

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 189 of 2019

Rajesh

....COMPLAINANT

Vs.

M/s. Alliance Villa Private Limited.,

Rep. by its MD, Manoj Namburu

(TN/11/building/0192/2018 dated 08.06.2018)

....RESPONDENT

Complainant : Rep. by Mr. T. Raghavan, Advocate.

Respondent : Rep. by M/s. A.A.V Partners, Advocates.

Heard on : 09.03.2021

Delivered on : 30.03.2021

ORDER

The complaint by the above complainant seeking refund of amount paid to the respondent towards purchase of row villa with interest, compensation and cost is filed 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 complainant, in brief, as follows:

(a) On 25.01.2019, the complainant booked a row villa with the respondent in their project, namely, "Alliance Humming Gardens Phase II", at Thayyur, Kelambakkam post, OMR, Chennai District. The complainant paid a sum of Rs.4,18,000/- in total and on various dates. Agreement for UDS land and construction agreement were entered between the complainant and the respondent on 23.02.2019.

(b) At the time of execution of the agreements, the respondent asked the complainant to pay 12% as GST. But, the Central Government has reduced

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the GST from 12% to 5%. The respondent forced the complainant to pay the rate of 12% of GST and also gave wrong information of TNRERA.

(c) Due to lack of transparency, the complainant sought to cancel the booked villa. The respondent is liable for providing false information and threatening the complainant. Hence, the complainant is entitled for refund of the amount paid to the respondent with interest, compensation and cost.

3. Counter averments of the respondent, in brief, as follows:-

(a) The respondent has formulated a scheme to develop the aforesaid land into a residential group housing project of villas and row houses. The project was registered with TNRERA. The complainant with his wife approached the respondent for purchase of a row house in the project.

(b) The respondent allotted a row house bearing No.576 for a total sale consideration of Rs. 49,71,984/-. The complainant required to pay 10% of the total consideration as booking advance. However, on various dates, the complainant has paid only a sum of Rs.4,18,000/- as booking advance. The allotment was made subject to terms and condition of the agreement to sale and construction.

(c) The complainant requested time to pay the balance advance amount and to execute the agreement for availing housing loan from bank and also to add his mother's name as co-applicant in the place of his wife. On 23.02.2019, the complainant and the respondent entered into an agreement of sale of UDS land and also construction agreement. Since, 10% of the advance amount has not been paid by the complainant, the said agreements were not registered. The original agreement was handed over to SBI, Chennai for processing the loan of the complainant.

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(d) In the mean time, on 19.03.2019, the GST council recommended an option for all the ongoing projects to either continue with the old scheme of 12% GST with Input Tax Credit (ITC) or switch to new scheme of 5% without ITC. Since, the subject project was ongoing, the respondent had chosen to go with old scheme of 12% with ITC. Therefore, the respondent was charging from the customers 12% GST. To the sudden shock and surprise, on 18.07.2019, the complainant sent e-mail for cancellation of the booking and refund of the amount without any reason.

(e) The respondent sent reply stating that the amount advance by the complainant is forfeited as per the clause in the agreement. The complainant has failed to pay the due amount as per the terms and condition in the agreement and there was clear breach of agreement. The complainant is not entitled for any refund. 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 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 to get refund of the advance amount paid to the respondent on the ground of incorrect or false information on GST applicable and lack of transparency on the part of the respondent?

ii. What are the reliefs, the complainant is entitled to?

7. **Answer for Point Nos (i):**

(a) The learned counsel for the respondent filed written notes of argument and contended that the complainant was allotted row house in the project

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on receipt of Rs.4,18,000/- as booking advance and allotment was made subject to the terms and condition of the agreements which were entered on 23.02.2019 and the original agreements with payment schedule were handed over to bank for processing loan availed by the complainant and as per the recommendation of the GST council, the respondent was given an option to either continue with the old scheme of 12% GST with Input Tax Credit(ITC) or switch to new scheme of 5% without ITC and the respondent had chosen to go with old scheme of 12% with ITC and accordingly 12% GST was being charged from the customers and the complainant was informed of the same and was also invited to approach the respondent for more clarification if required, but all of a sudden the complainant informed that he wants to cancel the booking and requested the refund of the amount paid to the respondent without any reasons and the complainant is not entitled for refund and there was no deficiency of service by the respondent.

(b) The learned counsel for the complainant also filed written notes of argument and submitted that the complainant was forced to cancel the villa booked by him since the complainant was not given any clarity as to the applicability as GST rates and instead the complainant was asked to pay GST at 12% and subsequent to the recommendation of the GST Council after meeting on 19.03.2019, certain option were given to promoter with regard to the GST rates and when the complainant and his family members went to the respondent office, they were harassed by the representatives of the respondent by not responding properly and the complainant lost confidence with the respondent and therefore, the complainant is entitled for all the reliefs.


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(c) Admittedly, the respondent was given an option to either continue with 12% GST with ITC or switch over to new scheme of 5% without ITC and the respondent had chosen to go with old scheme of 12% with ITC and accordingly charged 12% of the cost of the villa as GST from the customers. It is not in dispute that the tax liability on GST was passed on to the customers by the respondent. Had the respondent chosen to prefer GST at 5% without ITC, the home buyer would suffer GST at 5% only. When the option is given to the respondent, such option should be exercised to the benefit of the home buyers who pay the GST. In case of exercising the option of payment of 12% GST with ITC, the respondent is entitled to tax concession or rebate in the form of ITC. On such occasion, the benefit under the ITC should go to the ultimate tax payer, i.e., the home buyer. The respondent should have made this clear to the complainant while giving information on collection of GST.

(d) In Ex.B16, the e-mail communication, the respondent confirmed and clarified that GST at 12% is applicable in the case of the complainant. The clause 2(a) of Ex.B8, the construction agreement gives details of cost of villa and other related payments and the cost of the villa is given as Rs.30,79,862/- and the GST is arrived at Rs.5,95,144/-, which is nearly 19% of the cost of the villa. Under the clause, the respondent was very particular to mention that in case of any change in the existing taxes and any other new taxes, the subsequent amount payable by the allottee to the promoter shall be increased/reduced based on such change/modification. The respondent not only charged higher amount under GST, but never revealed the complainant the benefit under the ITC available on GST or assured to pass

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the benefit to the complainant. Therefore, the contentions of the respondent on the GST rates are not at all sustainable.

(e) The learned counsel for the respondent further contended that as per clause 5(a) of the construction agreement, the complainant is entitled to deduct cancellation charges as per RERA norms and the amount paid by the complainant was forfeited as per the terms in the agreement. In Ex.B12, the e-mail communication, the respondent has not specified under which RERA norms or provisions of RERA Act, they are entitled to forfeit the entire amount paid as advance by the complainant. 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. As per the clause 5(a) of the construction agreement, the respondent is liable to refund the amount collected from the allottee subject to deduction of booking amount. Such a clause is vague, unfair and one-sided not binding on the complainant. The respondent has given incorrect and false information on GST to the complainant. Therefore, the respondent is not entitled to forfeit the entire amount to booking advance paid by the complainant.

(f) The very object of the RERA Act is to ensure sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers and also to ensure greater accountability towards consumers. Under Section 12 of the RERA Act, the respondent is under obligation to provide correct information to the consumers. The circumstances clearly prove that in the name of GST, the respondent made an attempt to collect a higher amount and also denied correct information and the benefit of ITC to the complainant. Therefore, considering the facts and circumstances of the

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case, it is held that the complainant is entitled for refund of entire amount with interest, compensation and cost. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

(a) In view of the answer for the point No (i), the complainant is entitled for refund of advance amount paid to the respondent with interest, compensation and cost from the respondent. The complainant has paid a sum of Rs.4,18,000/- to the respondent. Therefore, the complainant is entitled for refund of the said amount from the respondent.

(b) As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2%, i.e., 10.05% per annum for the amounts paid from the date of respective payments till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed as compensation towards mental agony and hardship caused to the complainant. Apart from the above, the complainant is also entitled for litigation expenses of Rs.25,000/-. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

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

**G. SARAVANAN
ADJUDICATING OFFICER**

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LIST OF WITNESSES

CW-1--- Rajesh

RW-1—N. Sivakumar (A.S)

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	23.02.2019	Construction agreement
Ex.A2	23.02.2019	Agreement for UDS land
Ex.A3	----	Statement of account
Ex.A4	----	E-mail communications
Ex.A5	-----	Interest calculation sheet
Ex.A6	29.08.2019	Statement of account by SBI
Ex.A7	18.10.2019	Allotment letter

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	03.05.2018	Planning permit
Ex.B2	09.05.2018	Building permit
Ex.B3	08.06.2018	Project registration certificate
Ex.B4	26.01.2019	Booking form
Ex.B5	26.01.2019	Allotment letter
Ex.B6	----	Schedule of payment
Ex.B7	-----	Statement of account
Ex.B8	23.02.2019	Construction agreement
Ex.B9	23.02.2019	Agreement for UDS land
Ex.B10	15.04.2019	Planning permit
Ex.B11	31.05.2019	Building permit
Ex.B12	-----	E-mail communications
Ex.B13	01.10.2019	Letter of cancellation
Ex.B14	04.10.2019	Project registration certificate
Ex.B15	07.05.2019	Letter from Government of India

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Ex.B16	-----	E-mail communications
Ex.B17	25.11.2019	Board resolution copy

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.


30.3.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY