

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP Nos. 114 of 2020**

1. Ajmal Khan  
2. Finozia Farveen ..... COMPLAINANTS

**Vs.**

M/s. Casa Grande Engineering Pvt Ltd  
Rep. by its Managing Director  
(Regn. No.TN/01/Building/0028/2017) ..... RESPONDENT

Complainants : Rep. by Mr.R.Prabhakaran, Advocate

Respondent : Remained absent

Heard on : 10.08.2021

Delivered on: 31.08.2021

**ORDER**

The complainants filed the complaint claiming compensation for the delay in handing over possession of the flat with interest and other reliefs 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) On 12.04.2017, the complainants booked an apartment with the respondent in their project namely "CG BELLISSIMO" at Pazhavanthangal Village, Alandur Taluk, Kancheepuram District. On 14.04.2017, the respondent allotted flat and issued allotment letter. The pre-launch price of the apartment was Rs.121.81 lakhs and the total cost was Rs.130.81 lakhs including car park and other charges.

(b) On 26.10.2017, the complainants and the respondent entered into a sale agreement for UDS and also a construction agreement. The respondent undertook to complete the construction and to handover the possession of the apartment by November 2019. The complainants paid in

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total a sum of Rs.1,29,58,840/- to the respondent. The complainants also availed bank loan to pay the sale consideration.

(c) On 25.05.2018, the respondent informed the complainants that they are unable to provide two covered car parks and will provide one covered car park and one open car park with a discount of Rs.25,000/-. The respondent collected Rs.4,50,000/- for two covered car parks and is liable to return Rs.90,000/-. However, the respondent informed that they will return only Rs.25,000/- . The respondent failed to complete the construction within the time limit stipulated under the agreements. The complainants were put to hardship and are living in a rental house on payment of monthly rent of Rs.23,000/-. The complainants are also paying monthly interest for the loan availed by them.

(d) The respondent collected GST at the rate of 12%. An ongoing project attracts only 5% of GST. The respondent is liable to repay the excess 7% of GST to the complainants. Hence the complainants are entitled for all the reliefs.

3. In spite of service of notice, the respondent remained absent.

4. On the side of the complainants, the complainants filed proof affidavit and marked Ex.A1 to Ex.A9 documents.

5. On the basis of the averments of the complainants, the following points arise for consideration:-

- i. Whether the Complainants are entitled for compensation for the delay in construction and delivery of possession of the flat with interest paid on the loan amount, compensation for mental agony, refund of Rs.2,25,000/-paid towards extra car parking charge and GST charged extra and cost of litigation?

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ii. What are the reliefs, the complainants are entitled to?

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

a) The learned counsel for the complainants submitted that on 26.10.2017, the complainants and the respondent entered into a sale agreement and also a construction agreement towards purchase of apartment and the respondent undertook to complete the construction and handover delivery of possession of the flat by November 2019 and the complainants paid Rs.1,29,58,840/- to the respondent, which is more than the amount of pre-launch sale price of the apartment, but the flat is yet to be handed over and the respondent informed to provide only one covered car park and one open car park instead of two covered car parks committed by them and would return only a sum of Rs.25,000/- instead of Rs.90,000/- and the respondent also collected GST at the rate of 12% instead of 5% applicable for ongoing projects and therefore the complainants are entitled for all the reliefs.

(b) Under Ex.A4, construction agreement dated 26.10.2017, the respondent undertook to complete construction of the apartment and to handover possession of the apartment by November 2019. As per the evidence of the 1<sup>st</sup> complainant and Ex.A5, series of payment receipts, the complainants paid a total sum of Rs.1,29,58,840/- to the respondent and the flat is not handed over till date.

(c) By e-mail dated 25.05.2018, the respondent informed the complainants that they committed two tandem covered car parks at the time of booking and they are unable to provide the two covered car parks due to restrictions and they will provide one covered car park and one open car park for the unit of the complainants and also to provide a

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discount Rs.25,000/- for one open car park. By e-mail dated 11.06.2018, the first complainant pointed out that the respondent collected Rs.4,50,000/- towards two car parks, at the rate of Rs.2,25,000/- for one covered car park and requested to consider return of Rs.90,000/- in view of the open car park provided subsequently.

(d) So far as GST is concerned, the first complainant sought for reduction in GST rate in view of the reduced GST from 12% to 5% for existing ongoing stage projects. The respondent by e-mail dated 03.05.2019 informed the complainants that the GST got reduced only for the projects which is getting launched post 1<sup>st</sup> April 2019 and not for the almost completed project. It is not in dispute that as per notification of the GST council, GST rates for the real estate sector to be effective from 01.04.2019 is 1% (without ITC) for affordable housing properties and 5% (without ITC) for residential properties outside affordable segment.

(e) Considering all the above circumstances, it is held that the complainants are entitled for compensation for the delay, refund of amount towards car park and refund of GST collected excess and also the compensation for mental agony and cost. In view of award the compensation for the delay, the complainants are not entitled for interest on the loan availed by them. Thus the point is answered accordingly.

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

a) As per the proviso of section 18 of the RERA Act, the complainants are entitled for compensation by way of interest for every month of delay, till the handing over possession at such rate as may be prescribed. As per Ex.A2, allotment letter, the total cost of the flat is Rs.1,26,72,000/-

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Admittedly the flat was offered to the complainants under pre-launch price of Rs.1,21,81,000/-. As per Ex.A4, construction agreement, the due date for delivery of the constructed flat was November 2019. Therefore, the complainants are entitled for compensation by way of interest for every month from December 2019, till the date of handing over of possession of the constructed flat.

(b) As per Rule 18 of the TNRERA Rules, the rate payable by the promoter to the allottee shall be the highest marginal cost of lending rate of SBI plus 2% . 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.1,21,81,000/- from December 2019 till delivery of possession of the constructed flat by the respondent.

(c) So far as the car parking charges are concerned, the complainants claim refund of Rs.2,25,000/- which is the cost of one covered car park. Admittedly, the complainants are provided with two car parks, i.e., one covered car park and one open car park. The complainants themselves claimed return of Rs.90,000/- only as the other car park is only a open car park. Therefore, the complainants are entitled for only refund of Rs.90,000/- towards provision of open car park instead of covered car park.

(d) With regard to GST charged by the respondent, it is made clear that since the project is an ongoing project as on 01.04.2019, the rate of GST is applicable only as per the notification of the GST Council.

(e) Apart from the above, the complainants are entitled for compensation of Rs.1,00,000/- towards mental agony and inconvenience caused to the

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