

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 308 of 2019**

Mohamed Yaseen

..... COMPLAINANT

Vs.

1. M/s. Cybercity Mangadu Project (P) Ltd.,
Rep.by its Director, Kottu Muralikrishna
2. M/s. Shriram Properties Ltd.,
Rep by its MD, Murali Malayappan
(TN/01/Buildidng/0056/2018 dated 19.02.2018)

..... RESPONDENTS

Complainant : Rep. by M/s. Genicon & Associates, Advocates.
1st Respondent : Rep. by Mr. S. Rajasekar, Advocate.
2nd Respondent : Rep. by Mr. P. Mathivanan, Advocate.

**Heard on : 13.07.2021
Delivered on : 27.07.2021**

ORDER

The above complaint by the complainant claiming interest on the amounts paid, refund of cancellation charges with interest, compensation and cost from the respondents is filed *u/s 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016* (hereinafter referred to as RERA Act).

2. Averments of the complainant, in brief, as follows:

(a) The complainant booked a flat in the project, namely, "Divine City" at Mangadu, developed and promoted by the first respondent and marketed by the second respondent. On 05.06.2018, the complainant visited the office of the second respondent and requested to furnish copies of all titled deeds, records and approvals for verification. The same was not provided to him. However, the official of the second respondent requested for payment as per the demand sent to the complainant. The complainant made payments on various dates believing that the respondents will adhere to the time schedule and expedite the construction work.

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(b) The complainant paid Rs.11,83,992/- which is more than 10% of the cost of the apartment even before signing the agreement for sale and construction. The respondent collected the amounts misrepresenting the stage wise construction of the project. Therefore, the complainant cancelled the booking of and sought refund of the amounts paid to the respondents. The respondents deducted Rs.3,74,504/- as cancellation charges without any valid reasons and returned only Rs.8,09,488/-The complainant is entitled for interest on the entire amount paid to the respondents, refund of the cancellation charges with interest, compensation and cost of litigation.

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

(a) Except admitted, all the averments are denied. The first respondent is the promoter and the second respondent is the marketing agent of the project. Both the respondents entered into a development management agreement. The project is duly registered under the RERA Act.

(b) The complainant booked the flat in the project of the respondents and subsequently opted to cancel the booking of the flat on his own motion citing financial inability to pursue the purchase. There was no communication received from the complainant for furnishing copies of documents. As per Section 19(4) of the RERA Act, the complainant is not entitled to a full refund and the respondents are entitled to keep the booking fee as cancellation charges. The complainant sought for cancellation of the booking and the respondents deducted the cancellation charges and refunded the amount. The complaint is liable to be dismissed as devoid of merits.

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 for interest on the entire amount paid, refund of the cancellation charges with interest, compensation for mental agony and cost of litigations?
- ii. What are the reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that the complainant booked flat in the project of the first respondent marketed by the second respondent and paid more than 10% of the cost of the apartment as advance payment on the demand of the respondents and the complainant entered into agreements of sale and construction with the respondents and the respondents have not incorporated the stage wise time schedule of completion of the project in the construction agreement and the respondents were uncertain about the completion of the project and therefore, the complainant cancelled the booking of the flat and sought refund of the amount paid to the respondents and the respondents deducted cancellation charges without valid reason and repaid only the part amount and the complainant is entitled for return of the cancellation charges with interest, and other reliefs.

(b) The learned counsel for the respondents contended that the complainant opted to cancel the flat booked by him on his own motion due to financial inability and the respondents provided all the information regarding the project and all the demands for payment were made in accordance with the schedule and the Act and though the respondents are entitled to keep the

booking fee as cancellation charges, they deducted cancellation charges and returned the balance amounts to the complainant and there was no illegality on the part of the respondents and they acted completely in consonance with the RERA Act and the complaint is liable to be dismissed as devoid of merits.

(c) It is not in dispute that the respondents deducted cancellation charges of Rs.3,74,504/- from the amount Rs.11,83,992/- paid by the complainant and repaid the balance amount.

(d) The complainant has given several reasons for cancellation of the booking made in the project of the respondents. The respondents also denied all the reasons for cancellation of the booking made by the complainant and justified deduction of cancellation charges by them. It is the specific contention of the respondents that in accordance with the Section 19(4) of the RERA Act, the complainant is not entitled to a full refund and the respondents are entitled to keep the booking fee as cancellation charges. Section 19(4) reads as follows:-

The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

On a reading of the above provision, it is obvious that the provision cannot be applied to the facts and circumstances in the present case. Therefore, the above contentions of the respondents are not sustainable.

(e) In cases, where a contract is unenforceable, invalid or void or partly performed, the principle of quantum merit is made applicable. Under the principle, a plaintiff is entitled to recover so much as is deserved; reasonable amount to be paid for services rendered or work done, when the price therefore is not fixed by contract. In the absence of any specific pleading as to amounts of damage suffered by respondents, the cancellation charges can be fixed reasonably. Depending upon the facts and circumstances of the case, it can be 5% to 10% of the amounts paid by the complainant to the respondents. Considering the facts and circumstances of the case, it is held that the respondents are entitled to cancellation charges in the manner discussed above. Thus, the point is answered accordingly.

8. Answer for Point No.(ii)

(a) In view of the answer for point No.(i), the respondents are entitled for deduction of cancellation charges as per findings in the point No.(i) and the complainant is entitled for the balance amount.

(b) The complainant paid Rs.11,83,992/- to the respondents. No agreement was entered between the complainant and the respondents in pursuance of the booking of the apartment. Hence, 5% of the amount paid by the complainant which is Rs.59,200/- is fixed as cancellation charges. The respondents are liable to return the balance amount to the complainant. Towards litigation expenses, a sum of Rs.10,000/- is fixed.

(c) so far as other reliefs are concerned, the claims of interest on the amounts paid, interest for the cancellation charges and compensation for mental agony are rejected in the facts and circumstances of the case. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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In the result, the respondents are directed as follows:-

The respondents shall either jointly or severally return the cancellation charges after making deduction as per the findings in answer for Point No.(ii) in Para No. 8 of this order and litigation expenses to the complainant within 30 days from the date of issue of this order.

**G. SARAVANAN
ADJUDICATING OFFICER**

List of witnessess

CW-1 --- Mohamed Yaseen

RW-1 --- R. Murugesan

List of documents filed by the complainant

| Ex.Nos | Date | Documents Name |
|---------------|-------------|--|
| Ex.A1 | 23.11.2017 | Screenshot of advertisement |
| Ex.A2 | 28.06.2018 | E-mail from 2 nd respondent |
| Ex.A3 | 11.10.2018 | The demand letter from the respondents |
| Ex.A4 | ---- | Bank statement of the complainant |
| Ex.A5 | ---- | Quarterly report of the project |
| Ex.A6 | 31.08.2019 | Letter from respondent |

List of documents filed by the respondents

| Ex.Nos | Date | Documents Name |
|---------------|-------------|----------------------------------|
| Ex.B1 | 12.02.2019 | E-mail from respondent |
| Ex.B2 | --- | Request letter to cancel booking |

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

sd: 27.07.2021
G. SARAVANAN,
ADJUDICATING OFFICER,
TNRERA, CHENNAI.