

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

**Quorum : Hon'ble Tmt. N. Uma Maheswari, M.A.,M.L., Adjudicating Officer,
CCP No.43 of 2023**

1. Melvin Victor De Poures
2. Sherly Jenifer Dhanraj

.... **Complainants**

Vs.

M/s. Poomalai Housing Pvt. Ltd.
Rep. by its Managing Director
(Regn. No.TN/01/Building/0021/2018)

.... **Respondent**

Complainants : Rep. by Mr. Hari Radhakrishnan, Advocate
Respondent : Remained absent.

Heard on : 26.02.2024
Delivered on : 20.03.2024

ORDER

The complainants have filed this claim petition *U/s 31 r/w Section 71 of the Real Estate (Regulation and Development) Act, 2016* (hereinafter referred to as RERA Act) praying to pass an order of compensation towards mental agony and inconvenience caused to them by the respondent and to direct the respondent to pay the litigation expenses.

2. Gist of the averments of the complaint:

The respondent promoted a residential project in the name of "**Poomalai Avantikaa**" at Pallavaram Taluk, Chennai. The complainants entered into a sale deed with the respondent on 05.09.2019 for the purchase of a UDS of 685 sq.ft. in the property which was registered as Document No.7297 of 2019 for which the complainants have paid Rs.13,76,850/-, and the complainants entered into a construction agreement with the respondent on 13.06.2019 for construction of a residential flat of 1324 sq.ft. along with one car parking. For the purpose of purchase and construction of the flat, the complainants have availed a home loan of Rs.52,99,000/- from SBI, Indira Nagar Branch in June 2019. As per the

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construction agreement, the project should have been constructed and delivered by May 30, 2020. Meanwhile, the complainants are also regularly paying monthly EMI of Rs.43,357/-. As per Clause 4(b) of the construction agreement, the respondent is liable to compensate the complainants at Rs.10/- per sq.ft. per month in case of any delay in the construction and delivery. Due to Covid-19 pandemic, the time for completion of the project was extended which also got expired by February 2021. In spite of repeated reminders and personal approach, the respondent did not complete the project. Hence, the complainants issued legal notice to the respondent on 03.11.2022, for which, there was no response. So the complainants have filed this complaint praying to pass an order of compensation towards the mental agony and inconvenience sustained by them and for the litigation expenses.

On service of notice, the respondent remained absent; as subsequently entered into appearance through his counsel by filing an interlocutory application which was returned as early as on 26.06.2023. Till this date of orders, the application is not represented. Hence, the respondent is considered to be absent.

The entire case records are perused; the complainants have filed the proof affidavit and have marked Ex.A1 to A13 on their side. There is no evidence or documents on the side of the respondent.

Now, the points that arise for consideration in this CCP are,

- i. Whether the complainants are entitled for any compensation towards the mental agony and inconvenience as stated by them?
- ii. Whether they are entitled for litigation expenses?

3. Answer for Point No.(i)

The complainants have stated in their complaint about the purchase of UDS area and the construction agreement in between them and the respondent. To support these averments they have marked Ex.A1 - Sale Deed dated 05.09.2019 and Ex.A2 - Construction Agreement dated 13.06.2019. So, the complainants have proved the purchase of the UDS land and an agreement to construct the flat by the respondent. Further they have produced Ex.A9 (Series) to show that they have periodically and regularly made all the due payments within a short span of time.

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Ex.A5 is a Home loan Agreement arrived in between the complainant and the SBI, Indira Nagar Branch. This elucidates that the complainants availed Rs.52,99,000/- as home loan for constructing the Flat No.S10, Second floor in the project of Poomalai Avantikaa. It is to be held that the complainants have proved the execution of the agreement and availing of SBI home loan for the construction of the flat, without any ambiguity.

As admitted by the complainants, due to the pandemic period, it was something hard to complete the construction and deliver the flat. Even then, the respondent has been reluctant to proceed with the construction and deliver the flat to the complainants who have already availed the home loan and paying the EMI on a memorandum of deposit of title deeds. It is quite natural that a home buyer will be expecting the completion and delivery of a residential flat after performing all the legal requisites. But in this case, the complainants were not delivered the residential flat duly completed. Annoyed by the attitude of the respondent, they have issued a legal notice to the respondent on 03.11.2022 calling upon them to adhere to the TNRERA Act and to refund the entire amount along with compensation. For this also, there was no reply or no settlement by the respondent side. These all go to show that the complainants have suffered mental agony and inconvenience and it is answered for Point No.(i) that they are entitled for a compensation towards the mental agony and inconvenience suffered by them.

4. Answer for Point No.(ii) :

Based on the above discussion, it is answered that the complainants are entitled for the costs of the litigation expenses.

In the result, it is ordered that

The respondent should pay Rs.2,00,000/- to the complainants towards compensation for mental agony and inconvenience and Rs.50,000/- towards the costs of the litigation. These amounts should be paid by the respondent within 90 days from the date of this order.

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Dictated by me to the Stenographer directly and typed by her in the computer, corrected and pronounced by me in the open court on this 20th Day of March 2024.

Sd/- 20.03.2024
N. UMA MAHESWARI
ADJUDICATING OFFICER

C.C.P.No.43/2023
LIST OF WITNESSES

CW-1 --- Melvin Victor De Poures
RW1 --- Nil.

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos.	Date	Documents Name
Ex.A1	05.09.2019	Sale Deed
Ex.A2	13.06.2019	Construction Agreement
Ex.A3	29.05.2019	Confirmation Letter
Ex.A4	05.09.2019	Memorandum of Deposit of Title Deed
Ex.A5	17.06.2019	Home loan Agreement Letter
Ex.A6	22.12.2020	Provisional Interest Certificate of Home Loan
Ex.A7	28.01.2022	Provisional Interest Certificate of Home Loan
Ex.A8	19.01.2023	Provisional Interest Certificate for Home Loan
Ex.A9 (Series)	---	Payment Receipts
Ex.A10	---	Quarterly Progress Report of the project
Ex.A11	03.11.2022	Legal Notice sent by the complainant
Ex.A12	05.11.2022	Acknowledgement of Legal Notice
Ex.A13	21.01.2023	Online Police Complaint Ack.

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
-	Nil	-

Sd/- 20.03.2024
N. UMA MAHESWARI
ADJUDICATING OFFICER
TNRERA, CHENNAI.

CERTIFIED TO BE TRUE COPY
N. Uma Maheswari
20/3/2024
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY