a higher loan due to his profile and credit track record and hence, the Complainant was referred to India Bulls, which sanctioned a loan of Rs.49,51,292/- in March 2018. The Complainant had committed a series of defaults in making the periodical stage wise payments towards the Apartment, as detailed below:

Stage Due	Total amount to be paid	Due date	Date paid	No.of days delay
Up to Sixth floor roof slab stage due	Rs.29,43,780	31/05/2017	28/06/2017	28 days
Completion of Eighth Floor roof slab	Rs. 2,71,602	31/05/2017	14/07/2017	44 days
Completion of Tenth Floor roof slab	Rs. 2,71,602	31/05/2017	14/07/2017	44 days
Completion of Twelfth Floor roof slab	Rs. 2,71,602	31/05/2017	14/07/2017	44 days
Completion of Brick work	Rs. 2,71,602	13/07/2017	14/07/2017	1 day
VAT	Rs. 19,032	27/07/2017	27/07/2017	
Completion of Plastering	Rs. 3,02,348	04/08/2019	Unpaid	528 days
Completion of Flooring	Rs. 3,02,348	21/12/2019	Unpaid	389 days
Apartment handover stage	Rs. 3,02,348	03/09/2020	Unpaid	132 days

7. The Respondent has further submitted that the Home Loan Bank – India Bulls did not release the stage wise payments only on account of the fact that the Complainant committed defaults in remitting the EMI payments to the bank. The balance amount of Rs.9,49,737/- has to be sourced from the Complainant's own funds only. The Complainant's averment that only on account of not furnishing the Completion Certificate, the banks have refused to release funds is factually incorrect.

8. The Respondent has further submitted that the Apartment of the Complainant was ready for possession on 19th August 2020. The Complainant ought to have made the balance payment of Rs.9,49,737/- and taken delivery of possession. However, the Complainant is insisting on delivery of possession without making the balance payment.

9. The Respondent has further submitted that the Complainant had paid a sum of Rs.45,49,220/- only and not a sum of Rs.45,74,220/- as averred in the Complaint. In this context, it is relevant to point out that a sum of Rs.25,000/- is provided as Referral Credit, which will be adjusted against the final payment dues.

10. The Respondent has also stated that the Respondent was unable to deliver the apartment on time due to several factors that hindered the construction process, which were beyond the control of the Respondent, including specific factors such as the December 2015 Floods, the Vardha Cyclone etc. and the consequential unforeseeable circumstances that led to the delay in delivery of the apartment. Insofar as the amenities are

concerned, the work is progressing at a very rapid pace with regard to the construction of all the adjacent blocks, and all the amenities will be provided as and when the construction is completed in the adjacent blocks. The Respondent is ready and willing to hand over the possession of the Apartment, provided that the Complainant makes the balance payment of Rs.9,49,737/-

11. The Respondent has further submitted that the Agreement for Sale, Construction Agreement and the Sale Deed have all been registered in favour of the Complainant at the Sub Registrar Office, Neelangarai, during June 2017 itself.

12. In the Additional Counter Affidavit, the Respondent has further submitted that the Respondent has decided to register Blocks "B" and "C" of the "TANGO" Project with the Regulatory Authority. In furtherance to the above, an application for registration of the Blocks "B" and "C" of the "TANGO" Project has been presented to the Authority on 17.02.2021 by the Respondent and the office of the Authority has directed the Respondent to submit further documents and the same is in progress.

13. In the written submission of arguments, the Complainant has submitted that the list of the following amenities is still incomplete.

List of Amenities to be completed

S.No. List of Amenities to be completed

1. Swimming Pool
2. Indoor Games
3. A.V. Room
4. Gymnasium & Fitness Centre
5. Ladies & Gents health Club
6. Library
7. Multipurpose Hall
8. Sauna, Steam & SPA
9. Squash court
10. Basketball Court
11. Rubberized Walkers/Jogging Track
12. Children's play area with play equipment

14. In the written submission of arguments, the Respondent has submitted that as on date, the Complainant owes a sum of Rs.8,82,042/- towards the cost of the apartment. Further, a sum of Rs.31,095 towards maintenance charges and a sum of Rs.36,600/- towards corpus fund is also due from the Complainant. Therefore, the Complainant owes a total sum of Rs.9,49,737/- to the Respondent. As and when the above payments are made, the Apartment will be delivered to the Complainant. The Completion Certificate has no bearing on the Complainant having to pay the balance amount towards the cost of the Apartment, since the same is over and

above the sanctioned loan limit of SBI for the Complainant. The Complainant was informed that the Apartment was ready for handing over possession as early as 19th August, 2020 and it is the Complainant who has not come forward to take delivery of possession of the Apartment. The Respondent is ready and willing to hand over the possession of the Apartment, provided that the Complainant makes the balance payment of Rs.9,49,737/-

15. This Authority has examined the Complaint, the Counter Affidavit and the Additional Counter Affidavit filed by the Respondent and the arguments by way of written submissions by both sides carefully.

16. It is seen that there has been delay in completion of this real estate project as admitted by the Respondent Promoter. However, the Respondent Promoter has submitted that the apartment of the Complainant was ready for possession on 19.08.2020 and the Complainant has to pay the balance payment of Rs.9,49,737/-

17. It is also ascertained from the Registration wing of this Authority that the Blocks-A, B & D have already been registered with this Authority with November, 2021 as the date of completion of project and the Blocks-C & E have been registered on 05.05.2021 with this Authority. Therefore, the prayer of the Complainant to register the project has been fulfilled.

18. In the written submission of arguments, the Complainant has given a list of amenities which are still incomplete. The Block-D stated to be a commercial Block having some of these amenities will be completed by November, 2021 as indicated by the Respondent Promoter while registering the Blocks-A, B & D. Therefore, this Authority directs the

Respondent Promoter to complete all the amenities promised in the Construction Agreement by November, 2021 without fail.

19. In the meanwhile, the Respondent Promoter shall hand over the possession of the apartment which is ready for possession to the Complainant on receipt of the balance consideration of Rs.9,49,737/- from the Complainant.

20. The Complainant is at liberty to move the Adjudicating Officer of this Authority for interest on delayed construction, compensation, etc.

21. The Respondent Promoter is also at liberty to move the Adjudicating Officer of this Authority and make its counter claim for interest on delayed payment, if any.

22. The Authority directs the Respondent Promoter to furnish a copy of the Completion Certificate for Block-C obtained from CMDA to the Complainant. If not obtained already, the Respondent Promoter shall obtain the Completion Certificate in respect of Block-C and furnish the copy of the same to the Complainant.

23. With the above directions, this Complaint is disposed of.

Sd/-...30.06.2021
MEMBER (M), TNRERA

Sd/-...30.06.2021
MEMBER (J), TNRERA

Sd/-...30.06.2021
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

DIC

N. 
30/6/21
ADMINISTRATIVE OFFICER


30-6-21