

Appeal No.39 of 2026

BEFORE THE TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL
(TNREAT)

(Tamil Nadu, Puducherry, Andaman & Nicobar Islands)

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

Reserved on: 19.08.2026

Delivered on: 24.08.2026

Coram : Hon'ble Mr.Justice M.Duraiswamy, Chairperson
Mr.K.Babu, Judicial Member

Appeal No.39 of 2026
and
M.A.Nos.106 & 107 of 2026

M/s.Avakara Spaces Private Limited
rep. by its Managing Director, Barath Vummidi
(Formerly known as BBCL Homes India Pvt. Ltd.
Amended as per order in
I.A.No.15 of 2026 dated 23.02.2026)

... Appellant

Vs.

Sivasekar.E

... Respondent

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the impugned order dated 26.11.2025 passed by the learned Adjudicating Officer, Tamil Nadu Real Estate Regulatory Authority, Chennai in C.C.P.No.76 of 2023.

For Appellant : Ms.N.Hansika
For Respondent : Mr.N.Thamizhanban

ORDER

Challenging the order passed in C.C.P.No.76 of 2023 dated 26.11.2025 on the file of the learned Adjudicating Officer, TNRERA, the promoter has filed the above appeal.

2. The brief case of the complainant is as follows:

The respondent/complainant booked a 2BHK Apartment in the appellant/promoter's project, namely, "BBCL Midland". The total cost of the Apartment was Rs.53,01,944/-. The respondent/complainant entered into Agreement of Sale and Construction Agreement on 12.11.2019 with respect to the Apartment bearing No.325 in the Third Floor having a carpet area of 664 sq. ft and UDS area of 482 sq. ft. in the subject property. The respondent/complainant, in order to purchase the Apartment, had paid a sum of Rs.25,00,000/- as part of booking amount through cheque from his own savings account and obtained a home loan for a sum of Rs.25,00,000/- from State Bank of India, Ekkattuthangal Branch. Thus, totally, respondent/complainant had paid Rs.50,00,000/-.The State Bank of India, sanctioned the loan amount of Rs.25,00,000/- on 18.11.2019 and the said amount was released to

the account of the appellant/promoter. The respondent/complainant paid the monthly EMI towards the Home Loan. As per Clause 4(a) of the Construction Agreement, the appellant/promoter had to finish the construction of the Apartment by December 2019. But the appellant/promoter postponed the handing over possession of the Apartment and claimed that the delay in handing over possession of the Apartment was due to Covid-19 pandemic. The appellant/promoter still claimed Covid-19 pandemic as reason for the delay for handing over possession of the property. The respondent/complainant also gave the appellant/promoter the reasonable time to complete the project, but, even in the year 2021, the appellant/promoter stated the same reason. The respondent/complainant was residing in a rented house and he has been paying the monthly rent as well as loan EMI amount for the new Apartment. Since, the appellant/promoter failed to hand over the Apartment on time, the respondent/complainant filed the complaint in C.C.P.No.76 of 2023 claiming compensation from the appellant/promoter together with interest at the rate of 13% on the amount of Rs.50,00,000/- that has been paid from the committed date of delivery till the date of filing of the complaint, Rs.15,00,000/- towards mental agony and Rs.1,00,000/- towards litigation expenses.

3. The brief case of the promoter is as follows:

The complaint preferred by the respondent/complainant is false, incorrect and misleading except those that are specifically admitted. The respondent/complainant was given possession of the booked Unit for which Possession Agreement was entered

on 03.02.2024. In the Possession Agreement, the respondent/complainant relinquished all the claims towards the subject Unit. Against the terms of Possession Agreement, the respondent/complainant filed the present complaint which is contrary and not sustainable. As per Clause 12 of the Possession Agreement dated 03.02.2024, the respondent/complainant promised to withdraw all legal proceedings against the appellant/promoter. Despite that undertaking, filing the complaint by the respondent/complainant before the Adjudicating Officer is not maintainable, hence, prayed for the dismissal of the complaint.

4. Before the Adjudicating Officer, on the side of the complainant, C.W.1 was examined and 8 documents, Exs.A1 to A8 (Ex.A6 and Ex.A7 series) were marked. On the side of the respondent, R.W.1 was examined and 1 document, Ex.B1 was marked. The said complaint has been partly allowed by the learned Adjudicating Officer, TNRERA by directing the appellant/promoter to pay a sum of Rs.5,00,000/- towards mental agony and hardship and Rs.50,000/- towards litigation expenses to the respondent/complainant. Aggrieved by the same, the appellant/promoter filed the present appeal.

5. Heard Ms.N.Hansika, learned counsel appearing for the appellant/promoter and Mr.N.Thamizhanban, learned counsel appearing for the respondent/complainant.

6. The Miscellaneous Application M.A.No.107 of 2026 has been filed by the appellant/promoter for receiving additional documents. The documents, which are

sought to be filed in the appeal have no relevancy in deciding the appeal. Filing those documents in the appeal belatedly is not acceptable. There is no merit in this application and is liable to be dismissed.

7. The admitted facts are that the respondent/complainant purchased a 2BHK Apartment bearing No.325 having a carpet area of 664 sq. ft. and UDS of 482 sq. ft constructed in the Third Floor in the appellant/promoter's project "BBCL Midland" at Pudhucherry Salai, Sholinganallur and the cost of the said Apartment was Rs.53,01,944/-.

8. The Sale and Construction Agreements were marked as Exs.A1 & A2 respectively. As per the Clause 4 (a) of the Construction Agreement, the Apartment should have been handed over by the appellant/promoter by December 2019 with a grace period of three months (i.e.) by March 2020. But, admittedly, as per the Possession Agreement dated 03.02.2024, the possession was handed over after 4 years. The learned counsel for the appellant/promoter contended that in the Possession Agreement dated 03.02.2024, though the respondent/complainant agreed to withdraw legal proceedings against the appellant/promoter unconditionally he had filed the complaint claiming compensation for the delay in handing over possession. The learned counsel further contended that the learned Adjudicating Officer, without considering the terms of Possession Agreement awarded compensation.

9. The said contention raised by the learned counsel appearing for the appellant/promoter was repudiated by the learned counsel appearing for the

respondent/complainant and contending that the appellant/promoter handed over possession of the Apartment 4 years after the promised date of handing over by the appellant/promoter. The date of Construction Agreement and the period agreed by the appellant/promoter to hand over possession of the Apartment to the respondent/complainant are much prior to Covid-19 pandemic. After considering all those factors, the learned Adjudicating Officer rightly awarded compensation, hence, the claim of the appellant/promoter is not sustainable.

10. As per Clause 4(a) of the Construction Agreement (Ex.A2) dated 12.11.2019, it is clear that the possession of the Apartment should have been handed over before the end of December 2019 with a grace period of 3 months, if so, the possession of the Apartment should have been handed over to the respondent/complainant by the end of March 2020. But, the possession of the Apartment was handed over to the respondent/complainant on 03.02.2024, (i.e.) after a period of 4 years from the agreed date of handing over of possession of the Apartment. Though it has been contended by the learned counsel appearing for the appellant/promoter that the delay is due to Covid-19 pandemic, but as per the Construction Agreement, the appellant/promoter agreed to hand over the Apartment by December 2019 with a grace period of 3 months (i.e.) by March 2020 much prior to the Covid-19 pandemic. Whiles, the claim of the appellant/promoter that the delay was due to the Covid-19 pandemic is not sustainable.

11. The learned counsel appearing for the appellant/promoter contended that as per Possession Agreement dated 03.02.2024, the respondent/complainant agreed to withdraw all the legal proceedings against the appellant/promoter, but had filed the complaint contrary to Clause 12 of the Possession Agreement dated 03.02.2024. The said contention put-forth by the learned counsel appearing for the appellant/promoter is not sustainable. Since the appellant/promoter had received the entire amount for the Apartment and as per Clause 4(a) of the Construction Agreement, the Apartment should have been handed over to the respondent/complainant by December 2019 with a grace period of 3 months. In spite of the same, the appellant/promoter handed over the possession of the Apartment only on 03.02.2024.

12. On a perusal of the said Possession Agreement dated 03.02.2024 marked as Ex.B1, it could be seen that the said Agreement has no legal sanctity and it is a self serving document and is liable to be rejected. Further, the said document was not attested by anyone. In such circumstances, the contention of the learned counsel appearing for the appellant/promoter that based on the Possession Agreement dated 03.02.2024, the respondent/complainant agreed to withdraw legal proceedings against the appellant/promoter, hence, the respondent/complainant is not entitled to file the complaint before the Adjudicating Officer cannot be accepted.

13. After receiving the entire payment for the Apartment, the appellant/promoter failed to hand over the possession of the Apartment as per the Construction Agreement. The right of claiming compensation under Section 18(1) arose from the date of breach of the contract. Admittedly, the appellant/promoter had received an amount of Rs.50,00,000/- for the purchase of the Apartment from the respondent/complainant and the said amount was retained by the appellant/promoter. The Construction Agreement and the promised date of handing over were all well before Covid-19 pandemic. Hence, Covid-19 pandemic has no role to play in the Construction Agreement and it cannot be taken as a ground for the delay of 4 years.

14. In such circumstances, considering the guidelines about the factors to be taken into consideration while adjudicating the quantum of compensation under Section 72 of the Act, the learned Adjudicating Officer after considering all the circumstances rightly awarded compensation of Rs.5,00,000/- towards mental agony and hardship and Rs.50,000/- towards legal expenses. We do not find any reason to interfere with the findings of the learned Adjudicating Officer.

15. In view of the above discussions, the appeal is devoid of merits and is liable to be dismissed. Accordingly, the same is dismissed. The Miscellaneous Application in M.A.No.107 of 2026 is also dismissed. Consequently, the connected Miscellaneous Application M.A.No.106 of 2026 is closed.

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16. Since we have dismissed the appeal, the respondent/complainant is entitled to withdraw the pre-deposit amount of Rs.5,50,000/- deposited by the appellant/promoter under Section 43(5) of the Act together with accrued interest, if any.

Sd/- xxxx
JUSTICE M.DURAIWAMY
CHAIRPERSON
24.08.2026

Sd/- xxxx
K.BABU
JUDICIAL MEMBER
24.08.2026

Copy to

1. The Adjudicating Officer, TNRERA
2. Sivasekar.E.
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