

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 264 of 2019**

Vinny Sawhney

..... Complainant

**Vs.**

1. M/s. Cenotaph Developers LLP,  
Rep. by Chandrakanth Metha,  
and its Partners.
2. M/s. Olympia Tech Park Chennai Pvt.Ltd.,  
(Formerly known as M/s.KSM Housing Pvt.Ltd.)  
Rep. by its Directors.  
**(Project not registered)**

..... Respondents

Complainant : Rep by M/s. Mothilal & Goda, Advocates.

Respondents : Rep by Mr. N.V.V.Krishna, Advocate.

**Heard on** : 23.07.2021  
**Delivered on** : 19.08.2021

**ORDER**

The complaint by the above complainant seeking return of the amount deducted from and out of the amount paid by the complainant to the respondents 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) In February 2016, the respondents approached the complainant for purchase of an apartment in their project, namely, "The Goodwood Residence" at Cenotaph Road, Chennai to be promoted by them under 'preferential allotment' scheme in which the price of the flat was freezed at Rs.19,000/- per sq.ft., all inclusive.

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(b) By their communication dated 04.04.2016, the respondents invited offer for the purchase and clearly mentioned that the offer is a 'non-binding expression of interest'. The respondents ensured that a binding contract between them would exist only on execution of necessary agreements. Hence, the complainant made payments to the respondents, expressing his interest to purchase a flat in the project and paid Rs.3,63,36,841/-

(c) In April 2017, the complainant called upon the respondents to convey his decision not to proceed with the purchase of the apartment and sought refund of the amounts paid by him. The respondents promised to return the amounts received by them. Subsequently, the respondents insisted a written communication to process the refund. After repeated requests, the respondents returned a sum of Rs.3,50,59,302/- towards refund from and out of the amount of Rs.3,63,36,841/- paid and a balance sum of Rs.12,77,539/- is due.. The respondents stated that the deduction of the sum of Rs.12,77,539/- was made towards service and other taxes. The deduction of the amount is illegal and unacceptable. The respondents are liable to return the amount together with interest, compensation and cost. Hence the complainant is entitled for all the reliefs.

**3. Counter averments of the 1<sup>st</sup> respondent, adopted by the 2<sup>nd</sup> respondent also, in brief, as follows:**

(a) Except admitted, all the allegations are denied. The complainant is put to strict proof of the same. The complaint is prima facie not maintainable for want of jurisdiction. The petition is filed under section 31 and 71 of the

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RERA Act, claiming compensation under section 18 of the Act which cannot be invoked by the complainant.

(b) It is admitted that the complainant, to buy a flat in the project of the respondents, paid at various dates, a total sum of Rs.3,63,36,841/-. While the construction was in progress, the complainant informed his decision to cancel the allotment due to his own reasons and inability to pay the balance amount and requested for refund of the amount.

(c) Out of the payments received from the complainant, the respondents paid statutory tax payments such as service tax, Swachh Bharat cess and Krishi Kalyan cess, in total, a sum of Rs.12,77,539/-, which was deducted and the balance amount was refunded to the complainant. Hence the complaint is devoid of merits and is liable to be dismissed with cost.

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

5. The complainant filed proof affidavit with documents. On the side of the respondents, only proof affidavit was filed and no documents marked.

6. On the basis of rival contentions of the parties, the following points arise for determination:-

i. Whether the complainant is entitled for return of Rs.12,77,539/- deducted by the respondents on the ground of payment of statutory taxes with interest, compensation and cost from the respondents?

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

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

(a) The learned counsel for the complainant submitted that the entire transaction between the complainant and the respondents had taken place when the respondents approached the complainant stating that they were

promoting a high end apartment complex and the offer is a 'non-binding expression of interest' and the agreements for sale and construction would be executed on receipt of 25% to 30% of the total value of the apartment cost and the complainant paid the amounts and subsequently withdrew from the project seeking refund of the amount and the respondents returned the amount after deduction of Rs.12,77,539/-, which is not acceptable and the complainant is entitled for all the reliefs.

(b) The learned counsel for the respondents contended that there is no dispute about the facts and the amount collected from the complainant was returned after deduction of statutory tax payments and the respondents questioned the very maintainability of the complaint filed under section 31 and 71 of the RERA Act claiming compensation under section 18 of RERA Act and the taxes are paid to the tax authorities and there was no delay or default on the part of the builder and therefore the complaint is liable to be dismissed with cost.

(c) The complaint is filed for claiming of compensation under section 31 read with section 71 of the RERA Act. Under section 31, any aggrieved person can file a complaint before the Adjudicating Officer for any violation or contravention of the provisions of the Act, the Rules and Regulations made there under against a promoter. As per section 71 of the Act, the Adjudicating Officer can adjudge compensation under sections 12,14,18 and section 19 of the Act. Therefore, the complaint claiming compensation under sections 31 read with section 71 is found maintainable.

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(d) It is not in dispute that the respondents collected Rs.3,63,36,841/- towards the sale consideration of the apartment measuring 2348 sq.ft at the rate of Rs.19,000/- per sq.ft. The respondents have collected around 80% of the sale consideration from the complainant without first entering into an agreement for sale or construction agreement, which is in clear violation of section 13 of the RERA Act. The amounts were collected from the complainants on allotment made on the basis of 'non-binding expression of interest'.

(e) In Ex.A1, the letter dated 04.04.2016, the 2<sup>nd</sup> respondent, stated that they would provide the complainant with a copy of the approved plan and legal documents and if the title documents are not in order, to refund the full money paid to them. On 04.04.2016 and 06.04.2016 itself, the respondents have received by cheques Rs.75,00,000/- and Rs.20,00,000/- respectively as payment towards 'Expression of interest' from the complainant. It is not the case of the respondents that prior to receipt of such amounts, they have served copies of documents to go for a binding contract between them and the complainant. Only on 29.12.2016, Ex.A3 letter, the respondents informed that they received all the statutory approvals and planning permit and also to hand over all the required documents.

(f) Receipt of part sale consideration under the guise of payment towards 'Expression of interest' with a promise to refund the amount is ill-conceived and deceptive to by-pass legal procedure under law. It is clear that the complainant proceeded with the transaction on clear understanding that the payments would be refunded in full, if he did not want to proceed with

purchase of the flat. It is obvious that the respondents violated section 12 of the Act regarding the obligations of the promoter by making incorrect and false statements.

(g) It is the specific case of the respondents that they had paid the statutory tax payments to the authorities, such as, service tax, Swachh Bharat cess and Krishi Kalyan cess to the tune of Rs.11,92,369/-, Rs.42,585/- and Rs.42,585/- respectively totaling to a sum of Rs.12,77,539/-. The respondents have not produced any documents to prove that the above tax payments on account of the transaction with the complainant were made to the authorities concerned. When all the payments towards the sale consideration was received by the respondents on the basis of 'non-binding expression of interest', the requirement for payment of service tax and other taxes is not substantiated by the respondents. The respondents have failed to prove that they have provided a taxable service to the complainant and they were registered with the service tax authorities for making such payment with respect to the project.

(h) Considering all the above circumstances, it is held that the complainant is entitled for the return of the amount deducted from and out of the total amount paid by the complainant with other reliefs.

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

(a) In view of the answer for point No.(i), the complainant is entitled for refund of the amount of Rs.12,77,539/- with interest.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled

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for the interest at the rate of 8.25% per annum which is currently the highest marginal cost of lending rate of interest of SBI at the time of filing of the complaint plus 2% per annum i.e., 10.25% p.a for the amount till repayment by the respondents.

(c) Apart from the above, considering the facts and circumstances of the case, it is held that the complainant is entitled for Rs.50,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses. 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:-**

- (1) The respondents, either jointly or severally, 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 from the date of issue of the order.
- (2) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order.

Sd/- 19.08.2021  
G. SARAVANAN  
ADJUDICATING OFFICER

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**LIST OF WITNESSES**

CW-1--- Vinny Sawhney

RW-1--- Sampath Kumar

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	04.04.2016	Letter by the 2 <sup>nd</sup> respondent
Ex.A2	04.04.2016	Payment receipts (series)
Ex.A3	29.12.2016	Booking letter by the 1 <sup>ST</sup> respondent
Ex.A4	13.08.2018	Cancellation request by the complainant
Ex.A5	28.08.2017	Letter from the 1 <sup>st</sup> respondent
Ex.A6	---	Ledger account by the 1 <sup>st</sup> respondent
Ex.A7	23.09.2019	Whats app communication
Ex.A8	10.04.2019	Project brochure

**LIST OF DOCUMENTS MARKED BY THE RESPONDENTS****NIL**

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N. [Signature]  
19/8/21  
Administrative Officer

Sd/- 19.08.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI