

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 133 of 2019**

Pawan Kumar Gupta

Complainant

Vs.

M/s. SPR Construction Pvt Ltd.,
Rep by its Managing Director
(Regn. No.TN/29/Building/0068/2018)

Respondent

Complainant : In person

Respondent : Represented by Mr. E. Sathish Kumar,
Advocate

Heard on : 21.08.2019

Delivered on : 12.09.2019

ORDER


The above complaint by the complainant seeking refund of booking advance amount paid by him to the respondent towards purchase and construction of booked flat with compensation is filed u/s 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Averments of the complainant in brief as follows:

(a) On 24.03.2019, the complainant booked an apartment with the respondent in their project, namely, "**SPR High Living**", SPR City, Perambur, Chennai – 600012 and paid booking advance of Rs.3,00,000/-

(b) The complainant was forced to cancel the booking of the flat with the respondent since he could not raise fund on sale of his ancestral property. On 20.04.2019, the complainant requested the respondent for the cancellation of booking and to refund the advance amount.

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(c) But the respondent informed the complainant that they are forfeiting the booking advance and no amount is repayable on cancellation. The complainant is entitled to get the refund of the booking advance amount and also compensation due to mental stress and agony caused by the respondent. Hence the complaint.


3. **Counter Averments of the respondent in brief as follows:**

(a) On 24.03.2019, the complainant booked an apartment with the respondent in their project by signing an application/booking form, price chart and payment schedule and paid Rs.3,00,000/- as booking advance. The booking advance of Rs.3,00,000/- includes GST of Rs.32,143/-. As per the terms and conditions and the cancellation policy, an amount equivalent to the booking amount as mentioned in the payment schedule is liable to be deducted as cancellation charges.

(b) On 03.04.2019, the respondent sent email to the complainant requesting his KYC details to prepare an agreement for sale and the same was provided by complainant. The details were sent to the counsel to prepare agreements for sale and construction. The draft agreements were also finalized by the respondent even before 12.04.2019, by paying legal charges and the same has been communicated to the complainant by the respondent through their sales executives. All of sudden, citing some lame excuses, the complainant cancelled the said booking and the same has been accepted by the respondent. The unreasonable demand of the complainant for refund was not accepted by the respondent.

(c) The respondent suffered substantial loss due to the act of the complainant blocking the apartment for a month. The respondent is

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entitled to forfeit the amount as agreed by the complainant by acknowledging the booking form, price chart and payment schedule. Hence the respondent prays for dismissal of the complaint.


4. An attempt to settle the matter amicably has failed.
5. Both the parties have filed their respective evidence on affidavit with documents.
6. On the basis of the rival contentions of the parties, the following points arise for determination:
 - i. Whether the complainant is entitled for the refund of the booking advance amount paid to the respondent?
 - ii. What are the reliefs, the complainant is entitled for?

7. **Answer for Point No.(i)**

(a) The complainant submitted that on 24.03.2019, he booked a flat with the respondent and paid a token booking advance of Rs.3,00,000/- and due to family dispute and lack of funds, he could not continue the process of purchase of the flat and he submitted cancellation letter on 20.04.2019 requesting refund of the advance amount and the respondent by his letter dated 22.04.2019 informed him that the allotment was cancelled and the booking advance paid by the complainant was forfeited in gross violation of rules, terms and conditions and the complainant is entitled to get refund of the booking advance with compensation and cost.

(b) However, the counsel for the respondent submitted that as per the terms and conditions of the application cum booking form, the cancellation policy of the respondent was informed to the complainant

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and the receipt of the amount of Rs.3,00,000/- was towards booking advance and GST and the respondent prepared agreements of sale and construction with the details provided by the complainant and thereby incurred legal charges towards drafting the documents and the respondent is entitled to forfeit the amount paid by the complainant towards monetary loss for blocking the apartment and also towards administrative charges, GST, legal charges etc., and the complaint is liable to be dismissed.

(c) Admittedly, no written agreements for purchase of flat entered between the complainant and the respondent. Ex.A-1 is the application/booking form with price chart and payment schedule, which was given to the complainant at the time of booking and was asked to fill up and submit by the respondent. The application and the price chart contains the terms and conditions. Under clause -1 of the terms and conditions in price chart, it is mentioned as "*The above proposal is subject to change at the discretion of the developer/promoter*". But no such discretion or liberty is given to home buyers.

(d) A reading of the terms and conditions reveals that the proposal by Ex.A-1 is to follow acceptance by issue of allotment letter on realization of booking amount, which is 10% of the total sale consideration and execution of agreement on receipt of such amount. In the payment schedule, it is also mentioned as the booking amount is to be made within 45 days from the date of booking – booking advance. Even prior to completion of 45 days, the complainant preferred to cancel the booking on 20.04.2019. By letter dated 22.04.2019, the respondent

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also cancelled the allotment against the booking form made on 26.03.2019.

(e) When the parties will only be bound by the terms and conditions of the agreement to be entered later on between the parties, the complainant is made to sign with a declaration on the dotted lines in the proposal with the terms and conditions, which are all one sided favouring the respondent/promoter alone. Incorporating terms and conditions in the booking form and price chart at the proposal stage on the receipt of booking advance itself is an unfair trade practice.

(f) The respondent relies on the condition that any amount equivalent to booking amount as mentioned in the payment schedule is liable to be deducted as cancellation charges. When the stage of payment of booking amount with time limit of 45 days was not at all reached, the complainant preferred cancellation. Therefore, the respondent cannot rely on the cancellation policy mentioned in the terms and conditions.

(g) Forfeiture means to incur a penalty. The question of forfeiture will arise only on breaches of conditions of written agreement with forfeiture clause where it is stipulated that the breaches shall occasion forfeiture. There is no clause for forfeiture of the booking advance paid by the complainant in Ex.A-1. Therefore, the respondent is not entitled to forfeit the booking advance.

(h) It is the contention of the respondent that on request through email sent made by them, the complainant provided details, which were sent to their counsel to prepare agreement for sale and construction and the drafts agreements were finalized by the respondent even before 12.04.2019 by paying drafting and legal

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charges. It is the case of the complainant that he was not provided with the property documents and he has also not provided any details for preparation of the agreements and even his age is wrongly mentioned in the draft agreements, which are marked as Ex.B-2 & B-3.

(i) The respondent has not filed any document to prove that the complainant provided details for the preparation of the agreement. Nowhere in the counter or the proof affidavit of RW1, it is mentioned that the complainant was allowed to verify the property documents or was provided with copies of the title documents to satisfy himself. It is also not the case of the respondent that before finalizing the draft agreements by them, the rough draft agreements prepared were sent to the complainant for scrutiny and approval. In the absence of such approval of draft agreement by the complainant, the act of finalizing terms and conditions of written agreement by respondent unilaterally is gross violation of the rights of the complainant as a home buyer.

(j) Ex.B-2 & B-3 agreements reveal that the agreements are engraved on the stamp papers purchased in the name of respondent on 19.01.2019. When the booking itself was made by the complainant only on 24.03.2019, there is no explanation as to how the respondent was able to procure stamp papers on 19.01.2019 for preparation of the agreements. When there is 45 days time limit for payment of advance made of 10% of the total sale consideration and only on realization of the booking amount the agreements will have to be entered, it is seen that the respondent acted malafide and rushed hastily with the preparation of the agreements in order to deprive and defeat the claim refund of the booking advance by the complainant. Therefore, the

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complainant cannot be held liable or responsible for the unfair and unreasonable acts of the respondent.

(k) It is the contention of the respondent that amount of Rs.3,00,000/- received includes GST of Rs.32,143/-. In the proposal stage itself, the proposal for sale stood cancelled. Tax liability under GST would arise only on completion of sale. Therefore, there is no justification for collection and forfeiture of the amount under GST.


(l) The Counsel for respondent relied on the decision of the National Consumer Commission and Rule 13 of TNRERA Rules. In the decision, there was an agreement with forfeiture clause which was held invalid and reasonable amount can be forfeited. But in this case, there is no agreement at all. In the absence of written argument, the decision and the rule are not applicable to the facts of the case.

(m) In the above circumstances, there is no basis or reason in the contentions of the respondent for forfeiture of the booking advance paid by the complainant. Therefore, it is held that the complainant is entitled for refund of the booking advance amount paid by him to the respondent. Thus the point is answered accordingly.

8. Answer for Point No.(ii)

In view of the answer for point no.(i), it is held that the complainant is entitled for refund of Rs.3,00,000/- from the respondent with interest @ 9% per annum from the date of payment of the amount till realization. Considering the facts and circumstances of the case, towards compensation for mental stress and inconvenience caused to the complainant, a sum of Rs.25,000/- is fixed as payable by the respondent to the complainant. Apart from the above, a sum of

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Rs.10,000/- is fixed as litigation expenses. As found above, the complainant is entitled for the reliefs. Thus the point is answered accordingly.

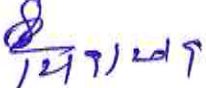
In the result, the respondent is directed as follows:

- (1) The respondent shall pay the complainant the amounts at the interest rate, compensation and cost as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

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Sd/-12.09.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY


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