



**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.55 of 2020

10th day of March, 2021

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

Mr. V.Rajasekar & ... Complainants
Mrs. M.Shobana Devi

Versus

M/s. VGN Developers Pvt. Ltd. ... Respondent

This Complaint came up for final hearing before the Authority in the presence of M/s.M.Balaji and Mr.R.Venkatraman – Counsel for the Complainants and of M/s. K.Harishankar, Mr.Srinath Sridevan, Mr.T.K.Bhaskar and Ms.Mithreyi Kasthurirangan – Counsel for the Respondent and upon hearing the arguments of both the parties, this Authority passes the following order:

FINAL ORDER

The Complainants are Allottees of residential flat No.D-205 at "Temple Town" Real Estate project, 2nd floor in Block-D at Thiruverkadu village, Poonamalle Taluk, Thiruvallur District.

2. The agreement for development and construction has been executed and registered on 08.10.2014. According to the Complainants, the Developer had to hand over the unit by end of March, 2016 with additional grace period of 6 months as per this agreement.

3. The Complainants also stated that the Respondent had to pay the delay charges as per Clause 11 (e) of this agreement. The Complainants have made all stage-wise payment in time as per Annexure II of the agreement.

4. The Complainants have further stated that on 16.04.2016 the Respondent informed the Complainants by a letter that the delivery date will be December, 2017 and the Respondent Promoter had committed to honour the delay charges as per the Agreement. By letter dated 23.11.2019 the Respondent Promoter has informed the Complainants that the residential unit is completed and ready for occupation. However, when the Complainants inspected the property they found the incomplete work like French door, utility area work and master bedroom. Parking area was also not ready for car parking.

5. The Complainants by their mail dated 28.11.2019 informed the Respondent Promoter about the defective and incomplete works.

6. The Respondent Promoter had also advised the Complainants to clear the sum of Rs.3,20,494/- and collect the possession letter. The Respondent Promoter by their mail dated 5.12.2019 admitted that the French door work was not yet completed and the work was in progress.

7. The Complainants have also stated that the Respondent has further admitted that the EB meter was also not yet transferred to

individual flat owners and would be done at the earliest. Finally, on 02.01.2020 they have received a mail from the Respondent Promoter that the Complainants did not inspect the flat and give any snags. This was also replied by the Complainants.

8. The Complainants have also complained that it is illegal and unlawful to claim the last instalment without completing the work and without complying with the agreement conditions and charging interest. They are ready to pay the final instalment, once the defects pointed out by them are rectified, Completion Certificate obtained from Chennai Metropolitan Development Authority and separate electricity service connection is obtained in their name and until then they need not pay the last instalment and it is not proper on the part of the Respondent Promoter to treat this nonpayment as overdue and charge interest on that amount.

9. The Complainants have prayed for the following reliefs:

- i. to direct the Respondent to rectify the defects namely (a) French door, (b) removal of scaffolding from the utility service area (c) issuance of Completion Certificate for the "D" Block, (d) getting new EB service connection in the name of the Complainant for Flat D-205 and thereafter give possession of the flat to the Complainants.*
- ii. to direct the Respondent to produce a discharge letter/release letter from IDBI Trusteeship Services Ltd. for their Unit D-205 measuring built up area 1094 sq.ft. with UDS 501 sq.ft.*

- iii. to direct the Respondent to pay compensation of Rs.10,00,000/- which includes mental agony suffered by the Complainants.*
- iv. to adjust the last instalment payment in the compensation amount and to pay the balance amount.*
- v. to declare that the interest charged by the Respondent on the last instalment and on the corpus fund, which is also payable on the last instalment amount are illegal and the same is unenforceable.*

Interim Order, prayed for

To direct the Respondent to obtain Completion Certificate from CMDA, loan discharge letter from IDBI Trusteeship Services Ltd. and thereafter handover Flat D-205 to the Complainants after rectifying the defects as pointed out by the Complainants in their e-mails.

10. In the Counter Affidavit, the Respondent Promoter have submitted that the date of handing over of the possession of the property was 30.09.2017 (Authority considers that this date should be 30.09.2016 and seems to be an error) including the grace period as per the Agreement. The Respondent has further submitted that the construction of the flat was incomplete by December, 2017 and thereby sought further extension.

11. The Respondent Promoter has also informed the Complainants that the flat was ready for possession on 21.11.2019 subject to the Complainants paying Rs.3,20,494/- This amount ought to have been paid

on or before 06.12.2019 and the Complainants have failed to do so. Hence now this amount is payable along with interest. The Respondent has denied the allegation regarding incomplete works. They have stated that the Complainants were not satisfied with the existing interior works and thereafter requested the Respondent Promoter to alter the interiors as per their wish. Therefore, the Respondent Promoter made changes according to the Complainants wish and thereafter informed the Complainants to inspect the property once again. The Respondent further submitted that all the works were completed and inspection was made by the CMDA. Further, there was delay in issuing Completion Certificate and subsequently the Completion Certificate was also issued.

12. The Respondent also stated that they were ready to pay the compensation as per the agreement for the delay in handing over the possession of the residential unit. For this purpose, the period is considered from 01.01.2018 till 23.11.2019 since they had intimated the latest handing over date as December, 2017.

13. In the written arguments, the Complainants have reiterated their earlier submissions and have stated that even after obtaining Completion Certificate till today; the Respondent had not obtained domestic electricity service connection from TANGEDCO for the Flat D-205 as per the Agreement. CMDA has also issued the Completion Certificate only on 12.06.2020 and only standby diesel generators fixed for temporary electricity connection.

14. The Respondent has not filed any written arguments.

15. The Authority has examined the Complaint, the Counter Affidavit filed by the Respondent and the written arguments filed by the Complainants carefully.

16. The Respondent Promoter has admitted to the delay in construction and finally informed that the residential unit is completed and ready for occupation only on 23.11.2019.

17. The crucial date for a Real Estate Project to be determined as a completed or an on-going project is 01.05.2017, the date of commencement of Section 3 of the Act. Therefore this real estate project is an ongoing project only.

18. In as much the Respondent Promoter has subsequently completed and obtained the Completion Certificate for the residential unit in question, the Respondent Promoter is directed to hand over the possession of the residential unit completed in all respects after rectifying the defects/snags already pointed out by the Complainants before 31.03.2021 after collecting the last instalment amount as per the Construction Agreement from the Complainants. However, the Respondent Promoter shall not charge and collect any interest on the delayed payment by the Complainants, if any, till it is adjudicated by the Adjudicating officer of this Authority.

19. The Complainants are at liberty to file claim for compensation for the delayed construction in Form-N to the Adjudicating Officer of this Authority. The Respondent Promoter shall make his claim regarding interest on the delayed payment, if any. Till the Adjudicating Officer of this Authority adjudicate this issue, the Respondent Promoter shall not charge

