

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

Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer

CCP No. 138 of 2020

Vinishya

.... COMPLAINANT

Vs.

1. M/s.Grace Gated Community LLP
Rep. by its Managing Partner

2. M/s.Casa Grand Civil Engineering Pvt. Ltd.
Rep. by its Managing Director

.... RESPONDENTS

(TN/01/Building/0079/2018)

Complainant : Rep. by Mr. S.M.Muralidharan, Advocate.

Respondents : Rep. by Mr.S.R.Sudhan Raj, Advocate.

Heard on : 13.08.2021

Delivered on : 02.09.2021

ORDER

The complaint by the above complainant seeking refund of amount paid to the respondents towards purchase of an apartment with interest, compensation and costs 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 complainant, in brief, as follows:

(a) The complainant booked an apartment in the project of the 1st respondent namely "CASAGRAN SMART TOWN" at Thazambur Village, Thiruporur Taluk, Kancheepuram District in the lands owned by the 2nd respondent. On 09.05.2018 the complainant entered into an agreement of sale with the 2nd respondent as Power of Attorney of the 1st respondent for the UDS land. On 15.11.2019, the

TRUE COPY

109
02/09/2021

complainant also entered into a construction agreement with the 1st respondent for construction of a residential flat. The 1st respondent undertook to complete construction and handover possession of the flat on 19.12.2019. The complainant has paid Rs.25,03,832/- in total to the respondents.

(b) Till date, the construction of the flat is not complete. The respondents have also not executed the sale deed for the UDS land. Whenever the complainant enquired about the delay, the 1st respondent was giving lame excuses. The complainant has been put to hardship and inconvenience. The complainant decided to withdraw from the project and issued a legal notice dated 03.08.2020. The 1st respondent issued a reply legal notice dated 25.08.2020 with false allegations. On 14.09.2020, the complainant issued a rejoinder notice denying the allegations. The complainant is entitled for refund of the amount with interest and other reliefs.

3. Counter Averments of the 2nd respondent, adopted by the 1st respondent also, in brief, as follows:-

(a) The averments and allegations by the complainant are false and baseless. The complainant is put to strict proof of the same. After verifying all the documents, the complainant entered into an agreement of sale on 09.05.2019 for purchase of UDS land and a construction agreement on 15.11.2019 with the respondents. The Government of Tamil Nadu withheld the registration of documents relating to lands in the entire Thazambur Village and nearby villages. The same was also conveyed to the complainant. Therefore, the respondents cannot be held liable for the decision and policy of the government. The payments made by the complainant was given due credit.

TRUE COPY

10/9
02/09/2027

3 20/10/27

(b) The complainant is liable to pay the respondents the relevant installments and other sums on the due dates. Balance payment is due from the complainant. Due to shortage and crisis in supply of sand and scarcity of water, there was delay. The respondents cannot be held responsible. The complainant filed the complaint with mala fide intentions, with false allegations and unclean hands. Hence, the complaint is liable to be dismissed with cost.

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

5. Both the parties have filed their respective evidence on affidavits. On the side of the complainant, documents were marked. No documents were marked on the side of the respondents.

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

- i. Whether the complainant is entitled to get back the amounts paid to the respondents with interest, compensation and cost on the ground of failure on the part of the respondents to give possession of the apartment booked by her in accordance with the date and terms of agreements for sale and construction?
- ii. Whether the complainant is entitled for all the reliefs as prayed for?

7. Answer for Point No: (i)

(a) The learned counsel for the complainant submitted that the complainant booked an apartment with the respondents in their project and entered into an agreement of sale for the UDS land and also a construction agreement for purchase of a residential flat and the respondents undertook to complete construction and deliver the apartment by 19.12.2019 and the complainant paid the amounts in accordance with the schedule of payment and the respondents failed to complete

TRUE COPY

log
02/09/2021

the construction of the flat till date and also to execute the sale deed for the UDS land and are giving lame excuses for the inordinate delay in handing over possession of the constructed flat and the complainant has withdrawn from the project and is entitled for all the reliefs.

(b) the learned counsel for the respondents contented that the complainant entered into an agreement of sale for the UDS land with the respondents on scrutiny of title documents and satisfaction over the title of the respondents and also entered into an agreement for construction and there was delay in payment by the complainant and due to pandemic situation, there was delay in construction activities and the Government of Tamil Nadu has withheld the registration of documents relating to lands in the entire Thazambur Village and nearby villages and therefore the respondents could not execute the sale deed for the UDS land and however, the respondents registered the construction agreement with the complainant and the complainant approached this Forum with false allegations and the complaint is liable to be dismissed with exemplary cost.

(c) Section 18 of RERA Act gives right to flat purchasers to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the flat on the date specified in the agreement. As per the construction agreement entered with the complainant, the respondents undertook to complete the construction of the apartment by 19.12.2019. Till the date of filing of the complaint, the respondents have not completed the construction and handover the flat to the complainant and not even able to execute the sale deed for UDS land for want of clearance from the Government of Tamil Nadu on issue of puramboke lands. It is also not the case of

TRUE COPY

10/9
02/09/2021

02/09/2021

the respondents that till the date of hearing of the case, the respondents were able to complete construction and also clear the title issue on the land.

(d) In the above circumstances, it is held that under section 18 of the RERA Act, the complainant is entitled for refund of the amounts paid by her and other reliefs. Thus, the point is answered accordingly.

8. Answer for point No.(ii)

(a) The learned counsel for the complainant submitted that the complainant paid Rs.6,46,200/- towards sale consideration for the UDS land and Rs.19,77,236/- towards cost of construction to the respondents and claimed to have paid in total a sum of Rs.25,03,832/-. However, the learned counsel for the respondents pointed out that the complainant stated to have paid Rs.25,03,832/- in the complaint and in the legal notice dated 03.08.2020, the claim is mentioned as Rs.26,03,832/- and the complainant is making contradictory statement.

(b) In the complaint and the proof affidavit, the complainant has claimed to have paid in total a sum of Rs.25,03,832/- only to the respondents. Considering the above circumstances, it is held that the complainant actually paid a sum of Rs.25,03,832/- towards sale consideration of the flat to the respondents. Therefore, the complainant is entitled for refund of Rs.25,03,832/- with interest, compensation and cost.

(c) As per Rule 18 of TNRERA Rules, the rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainant is entitled for the interest at the rate of 7.30% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 9.30% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondents.

TRUE COPY

by
02/09/2021

(d) Apart from the above, the complainant claimed to have incurred Rs.42,225/- towards registration of construction agreement. There is no dispute on the claim. Therefore, the complainant is entitled for the said amount from the respondents.

(e) Apart from the above, the complainant is entitled for Rs.1,00,000/-towards compensation for mental agony, hardship and inconvenience and a sum of Rs.25,000/- towards litigation expenses.

(f) The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (1) The respondents, either jointly or severally, 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 from the date of issue of this order.
- (2) The charge of the aforesaid amount shall be on the flat booked by the complainant till their repayment.
- (3) The complainant shall execute the cancellation of agreement and sale agreement of the UDS land, as the case may be, on satisfaction of her claims at the cost of the respondents.

**Sd/- 02.09.2021
G. SARAVANAN
ADJUDICATING OFFICER**

TRUE COPY

1/18
02/09/2021

LIST OF WITNESSES

CW- --- Vinishya
 RW-1 }
 RW-2 } --- Y Mohan Raj

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	09.05.2018	Agreement for sale
Ex.A2	15.11.2019	Construction Agreement
Ex.A3	06.06.2018	Payment receipts (series)
Ex.A4	03.08.2020	Letter correspondence

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

Sd/- 02.09.2021
 G. SARAVANAN
 ADJUDICATING OFFICER
 TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY


 2.9.2021
 LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY