

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 309 AND 310 of 2019**

- | | |
|----------------------------|---------------------------|
| 1. Mohamed Thahir | ... (CCP No.309/2019) |
| 2. K.M. Mohammed Rasik Ali | ... (CCP No.310/2019) |
| | COMPLAINANTS |

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 |

- | | |
|-----------------------------|---|
| Complainants (in both CCPs) | : Rep. by M/s. Genicon & Associates, Advocates. |
| 1 st Respondent | : Rep. by Mr. S. Rajasekar, Advocate. |
| 2 nd Respondent | : Rep. by Mr. P. Mathivanan, Advocate. |

Heard on : 08.04.2021

Delivered on : 30.04.2021

ORDER

Both the above complaints by the respective complainants claiming interest on the amounts paid, refund of cancellation charges with interest, compensation and cost are filed *u/s 31 read with Section 71 of the Real Estate (Regulatory and Development) Act, 2016* (hereinafter referred to as RERA Act).

2. Since both the above complaints are relating to same project of the respondents and the same points arise for determination, both the above complaints are heard together and disposed of by a common order.

3. Averments of the complainants, in brief, as follows:

(a) The complainants booked flats in the project, namely, "Divine City" at Mangadu, developed and promoted by the first respondent and marketed by the second respondent.

(b) On 05.06.2018, the complainants visited the office of the second respondent and requested to furnish copies of all titled deeds, records and approvals for

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verification. The same was not provided to them. However, the official of the second respondent requested for payment as per the demand sent to the complainants. The complainants made payments on various dates believing that the respondents will adhere to the time schedule and expedite the construction work.

(c) The complainants paid 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 complainants cancelled the booking of the apartments and sought refund of the amounts paid to the respondents. The respondents deducted cancellation charges without any valid reasons and returned only a part amount. The details of the amounts paid and returned are given as follows:-


S.No	CCP Nos.	Amount Paid Rs.	Refunded amount Rs.	Cancellation charges
1.	309/2019	12,83,992/-	8,65,315/-	4,18,677/-
2..	310/2019	13,70,192.84/-	9,95,687/-	3,74,505/-

The complainants are entitled for interest on the entire amount paid to the respondents, refund of the cancellation charges with interest, compensation and cost of litigation.

4. **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.

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

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

6. Both the parties have filed their respective evidence on affidavit with documents.

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

- i. Whether the complainants are 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 complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that the complainants booked flats 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 complainants entered into an agreements of sale and construction with the respondents and the respondents have not incorporated the stage wise time schedule of

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completion of the project in the construction agreements and the respondents were uncertain about the completion of the project and therefore, the complainants cancelled the booking of the flats 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 complainants are entitled for return of the cancellation charges with interest, and other reliefs.

(b) The learned counsel for the respondents contended that the complainants opted to cancel the flats booked by them on their 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 complainants and there was no illegality on the part of the respondents and they acted completely in consonance with the RERA Act and the complaints are liable to be dismissed as devoid of merits.

(c) It is not in dispute that the respondents deducted cancellation charges from the amount paid by the complainants and repaid the balance amount in following manner:-

(i) In CCP.No.309/2019, the complainant paid Rs.12,83,992/- and on cancellation, the respondents deducted a sum of Rs.4,18,677/- as cancellation charges and paid the balance amount.

(ii) In CCP.No.310/2019, the complainant paid Rs.13,70,192.84/- and on cancellation, the respondents deducted a sum of Rs.3,74,505/- as cancellation charges and paid the balance amount.

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(d) The complainants have given several reasons for cancellation of the bookings made in the project of the respondents. It is not in-dispute that the complainants sent requests to the respondents for cancellation of the booking as they have new commitments. The respondents also denied all the reasons for cancellation of the bookings made by the complainants 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 complainants are 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 cases. 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 meruit 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

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to amounts of damage suffered or work done 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 complainants 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.

9. 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 complainants are entitled for the balance amount.

(b) CCP No.309/2019: The complainant paid Rs.12,83,992/- to the respondents. Agreement was entered between the complainant and the respondents in pursuance of the booking of the apartment. Hence, 10% of the amount paid by the complainant which is Rs.1,28,399/- 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) CCP No.310/2019: The complainant paid Rs.13,70,192.84/- to the respondents. Agreement was entered between the complainant and the respondents in pursuance of the booking of the apartment. Hence, 10% of the amount paid by the complainant which is Rs.1,37,019/- 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.

(d) 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 7.30% per annum which is currently the

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highest marginal cost of lending rate of interest of SBI plus 2%, i.e., 9.30% per annum for the amounts payable under the order from the date of the order till the payment by the respondents.

(d) So far as record other reliefs are concerned, the claims of interest on the amounts paid from the date of payment and compensation for mental agony are rejected in the facts and circumstances of the case. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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 order and litigation expenses to the complainants within 30 days from the date of issue of this order.

**G. SARAVANAN
ADJUDICATING OFFICER**

C.C.P.No.309/2019

List of witnesses

CW-1 --- Mohamed Thahir

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 communication
Ex.A3	Sept, 2018	Agreement for sale
Ex.A4	Sept, 2018	Construction agreement
Ex.A5	11.10.2018	Demand letter
Ex.A6	----	Bank statement of the complainant
Ex.A7	----	Project quarterly report
Ex.A8	31.08.2019	Letter regarding cancellation

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List of documents filed by the respondents

Ex.Nos	Date	Documents Name
Ex.B1	12/24.02.2019	E-mail from respondent for registration
Ex.B2	---	Request letter to cancel the booking

C.C.P.No.310/2019

List of witnesses

CW-1 --- Mohammed Rasik Ali

RW-1 --- R. Murugesan

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


Secretary (Finance & Admn.)
TNRERA, Chennai - 8.