

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer
CCP No. 148 of 2020**

E.L.Leela

.... Complainant

Vs.

1. M/s. Casa Grande Grace Pvt. Ltd,
Rep. by its authorised signatory, G. Sethupathy
2. M/s.Casa Grande Enterprises LLP,
Rep. by its Power Agent
3. Mrs.R. Seema,
Rep. by her Power Agent
(TN/01/Building/0040/2018)

.... Respondents

Complainant : Rep. by Mr. N. Nanda Kumar, Advocate.
Respondents : Rep. by Mr. S.R. Sudhan Raj, Advocate.

Heard on : 11.11.2021
Delivered on : 03.12.2021

ORDER

The above complaint by the 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 first respondent namely "Casagrاند Supremus" at Thalambur Village, Thiruporur Taluk, Kancheepuram District in the lands owned by the all the respondents. On 15.11.2018 the complainant entered into an agreement of sale and construction with all the respondents through power agent, the first respondent for

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construction of a residential flat. The total cost of the flat is Rs.46,63,000/- The complainant has paid Rs.44,39,176/- 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 respondents were 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 07.09.2020. The complainant is entitled for refund of the amount with interest and other reliefs.

3. Counter Averments of all the respondents, 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, on 15.11.2018, the complainant entered into an agreement of sale and a construction agreement with the respondents.

(b) Clause-4 of the construction agreement provides for extension of time in delivery of possession of the apartment due to any force majeure conditions. Even though the respondents were facing scarcity of water and non-availability of materials like sand and changes in Government policies during pandemic lock down, migration and non-availability of workers, the respondents are taking all the steps to complete construction of the project. Whatever payment made by the complainant was given due credit and statutory charges to the authorities concerned. The respondents never violated any provisions of RERA Act and Rules. The complaint is not maintainable and the complainant is not entitled for any reliefs.

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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. 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 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 October 2019 and the complainant paid the amounts in accordance with the schedule of payment and the respondents failed to complete the construction of the flat till date and are giving lame excuses for the inordinate delay and the complainant has withdrawn from the project and is entitled for all the reliefs. The learned counsel also relied on various decisions in support of his contentions.
- (b) The learned counsel for the respondents contended that the complainant entered into an agreement for construction and the respondents has not violated

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any provisions of the RERA Act and Rules and as per clause-4 of the construction agreement, in case of delay due to any force majeure conditions, the promoter is entitled for extension of time for delivery of possession of the apartment and the respondents have taken all the steps to handover the constructed flat in the project, even though the respondents are facing scarcity of water and non-availability of materials like sand and changes in Government policies during pandemic lock down, migration and non-availability of workers and the complainant approached this Forum with false allegations and the complaint is liable to be dismissed with 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 October 2019. The reasons stated by the respondents for the delay on the grounds of force majeure conditions are not acceptable. The problems such as facing scarcity of water and non-availability of materials like sand and changes in Government policies during pandemic lock down, migration and non-availability of workers are general in nature. Such reasons are vague. The agreement for construction was entered on 15.11.2018 with a promise to complete the construction of the apartment by October 2019. But, till filing of the complaint, the respondents were not able to complete the construction. Therefore, the complainant is entitled to invoke Section 18 of the Act.

(d) It is also relevant to mention that in a recent decision in *M/s. Newtech Promoters and Developers Pvt.Ltd. vs State of UP & Ors, etc. reported in 2021 SCC*

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Online 1044, the Hon'ble Supreme Court was pleased to observe that when it comes to refund of the amount and interest on the refund of amount, or directing payment of interest for delayed delivery of possession or penalty and the interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. It is also very much relevant to note that for the same decision, the Hon'ble Supreme Court has held that ***"the provisions of which a detailed reference has been made, if we go with the literal rule of interpretation that when the words of the statute are clear, plain and unambiguous, the Courts are bound to give effect to that meaning regardless of its consequence"***.

(e) The Hon'ble Supreme Court in ***Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65 (75): AIR 2004 SC 2141*** made it clear that". Compensation, according to dictionary, it means, ***"compensating or being compensated; thing given as recompense;"***. ***In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss"***. In ***IRC vs. Glasgow South Western Railway Co., (1887) 12 App Cas 315 (HL)***, the British Court held that ***"compensation or purchase meaning are the same thing under different names"***. Compensation includes refund of the amount paid by the complainant which is an actual loss. It is obvious that compensation includes refund of money with interest also. Considering all the above, it is clear that this Forum can order or award refund of the amount with interest by way of compensation.

(f) 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.

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8. Answer for point No.(ii)

(a) It is not in dispute that the complainant paid a sum of Rs.44,39,176/- in total towards the purchase of flat to the respondents. Therefore, the complainant is entitled for refund of the said amount with interest.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 7.30% per annum which is currently the highest marginal cost of lending rate of interest of SBI at the time of filing of the complaint plus 2% per annum i.e., 9.30% p.a for the entire amount paid from the date of respective payments till repayment by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case that the complainant started making payments to the respondent towards purchase of the flat from 01.11.2018 and is also paying EMI with interest to the SBI on availing loan for the purchase and the respondent invested all the amounts received from the complainant in the project which has appreciated value even after a lapse of time and the amount of such gain and benefits of the unfair advantage is not quantifiable, the complainant is entitled for Rs.2,00,000/-towards compensation for mental agony, hardship and inconvenience and a sum of Rs.25,000/- towards litigation expenses. 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:-

- (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 as encumbrance shall be on the flats booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
- (3) The complainant shall execute the cancellation of construction 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/- 03.12.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW- --- E.L.Leela
 RW-1 }
 RW-2 } --- Y Mohan Raj
 RW-3 }

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

| Ex.Nos | Date | Documents Name |
|--------|------------|------------------------|
| Ex.A1 | 01.11.2018 | Allotment letter |
| Ex.A2 | 15.11.2018 | Agreement for sale |
| Ex.A3 | 15.11.2018 | Construction agreement |
| Ex.A4 | ... | Tax invoices |

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|-------|------------|----------------------------------|
| Ex.A5 | ... | Payment receipts |
| Ex.A6 | 22.11.2018 | Loan sanction letter |
| Ex.A7 | ... | E-mail communications |
| Ex.A8 | 07.09.2020 | Legal notice |
| Ex.A9 | ... | Tracking receipt of legal notice |

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

Sd/- 03.12.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY
3.12.2021