

**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 Pvt. Ltd.

Rep. by its managing director Manoj Namburu ... **RESPONDENT**

Complainant : Represented by Mr. T. Ragavan,
Advocate

Respondent : Remained absent

Heard on : 09.11.2019

Delivered on : 22.11.2019

ORDER

The above complainant filed the complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked together with interest, compensation and costs 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" and paid booking advance amount and further amounts.

(b) On 23.02.2019, the complainant entered into agreements for land and also construction agreement with the respondent. The total sale consideration of the villa is Rs.55,67,130/-. The complainant paid a sum of Rs.4,18,000/-.

(c) At the time of agreement, the respondent informed the complainant that the GST payable is at 12%. However, subsequently, the Government has reduced the rate of GST from 12% to 5% and the complainant was

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forced to pay GST at 12% to the respondent on the ground of wrong information. Due to the same, the complainant has lost trust and faith on the respondent. Hence the complainant cancelled the booking. The respondent has not refunded amount paid by the complainant. Hence the complaint.

(d) In spite of service of notice, the respondent remained absent.

3. In evidence to prove his claim, the complainant filed the proof affidavit with documents.

4. On the basis of the contentions of the complainant, the following points arise for determination.

- i. Whether the complainant is entitled to get back the amount paid to the respondent with interest, compensation, legal charges on the ground of failure to provide information regarding liability to pay GST by the complainant on purchase of flat?
- ii. Whether the complainant is entitled for all the reliefs as prayed for?

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

(a) The learned counsel for complainant submitted that the respondent has been quarrelsome and unprofessional and forcing the complainant to pay GST against the Government notification and committed breach of the trust and the complainant was not inclined to continue the purchase of the villa and the respondent violated section 19(1) and (2) of the RERA Act and therefore the complainant is entitled for refund of the amount.

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(b) As per notification of the GST council, GST rates for the real estate sector to be 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.

(c) As per the evidence of the complainant, at the time of booking of the flat and when the agreement was entered, the prescribed GST applicable was 12% for the villa and later as on 01.04.2019 the Government has reduced the GST from 12% to 5%, but he was forced to pay GST at 12% and he questioned to the respondent and the respondent stated that it was compulsorily to pay 12% GST.

(d) Ex.A4 email communications between the complainant and respondent reveals that by email dated 15.5.2019, on clarification on GST, the respondent stated that GST at the rate of 12% is applicable for the villa booked by the complainant. Subsequently, by email dated 18.06.2019, the complainant has cancelled the villa and sought refund of amount paid by him. By subsequent emails, the complainant also reiterated his claim of refund as the respondent failed to clarify.

(e) As per section 19(1) of the RERA Act, the allottee has a right to all information regarding the villa intended to be purchased by him. Without considering the notification by the Government on the applicability of the GST rate for under construction of flats and apartments with effect from

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01.04.2019, the respondent has proceeded to collect the GST at the rate of 12% and also failed to provide the information to the complainant. Therefore the complainant is entitled for refund of amount paid to the respondent with interest and compensation and legal expenses. Thus, the point is answered accordingly.

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

a) In view of the answer for Point No.(i), the complainant is entitled for refund of the entire amount Rs. 4,18,000/- paid by him to the respondent with interest, compensation and costs.

(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 complainants are entitled for the interest at the rate of 8.15% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.15% per annum for the amounts paid from the date of respective payment till repayment by the respondent.

(c) The respondent claimed Rs.60,000/- towards compensation for mental agony. Considering the facts and circumstances of the case, a sum of Rs.25,000/- is fixed compensation towards mental agony. Towards litigation expenses a sum of Rs.15,000/- is fixed. The complainant is entitled for reliefs as detailed above. Thus, the point is answered accordingly.

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

- (1) The respondent shall pay the complainant the amount at the interest rate, compensation and cost as per the findings in the answer for Point No.(ii), Para 6 of this order within 30 days from the date of issue of this order.

- (2) The charge of the aforesaid amount shall be on the flat booked by the complainant till repayment.

G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 --- Rajesh

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	23.02.2019	Construction Agreement
Ex.A2	23.02.2019	Land Agreement of UDS
Ex.A3	--	Statement of accounts issued by Respondent
Ex.A4	--	Email Communication
Ex.A5	--	Interest Calculation Sheet
Ex.A6	29.08.2019	Statement of accounts issued by SBI

Sd/ - 22.11.2019

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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Administrative Officer