

Appeal No.38 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.38 of 2026
and
M.A.Nos.104 & 105 of 2026

M/s.Avakara Spaces Private Limited
(Formerly known as BBCL Homes India Pvt. Ltd.
Amended as per order in I.A.No.14 of 2026 dated 23.02.2026)
rep. by its Managing Director,
Barath Vummidi

... Appellant

Vs.

1. Sathiya.S.

2. Krishna Kumar

... Respondents

Appeal has been filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016 to set aside the order dated 26.11.2025 passed by the learned Adjudicating Officer, Tamil Nadu Real Estate Regulatory Authority (TNRERA), Chennai in C.C.P.No.74 of 2023.

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

ORDER

Challenging the order passed in C.C.P.No.74 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 complainants is as follows:

The respondents/complainants booked a 2BHK Apartment with car park in the appellant/promoter's project, namely, "BBCL Midland". The respondents/complainants entered into an unregistered Construction Agreement on 22.02.2019 with respect to the Apartment bearing No.102 in the First Floor having a carpet area of 644 sq. ft. As per the Agreement, the appellant/promoter undertook to hand over possession of the Apartment by December 2019. In order to purchase the Apartment No.102, the respondents/complainants availed Home Loan for a sum of Rs.44,46,000/- from State Bank of India, Adyar Branch, Chennai. As per the quotation, the total cost of the Apartment No.102 was Rs.58,00,143/-. The respondents/complainants proposed to swap the Apartment from 102 to 303. The said request was accepted by the appellant/promoter in the year 2019. The consideration amount for Apartment No.303 was agreed at Rs.50,46,663/-. The respondents/complainants, in order to swap the said Apartment, closed the existing

Home Loan availed from State Bank of India, Adyar Branch for the Apartment No.102 and after closing, availed new Home Loan for a sum of Rs.40,00,000/-. Both the parties entered into registered Sale Deed and Construction Agreement on 25.04.2022 for the Apartment No.303. The State Bank of India sanctioned Home Loan on 18.11.2019 and a sum of Rs.44,46,000/- was released by State Bank of India to the account of the appellant/promoter and the respondents/complainants have paid Rs.6,00,000/- out of their own fund and total cost of the Apartment was fixed at Rs.50,00,000/- as per swapping letter dated 27.11.2019. As per Clause 4 of the Construction Agreement, the appellant/promoter agreed to complete the construction before December 2022 with a grace period of 3 months (i.e.) by March 2023. The appellant/promoter failed to hand over the possession of the Apartment within the promised period due to Covid-19 pandemic, which caused financial and mental hardship to the respondents/complainants. The respondents/complainants were residing in a rented house and paid the monthly rent and also Apartment loan EMI which comes around Rs.60,000/- . Since the appellant/promoter failed to hand over the Apartment on time, the respondents/complainants filed the complaint in C.C.P.No.74 of 2023 before the learned Adjudicating Officer claiming compensation of a sum of Rs.50,46,000/- together with interest at the rate of 13% 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 respondents/complainants is false, incorrect and misleading except those that are specifically admitted. The respondents/complainants were given possession of the booked Unit for which Undertaking Document was entered on 15.05.2023 for fit-out purposes. Subsequently, the respondents/complainants had taken possession of the Apartment on the same day. The respondents/complainants, at first, purchased the Apartment No.102 in the subject project and the total Sale Consideration was Rs.58,00,143/-. The respondents/complainants paid an advance amount of Rs.50,000/- at the time of booking. Subsequently, on 02.12.2019, the respondents/complainants, due to financial constraints, requested the appellant/promoter for an alternate Apartment. The appellant/promoter, considering the request of the respondents/complainants, allotted the Apartment bearing No.A-303. The total cost of the said Apartment was Rs.50,46,663/- in the Third Floor measuring carpet area of 644 sq. ft and UDS area of 462 sq. ft. with one covered car park. Based on the swapping of the Apartment by the respondents/complainants, both the appellant/promoter and the respondents/complainants entered into registered Construction Agreement and Sale Deed on 25.04.2022. As per the Clause 4(a) of the said Agreement, the Apartment should be handed over by December 2022 with a grace period of 3 months (i.e.) by March 2023. Due to Covid-19 pandemic, the appellant/promoter was not in a position to hand over possession of the Apartment. The respondents/complainants had taken

possession of the Apartment on 15.05.2023 by executing Undertaking Document. As per Clause 23 of the Undertaking Document dated 15.05.2023, the respondents/complainants have agreed to relinquish their right to claim the delay compensation from the appellant/promoter without any recourse to litigation. The delay in handing over possession was due to Covid-19 pandemic. The reliefs sought for by the respondents/complainants were contradictory to the Undertaking Document only to harass the appellant/promoter. The present complaint has been filed and the claim made by the respondents/complainants is not maintainable. Hence, the complaint is liable to be dismissed.

4. Before the Adjudicating Officer, on the side of the complainant, 1st complainant was examined as C.W.1 and 9 documents, Exs.A1 to A9 were marked. On the side of the respondent, R.W.1 was examined and 1 document, Ex.B1 was marked. The learned Adjudicating Officer, after considering the materials produced by both sides, allowed the complaint and directed the appellant/promoter to pay the respondents/complainants a sum of Rs.5,00,000/- towards compensation for mental agony and hardship and Rs.1,00,000/- towards litigation expenses. Aggrieved over the said order, 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 respondents/complainants.

6. The Miscellaneous Application in M.A.No.105 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 respondents/complainants originally booked the Apartment No.102. Subsequently, the respondents/complainants, due to financial constraints, requested the appellant/promoter for an alternate Apartment and the appellant/promoter allotted the 2BHK Apartment bearing No.303 having a carpet area of 644 sq. ft. and UDS of 462 sq. ft. in the Third Floor with one covered car park in the appellant/promoter's project "BBCL Midland" at Puducherry Salai, Sholinganallur and the cost of the said Apartment was fixed at Rs.50,46,663/-.

8. The registered Sale Deed and Construction Agreement entered on 25.04.2022 were marked as Exs.A5 & A6. According to the learned counsel appearing for the appellant, as per the Clause 4 (a) of the Construction Agreement, the Apartment must be handed over by the appellant/promoter by December 2022 with a grace period of three months (i.e.) by March 2023. As per Clause 23 of the Undertaking Document dated 15.05.2023 marked as Ex.B1, the respondents/complainants agreed to relinquish their right to claim the delay compensation from the appellant/promoter. But contrary to the same, the respondents/complainants have filed the complaint claiming compensation for the delay in handing over possession. According to the

learned counsel appearing for the appellant, the learned Adjudicating Officer, without considering the terms of Undertaking Document awarded the compensation.

9. The said contention raised by the learned counsel appearing for the appellant/promoter was repudiated by the learned counsel appearing for the respondents/complainants contending that the appellant/promoter handed over possession of the Apartment beyond the agreed date. The period of Construction Agreement and the period agreed by the appellant/promoter to hand over possession of the Apartment to the respondents/complainants are much later to Covid-19 pandemic. Hence, the learned Adjudicating Officer rightly awarded compensation after considering all those factors, hence, the claim of the appellant/promoter is not sustainable.

10. As per Clause 4(a) of the Construction Agreement (Ex.A6) dated 25.04.2022, it is clear that the possession of the Apartment should have been handed over before the end of December 2022 with a grace period of 3 months, if so, the possession of the Apartment should have been handed over to the respondents/complainants by the end of March 2023. But, the possession of the Apartment was handed over to the respondents/complainants on 15.05.2023 (i.e.) beyond the agreed date of handing over 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, but as per the Construction Agreement, the appellant/promoter agreed to hand over the Apartment by December 2022 with a grace period of 3 months (i.e.) by March 2023

much later 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 further contended that as per the Undertaking Document dated 15.05.2023, the respondents/complainants agreed to relinquish their right to claim the delay compensation from the appellant/promoter without any recourse to litigation, but have filed the complaint contrary to the Undertaking Document dated 15.05.2023. The said contention put-forth by the learned counsel appearing for the appellant/promoter is not sustainable. Since the appellant/promoter who had received the entire amount is liable to act as per the Construction Agreement by handing over the possession on time.

12. Moreover, on a perusal of the said Undertaking Document dated 15.05.2023, it could be seen that the said Agreement do not contain the signature of the attestors. The said document cannot be accepted and the said document has no legal sanctity and it is a self serving document and is liable to be rejected. In such circumstances, the claim of the learned counsel appearing for the appellant/promoter that based on the Undertaking Document dated 15.05.2023, the respondents/complainants agreed to waive their right to claim compensation and hence the respondents/complainants are not entitled to file the complaint before the Adjudicating Officer cannot be accepted.

13. The right of claiming compensation under Section 18(1) arose from the date of breach of the contract. The appellant/promoter, after receiving the entire payment for the subject Apartment, had failed to hand over the possession of the subject Apartment. As per the Construction Agreement, for causing such delay in handing over possession, the appellant/promoter is liable to pay compensation.

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 these circumstances rightly awarded the compensation of Rs.5,00,000/- towards mental agony & hardship and Rs.1,00,000/- 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.105 of 2026 is also dismissed. Consequently, the connected Miscellaneous Application M.A.No.104 of 2026 is closed.

Appeal No.38 of 2026

16. Since we have dismissed the appeal, the respondents/complainants are entitled to withdraw the pre-deposit amount of Rs.6,00,000/- 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. Sathiya.S.
3. Krishna Kumar
S.Nos.2 and 3 both are residing at
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