

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.266 of 2019**

1. D.Parthiban
2. P Dhivakaran
3. P.Lingeshwaran

.... COMPLAINANTS

Vs.

M/s. Casa Grande Shelters LLP
Rep by its Managing Partners, Arun MN and Anirudh Iyer

.... RESPONDENT

Complainants : Rep. by Mr. D.Aravinthkumar, Advocate

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

Heard on : 27.01.2022

Delivered on: 15.02.2022

ORDER

The complaint by the above complainants claiming compensation for the delay in handing over of the flat booked by them with the respondent 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 complainants, in brief, as follows:

(a) The complainants booked a flat with the respondent in their project namely "CASA GRANDE ASTA", in Pattaravakkam Village, Ambattur Taluk, Thiruvallur District and the respondent issued allotment letter dated 15.11.2017 and also entered into a construction agreement and also sale agreement dated 21.12.2017. Subsequently another revised construction agreement was entered on 09.07.2018 with the same clause and the handing over of possession was

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agreed to be August 2019. The sale consideration for the flat is Rs.39,33,040/-. The complainants paid Rs.36,98,028/-.

(b) Under the construction agreement, the respondent undertook to complete and handover the apartment by August 2019. Till date, the flat was not completed in construction and handed over. The complainants sought for modifications/alterations in the flat and also paid an additional sum of Rs.56,508/-. As per the terms of the construction agreement, the respondent is liable to pay compensation for every month of delay, till the handing over possession of the apartment to the complainants. The complainants are entitled for compensation for the delay and also other reliefs.

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

(a) Except admitted, all the averments are false and baseless. The complaint is an abuse of process of law and is liable to be dismissed. The delay in handing over of the apartment was due to the acute shortage and non-availability of sand and scarcity of water.

(b) In this regard, the Government also changed its policies and instructed all the realtors and public at large to use M-sand. Therefore the delay was only due to government policy and force majeure conditions. The respondent was not able to handover the flat only on account of genuine reasons. The delay was neither willful nor wanton.

(c) TNRERA has extended the time for completion of the project owing to the Covid-19 pandemic by 31.10.2020. The flat is now ready in all aspects for handing over, subject to the registration and final payment. The respondent has already given a discount in the cost of flat and agreed to adjust the amount payable by

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the complainants. Therefore, the complainants are not entitled for any relief and 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 proof affidavit. Only on the side of the complainant, documents were marked.
6. On the basis of rival contentions of the parties, the following points arise for determination:-
 - i. Whether the Complainants are entitled for compensation for the delay in construction and delivery of possession of the flat by the respondent on the ground of failure on the part of the respondent to complete construction and deliver the flat as per the terms of the agreement and other reliefs?
 - ii. What are the reliefs, the complainants are entitled to?

7. Answer for Point No.(i)

(a) The learned counsel for the complainants filed written notes of arguments submitting that the complainants booked the flat with the respondent in their project and the respondent issued allotment letter dated 15.11.2017 and the complainants promptly paid the sale consideration and on 21.12.2017, the respondent executed an agreement of sale and also the construction agreement and the revised construction agreement on 09.07.2018 and the respondent undertook to handover possession of the constructed flat by August 2019, including the grace period and the respondent has not come forward to register the agreement even after receiving 50% of the sale consideration and the complainants have paid 95% of the total sale consideration as agreed by them and the respondent has failed to handover the constructed flat till date and

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therefore the complainants are entitled for compensation as prayed by them from August 2019, till the handing over possession of the apartment.

(b) The learned counsel for the respondent contended that the complaint is an abuse of process of law and the delay in handing over the apartment was due to acute shortage and non-availability of sand and scarcity of water in the project area and around Chennai and due to the demand for the sand, the government even changed the policies and instructed all the promoters and public to use M-sand instead of river sand for construction activities and therefore, the delay was due to force majeure conditions and the delay was on account of genuine reasons and was neither willful nor wanton and the Authority also extended the time for completion of construction of the projects due to Covid-19 pandemic and the flat is now ready in all aspects for the handover, subject to the registration and final payment and the respondent has already given a discount on the cost of the apartment payable by the complainants and therefore the complainants are not entitled for any reliefs and the complaint is liable to be dismissed with cost.

(c) It is not in dispute that under Ex.A4, construction agreement dated 21.12.2017, as well as the revised construction agreement in Ex.A5, the respondent undertook to complete the construction and to handover possession of the apartment by August 2019. In the agreement itself, the timely delivery of possession of the apartment is emphasized as essence of the agreement. Even though, in the counter, the respondent claims that the flat is now ready in all aspects and ready to be handed over to the complainants, subject to registration and final payment, the respondent has not produced any documents on intimation of date for handing over of the flat and demand for final payment

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from the complainants and any discount on sale price. The respondent has stated, as per TNRERA, the completion of construction of the project is 31.10.2020. In the counter, the respondent stated that the flat is now ready in all aspects without any mention of the date on which the construction was completed by the respondent. The respondent cannot claim the scarcity of water and sand as unforeseeable circumstances and also one of the force majeure conditions.

(d) The compensation for the delay under section 18 is compensatory in nature and not penal. Section 18 gives no exception for the claim due to the delay in construction and handing over possession of the apartment to the home buyers. Therefore, the complainants are entitled for compensation from the promised date of handing over possession, till the actual handing over of the constructed flat to the complainants. Even though the respondent has stated that they have already given discount from the cost payable by the complainants for the subject flat and the same has also been adjusted, no proof or details of such discount is given by the respondent. Therefore, in case of any discount on cost payable by the complainants, by the respondent, it is adjustable towards the total compensation payable under the order. Considering all the above circumstances and facts, it is held that the complainants are entitled for compensation for the delay and other reliefs from the respondent. Thus the point is answered accordingly.

8. Answer for point No.(ii):

(a) In view of the answer for point No.(i), the complainants are entitled for compensation for the delay, mental agony, and also cost of the litigation from the respondent as follows:

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(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable by the promoter to the allottee shall be the highest marginal cost of lending rate of SBI plus 2% p.a. Therefore, the complainants are entitled for interest @ 8.20%, which was the highest marginal cost of lending rate of S.B.I. at the time of filing the complaint, plus 2% per annum i.e., 10.20% p.a. for the amount of Rs.36,98,028/- from August 2019, till delivery of possession of the constructed flat by the respondent..

(c) Apart from the above, the complainants are entitled for compensation of Rs.1,00,000/- towards mental agony and inconvenience caused to the complainants and Rs.25,000/- towards litigation expenses. The complainants are 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 complainants, compensation for delay, mental agony and 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.

Sd/- 15.02.2022
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1 ... D.Parthiban
RW-1 ... Y. Mohan Raj

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	15.11.2017	Allotment letter
Ex.A2 (series)	...	Payment receipts

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Ex.A3	...	Payment calculation sheet
Ex.A4	21.12.2017	Construction agreement
Ex.A5	09.07.2018	Revised construction agreement
Ex.A6	17.09.2020	E-mail sent by the respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 15.02.2022
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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LAW OFFICER
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