

FINAL ORDER

AVERMENTS OF THE COMPLAINANT:

The case of the Complainant is that the Complainant had submitted an application for the purchase of a flat in the 418 flats (114 Super HIG), SAF Games Village Scheme Block-A (2154 sq.ft), Koyambedu, Chennai-600 107. The Complainant was allotted Flat.No.100, in the 17th floor of Block- A, vide Letter.No. SAFGV. Dn/ Allot/396/2021 dated 01.11.2021 for a total consideration of Rs.1,71,07,100/- and the initial booking advance amount of Rs.5,00,000/- was paid on the same day. The Respondent failed to execute the sale or construction Agreement or registration of Undivided Share (UDS) of land. The Complainant submitted that as per the allotment letter dated 01.11.2021 wherein the payment plan was mentioned, the Complainant had paid 1st installment of Rs.1,57,51,745/-(inclusive of interest of Rs.10,40,780/-) on 20.11.2021 and the final installment has to be paid at the time of handing over of the flat. The 2nd Respondent assured that the flat will be handed over on or before January 2022, but the 2nd Respondent failed to handover the flat before January 2022 as agreed.

The Complainant submitted that he received a letter from the 2nd Respondent on 22.07.2022 requesting to pay interest up to 31.07.2022 for the belated installment paid without any details for a total sum of Rs.10,96,300/- which is illegal and unsustainable. The Complainant questioned the 1st Respondent for the interest on belated installment by various letters and emails. But the Respondent sent a vague and misleading calculations via email. The 2nd Respondent had

unofficially without any handing over letter handed over the flat on 04.08.2022 after a delay of 8 months from the assured date of handing over. Subsequently, he had received a reminder letter from the 2nd Respondent dated 18.11.2022 requesting to pay the remaining 5% of the flat cost of Rs.8,55,355/- and other maintenance charges of Rs.50,000/- (advance) and Rs.5000/- per month. The Complainant stated that he has paid the remaining 5% of the flat cost through TDS and RTGS on 23.12.2022 and 30.12.2022. Thus as on 30.12.2022, the Complainant has made full payment of Rs.1,71,07,100/- towards the flat. The Complainant has also submitted that the Respondents did not inform any additional payment other than the total consideration and deceitfully demanded the interest amount exclusive of the 95% of the Flat cost and demanding maintenance amount without official "KEY handover".

The Complainant filed rejoinder and submitted that the word "capitalization" was never mentioned / found throughout the letter dated 1.11.2021 of the Respondent and the exact description on the letter was Rs.1,57,51,745/- + (Interest=Rs.10,40,780/-) as deemed as inclusive within the total consideration of the flat cost and denies other averments as false.

RELIEF SOUGHT:

- i. To direct the Respondents to execute sale agreement and hand over the "Keys" officially to the Applicant along with the interest as mentioned in Section 2 in Explanation – (I) from the assured date of handover to till date.
- ii. Litigation expenses Rs.50,000/-

RESPONDENT'S AVERMENTS :

The Respondents submitted that an amount of Rs.1,57,51,745/- + capitalization cost of Rs.10,40,780/- was due to be paid by the Complainant on 30.11.2021 and failed to make the entire amount demanded and as such the Respondent Board is entitled to levy interest on late payments per the prevailing Rules of the Board.

The Respondents submitted that the construction activities were never stopped at any point in time despite shortage of labour and scarcity of construction materials owing to the Global pandemic COVID 19 that led to a Nation-wide lockdown.

The Respondents also submitted that the Complainant had remitted only an amount of Rs.1,57,51,745/- on 20.11.2021 and failed to remit a sum of Rs.10,40,780/- as per the allotment order along with accrued interest of Rs.55,520/- totaling to a sum of Rs.10,96,300/- was demanded to be paid on or before 31.07.2022 as per TNHB Rules in force.

The Respondents submitted that in its letter dated 18.11.2022 had informed the Complainant that the flat was ready for occupation from 21.11.2022 and requested to pay 5% amount i.e. Rs.8,55,355/-, maintenance charges of Rs.5,000/- and the corpus fund of Rs.50,000/- and the Complainant remitted only an amount of Rs.6,84,284/- and paid a sum of Rs.1,71,071/- to the IT Department.

The Respondents submitted that the Complainant has failed to remit the capitalization interest of Rs.11,72,403/- before 30.06.2023 and pay the corpus fund of Rs.50,000/- and maintenance charges of Rs.35,000/- (the period from 12/2022 to 06/2023) and the Complainant is

neither entitled for execution of sale agreement nor the handing over letter as demanded by him.

The Respondents also submitted that the Complainant was temporarily permitted on 04.08.2022 to enter into the flat for the limited purpose of executing any interior decoration work subject to the condition that the final handover of the flat will be done only upon clearing the pending dues.

The Respondents have submitted a statement explaining the calculation of the interest for 95% flat cost of Rs.1,62,51,745/-demanded in the allotment order dated 01.11.2021 and prayed this Authority shall be pleased to take the written arguments on file and dismiss the complaint as vexatious, fictitious, frivolous and by imposing exemplary cost and thus render justice.

This Authority has examined the Compliant, Counter affidavit filed by the Respondent, arguments and written submission of arguments filed by both sides carefully. The following points arise for determination:

- i. Is there is any delay on the part of the Complainant as per payment schedule?
- ii. Is there is any delay on part of the Respondent in delivery of the flat?
- iii. Whether the Complainant is entitled for registration of sale deed?
- iv. Has the Respondent failure to adhere with the provisions of RERA Act in execution of UDS as per the provisions of law?

Answer for Point No.(i) & (ii):

As per the allotment order dated 01.11.2021, the total consideration of the flat was Rs.1,71,07,100/- which has to be paid as per the payment plan mentioned in the allotment order. The Complainant had paid Rs.5,00,000/- as part payment and the receipt was issued by the respondent. Therefore, the Complainant has to pay the balance amount in remaining two installments within the due date as mentioned in the allotment order. Pursuant to the above the said two installments the 1st installment of Rs.1,57,51,745/- was paid by the Complainant through NEFT transfer on 20.11.2021 (due date as per the payment schedule was on 30.11.2021) and the final installment has to be paid at the time of handing over. The Respondent sent a letter dated 18.11.2022 stating that the flat was ready for occupation from 21.11.2022 and requested the Complainant to pay 5% amount i.e., Rs. 8,55,355/- and maintenance charges of Rs.5,000/- per month (the period from 12/2022 to 06/2023) and the corpus fund of Rs.50,000/- within 15.12.2022. The Complainant had paid a sum of Rs.6,84,284/- to the Respondent on 30.12.2022 and paid a sum of Rs.1,71,071/- to the IT department through RTGS on 23.12.2022. Furthermore, the Complainant had failed to remit the corpus fund and the maintenance charges as demanded by the Respondent in their letter dated 18.11.2022. As per the allotment order dated 01.11.2021 the Complainant had paid an amount of Rs.1,69,36,029/- to the Respondent and Rs.1,71,071/- directly to the IT department out of the total consideration of the flat of Rs.1,71,07,100/- and submitted a receipt for those payments from the Respondent and the IT department.

The 2nd Respondent has assured that the flat will be handed over by on or before January 2022. However, the Respondents have failed to hand over the flat on January 2022 as agreed. The Respondent stated that the Complainant was temporarily permitted on 04.08.2022 to enter into the flat for the limited purpose of executing any interior decoration work subject to the condition that the final handover of the flat will be done only upon clearing the pending dues. Even after paying the total consideration of the flat cost by the Complainant, the Respondent failed to hand over the flat on time. Instead of handing over the flat, the Respondent demanding to pay the interest on belated installment without any specifications by sending a letter dated 22.07.2022. After, receiving a significant amount of money from the Complainant, the Respondent failed to hand over the keys of the flat officially.

Thus, the point no. i & ii are answered accordingly.

Answer for Point No.(iii) & (iv):

The Allotment order issued by the Respondent clearly mentioned about the total cost of the flat as Rs.1,71,07,100/-, in view of that the Complainant had paid the payments as per the instalments mentioned in the allotment order. Further by the Respondent letter dated 18.11.2022 requesting to pay the remaining 5% of the total cost of the flat as Rs.8,55,355/- as per the allotment order. The Complainant quoted the Hon'ble Supreme Court Judgement of "*Haris marine products Vs Export credit guarantee corporation (ECGC) limited*" as follows :

B. Rule of contra proferentem

16. It is entrenched in our jurisprudence that an ambiguous term in an insurance contract is to be construed harmoniously by reading the contract in its entirety. If after that, no clarity emerges, then the term must be interpreted in favour of the insured, i.e., against the drafter of the policy.

Even after receiving the total consideration for the flat, the Respondent failed to officially hand over the keys and execute the UDS. Further, the Respondent failed to execute any agreement, as per the Section 13(2) of the Real Estate (Regulation and Development) Act, 2016 as read follows:

"The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

The agreement shall be in the prescribed form and must specify the particulars of the project, including the manner of payment towards the cost of the flat. However, the Respondent used vague and unclear terms in the allotment order by merely mentioning "interest". Thus, the Respondent alleging a belated interest that was not clearly mentioned in

the allotment order. Despite this, the interest stated in the allotment order exceeded the total consideration of the flat, but the Respondent failed to specify the interest component. Therefore, this Authority concludes that the Respondent is not entitled to claim capitalization interest, as it was neither explicitly stated in the allotment order nor in the letter sent to the Complainant.

As per Section 17 of the Real Estate (Regulation and Development) Act, 2016 the Respondent is obliged to execute the registered conveyance deed in favour of the Complainant.

Section 17(1) of the Real Estate (Regulation and Development) Act, 2016 as follows:

17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

Being a bona fide purchaser, the Complainant has made the payments as per the schedule provided in the allotment order. Therefore, the Complainant is entitled for sale deed and the UDS in the name of the Complainant.

Hence, this Authority directs the Respondent to execute sale deed and hand over the keys of the flat officially to the Complainant upon paying the corpus fund of Rs.50,000/- and the maintenance charges of Rs.5000/- per month (the period from 12/2022 to 06/2023) by the Complainant on or before 30.06.2025.

With the above directions, this complaint is disposed of.

Sd/-...28.04.2025
MEMBER (K), TNRERA

Sd/-...28.04.2025
MEMBER (LS), TNRERA

/TRUE COPY/FORWARDED/BY ORDER


LAW OFFICER, TNRERA