

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 78 of 2019**

P. Govindaraj AND Deeparaj COMPLAINANTS

Vs.

M/s. CASA GRANDE Engineering Pvt Ltd
Rep. by its Director Sethupathy
(Regn. No.TN/01/Building/0028/2017)

.... RESPONDENT

Complainants : Represented by M/s. S. Muthuvenkataraman
Advocate

Respondent : Represented by Mr. T. Gowthaman, Advocate

Heard on : 16.07.2019

Delivered on: 31.07.2019


ORDER

The complainants filed the complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together with interest and compensation 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 "CG BELLISSIMO" in Pazhavandhangal Village, Alanthur Taluk, Kancheepuram District on payment of booking advance of Rs.3,00,000/- on 17.08.2016. The total cost of the flat was Rs.98,47,096/-. Subsequently, on demand by the respondent, complainants paid Rs.6,60,000/- on 10.04.2017, Rs.38,15,550/- on 12.06.2017 and 13.06.2017 and also a sum of Rs.46,918/- towards TDS on 10.06.2017, thus in total a sum of Rs.48,22,468/- to the respondent. The respondent also issued allotment

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letter dated 14.04.2017, of a flat with built up area of 1277 sq.ft and UDS land of 622 sq.ft. The respondent undertook to launch the project within 8 months from the date of booking. The launch of the project was not made within the stipulated time.


b) The complainants had not entered into any sale or construction agreement with the respondent. In contravention of Section 13 (i) of the RERA Act, the respondent collected a sum more than 10% of the cost of the apartment as advance payment. Subsequently, the respondent informed that the size of the flat was reduced from 1277 sq.ft to 1229 sq.ft on account of the realignment of structures. No previous consent of the complainants was obtained for reduction of the built up area. The respondent also demanded revised cost without proportionate reduction on par with the reduced area.

c) The respondent also made the complainants to believe that they need not pay GST through their advertisement for the project. But, the respondent demanded GST on the ground that they were not getting the benefit of input tax credit from their vendors. The respondent violated the provisions of RERA Act and CGST Act. The complainants issued legal notice to the respondent for refund of the amount with interest. But the respondent failed to refund the amount with interest. The complainants are entitled for refund of the amount with interest, compensation and cost. Hence, the complaint.

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

a) All the averments except admitted are denied as false. The complaint is liable to be rejected. It is admitted that the complainants booked the flat in the project of the respondent for a total consideration of Rs.98,47,096/-.

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There was minor alteration in terms of the plinth and carpet areas of the apartment and the same had not been finalized by confirmation of the complainants. The complainants were not coming forward to sign the agreement for certain issues. There was lack of consensus. There was no possibility of signing agreement. There was no violation of RERA by the respondent.

b) The respondent informed the complainants that they had not received GST input tax credit from its vendors and they could not pass on the same to complainants. The advertisement of the respondent was only an invitation to offer. The terms and conditions by way of agreement between the parties had not been signed by the complainants and the respondent. The complainants were making few conditions for moving forward and the same were not acceptable to the respondent.

c) The respondent was willing and open to negotiation whereby they could arrive at a mutually agreeable solution to move forward. Without entering into any agreement, the complainants cannot be heard to contend that the respondent violated the provisions of RERA and GST Act. The respondent willing to accept the offer of cancellation of booking of the flat by the complainants and refund of the amount paid subject to terms of deduction of the respondent. The complainants are not entitled for any reliefs. Hence, the respondent prays for dismissal of the complaint with cost.

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

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

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


- i. Whether the Complainants are entitled for refund of the amounts paid to the respondent for purchase of the flat with interest, compensation and cost on the ground of violations of RERA Act and CGST Act?
- ii. Whether the complainants are entitled for all the reliefs as prayed for?

7. **Answer for Point Nos.(i)**

a) The learned counsel for the complainants submitted that on the basis of the advertisement of the project by the respondent, the complainants booked a residential flat in the project for a total consideration of Rs.98,47,096/- and the respondent issued allotment letter and the complainants also made payment of booking advance and further amounts as demanded the respondent, i.e., Rs.48,22,468/-, which is more than 10% of the price even prior to the execution of agreement and the launch of the project was not made within the stipulated time and subsequently the respondent proposed to reduce the size of the flat without making proportionate reduction of the price and also refused to pass on benefits of GST and the respondent violated the provisions of RERA and GST Act.

b) However, the learned counsel for the respondent contended that there was minor alteration in terms of the built up area of the apartment and there was lack of consensus between the complainants and the respondent with respect to the reduced area of flat and the proportionate cost and the respondent could not pass on GST benefits

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and the advertisement of the respondent was only on invitation to offer and it was made clear that there were accompanying terms and conditions for entering into construction agreement to be signed by both parties and without any agreement, the complainants cannot be heard to contend that the respondent violated the provisions of law.

c) It is not in dispute that the complainants were asked to pay booking advance and further payment on demand and the respondent has received in total Rs.48,22,468/- before entering into any agreement with the complainants. Section 13 (i) of the RERA Act stipulates *that a promoter shall not accept a sum more than 10% of the cost of the apartment as an advance payment from the home buyers without first entering into a written agreement for sale.* Therefore, it is a clear violation of the said provision of the RERA Act by the respondent.

d) Regarding the built up area of the flat is concerned, admittedly, there was alteration and reduction in the built up area subsequent to allotment from 1277 sq.ft to 1229 sq.ft. According to the complainants, the respondent had not made proportionate reduction of cost from the total cost of the apartment. In their complaint and proof affidavit, the complainants stated that they arrived at an amount of Rs.5,23,600/- towards reduction of cost instead of Rs.3,26,000/- arrived by the respondent and they asked the respondent to reduce the amount of cost as arrived by them for which the respondent has not made any reply. It was not disputed on the side of the respondent in their counter.

e) Regarding GST, it is a specific evidence of the complainants that the respondent made advertisement for the project as they need not pay GST for their dream home, but in contradiction they claimed GST from

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them. The respondent admittedly claimed GST @ 12% in their demand letter and contended in their counter that they have not received any credit from the vendors and they could not pass on the same to the complainants. The respondent made the evasive reply as to how input tax credit is not available from their vendors for the construction materials, which suffer incidence of tax. The respondent is liable for making incorrect and false statement on GST in their advertisement of the project under section 12 of the RERA Act.


f) It is pointed out by the learned counsel for the complainants that in Ex.A1, flat booking letter dated 17.08.2016, the respondent specifically assured that they will launch the project within 8 months from the date of booking and also promised to refund the advance amount with 15% interest in case of failure to launch in the said time limit. In their proof affidavit, the complainants specifically stated that within 8 months from the date of booking the project was not launched. It is not disputed in the counter and proof affidavit of the respondent that the project was not launched as promised by them.

In the above circumstances, it is held that the Respondent is liable to return the amounts paid by the complainants to them with interest and compensation on the ground of violation of the provisions of RERA Act. Thus, the point is answered accordingly.

8. **Answer for Point Nos.(ii)**

a) In view of the answer for Point No.(i), the complainants are entitled for refund of the entire amount of Rs.48,22,468/- from the respondent with interest and compensation. As per Rule 18 of the TNRERA Rules, the rate of payable by the promoter to the allottee shall be the highest

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marginal cost of lending rate of SBI plus 2%. Therefore the complainants are entitled for interest @ 8.60%, which is currently the highest marginal cost of lending rate of SBI plus 2% per annum i.e, 10.60% p.a from the date of respective payment till repayment by the respondent.

b) So far as the compensation towards mental agony claimed by the complainants is concerned, the amounts received from the complainants were used by the respondent in their project. The exact amount of disproportionate gain or unfair advantage is not quantifiable. However, considering the facts and circumstances of the case, 9% on the amount of Rs.48,22,468/- is fixed as compensation towards mental agony and inconvenience caused to the complainants. Towards litigation expenses a sum of Rs.25,000/- is fixed. 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:-

- (1) The respondent 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 of issue of this order.
- (2) The charge of the aforesaid amount shall be on the flats booked by the complainant till the repayment.

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


ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY
31/7/2019