

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 138 of 2019**

1. Usha Ravikumar &
2. B. Ravikumar ... **COMPLAINANTS**

Vs.

M/s. Casa Grande Civil Engg (P) Ltd.
Rep. by authorized signatory G. Sethupathy
(Regn. No.TN/01/Building/0028/2017) ... **RESPONDENT**

Complainants : Rep. by M/s. Chennai Law Associates

Respondent : Rep. by Mr. T. Gowthaman, Advocate

Heard on : 13.11.2019

Delivered on : 28.11.2019

ORDER

The above complainants filed the complaint seeking compensation for delay, mental agony and monetary loss and costs for the delay in delivery of the constructed apartment under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Averments of the complainants in brief as follows:

(a) On 12.07.2017, the complainants entered into a construction agreement with the respondent for construction of a flat and the respondent undertook to complete the construction of the flat within 18 months from the date of the agreement. Subsequently the respondent asked the complainants to enter into another construction agreement, by which the construction period was extended till November, 2019.

(b) The complainants filed a complaint before the TNRERA vide complaint No.52/2018. The respondent agreed to pay compensation for the delay. The respondent collected GST at 12% amounting to Rs.7,33,020/-. An

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ongoing project attracts only 5% of GST. Hence, the complainants is entitled for compensation for delay, mental agony and monetary loss and the legal expenses and also refund of the excess GST collected by the respondent. Hence the complaint.

3. **Counter averments of the complainants in brief as follows:**

(a) Except admitted, all the allegations are denied. The earlier petition filed by the complainants before the TNRERA was ordered on the basis of the mutual understanding. The present claim was not raised in the earlier proceedings. It is not open to the complainants to initiate fresh cause of action. The RERA Act does not contemplate multiple proceedings.

(b) The respondent is ready and willing to pay money liable to be paid to the complainants as rent from July, 2019 till the date of handing over as per terms and conditions of the agreement undertaken by them in the previous litigation.

(c) The issue on GST is directly covered by the advisory of the GST Council dated 19.03.2019 whereby the option has been given to the promoters for the ongoing projects to continue to pay tax at the old rates. For the projects not completed by 31.03.2019, it is not open to the complainant to raise the issue in the second complaint. The claims of the complainants are not sustainable. The complaint is liable to be dismissed.

4. An attempt to settle the matter amicably has failed.

5. Both the parties have filed their respective evidence on affidavit. The complainants filed documents and no documents were produced on the side of the respondent.

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6. On the basis of the rival contentions of the parties the following points arise for consideration:

- i. Whether the complainants are entitled for compensation for the delay in completion and delivery of the constructed flat as per the dates specified in the agreements and compensation for mental agony and monetary loss and refund of difference in GST rates and litigation expenses?
- ii. Whether the complainants are entitled for all the reliefs as prayed for?

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

(a) The learned counsel for complainants submitted that as per the agreements entered on 12.07.2017, the respondent was bound to hand over possession of the flat by March, 2019 including grace period of 3 months and they have not handed over the flat as agreed by them and therefore the complainants are entitled for the compensation at the rate of Rs.5/- sq.ft. and the rate of GST applicable to the project as ongoing project is only 5% and the respondent is to liable refund the excess 7% collected by them with interest and the complainants are also entitled for compensation towards mental agony and monetary loss on payment of EMI and litigation costs.

(b) The learned counsel for the respondent submitted that the respondent is ready and willing to pay the money liable to the complainants as rent as per the terms of the agreement as undertaken by them in the previous round of litigation, but the respondent is not liable to pay difference in GST and as per the advisory of the GST Council dated 19.03.2019, an option is

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given to the promoters to adopt the old rate of GST for ongoing projects and other ancillary claims raised by the complainants are not sustainable and the complaint is liable to be dismissed.

(c) As per E.A5, the construction agreement dated 12.07.2017 entered between the complainants and the respondent, the respondent undertook to complete the entire construction of the flat within 18 months with a grace period of 3 months and in case of failure to complete the construction of the flat in the stipulated time, to pay a sum of Rs.5/- sq.ft. per month as compensation for such delay period to the complainants. The due date for delivery including grace period expired by 11.04.2019. It is not in dispute that the respondent has not completed the construction of the flat of the complainants for delivery by the promised date and the time limit has been extended.

(d) In the counter of the respondent and proof affidavit of RW1, the respondent admitted their liability to pay the compensation as agreed by them in the construction agreement entered on 12.07.2017. The complainants claim the compensation for the delay period only from 12.04.2019, i.e., after the due date for delivery was over as per the agreement at the rate provided in the agreement. As per the Ex.A1 allotment letter, the super built up area of the flat allotted to the complainants is 1630 sq.ft. Therefore, the claim of the complainants at the rate of Rs.5/- per sq.ft. for the area of 1630 sq.ft. at Rs.8,150/- per month from 12.04.2019 till the handing over of the flat is found sustainable .

(e) So far as the rate of GST applicable to ongoing projects is concerned, as per notification of the GST council, GST rates for the real estate sector to be

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effective from 01.04.2019 is 1% (without ITC) for affordable housing properties and 5% (without ITC) for residential properties outside affordable segment. However, in case of on-going projects the promoter has an option to pay GST on old rates, i.e., 8% for affordable residential apartments and 12% on other residential apartments and consequently to avail permissible input tax credit and pass the benefit of the credit availed to the home buyers.

(f) In Ex.A8 email dated 07.05.2019, the respondent assured that the benefit due to input tax credit will be passed on to the customers. The respondent also stated that they will identify the amount at the handing over stage and confirmed passing of the benefit. It clearly shows that the respondent opted to pay GST on old rates and preferred to avail permissible input tax credit and pass on the benefit of the credit to the complainants. Therefore, the complainants shall have a right to claim the benefit of the input tax credit after the delivery of the flat from the respondent.

(g) The complainants made a claim of compensation towards mental agony and monetary loss due to payment of EMI for loan without occupation of the flat due to the delay in delivery. There cannot be any dispute that the delay in delivery of the flat to the complainants by the respondent caused mental agony and inconvenience to the complainants. In the above circumstances, it is held that the complainants are entitled for the compensation for the delay, mental agony and inconvenience and also litigation expenses. Thus the point is answered accordingly.

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8. **Answer for Point No: (ii)**

a) In view of the answer for Point No.(i), it is held that the complainants are entitled for compensation due to delay as per the terms of the agreement at the rate of Rs.8,150/- per month from 12.04.2019 to till the handing over of the flat to them. Considering the facts and circumstances of the case, compensation for mental agony and in convenience is fixed at Rs.1,00,000/- and towards litigation expenses a sum of Rs.25,000/- is fixed.

(b) So far as the GST is concerned, the complainants are entitled for the benefit of input tax credit on completion and delivery of the flat from the respondent. The complainants are entitled for the relief as above. Thus the point is answered accordingly.

In the result, the respondent is directed as follows:-

The respondent shall pay the complainants the compensation for delay in delivery of the apartment, compensation for the mental agony and inconvenience and costs 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.

Sd/-28.11.2019
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- B. Ravikumar
RW-1 --- Y. Mohanraj

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LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	17.05.2017	Allotment letter issued by the respondent
Ex.A2	20.05.2017	Demand Letter issued by the respondent
Ex.A3	12.07.2017	Construction Agreement
Ex.A4	01.11.2018	Respondent Letter
Ex.A5	17.11.2018	Final Order in complaint No.052/2018
Ex.A6	14.11.2018	Construction agreement
Ex.A7	02.05.2019	E-mail communication
Ex.A8	07.05.2019	E-mail communication
EX.A9	01.11.2018	Statement of Account

LIST OF DOCUMENTS FILED BY THE RESPONDENT

- Nil -

Sd/-28.11.2019
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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Administrative Officer