

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 154 of 2020**

1. Nivrutha
2. Arun Raghuvveeran

.... COMPLAINANTS

Vs.

M/s. Casa Grande Engineering Private Ltd
Rep. by its Managing Director, Arun Mn
(Regn. No.TN/01/Building/0028/2017)

.... RESPONDENT

Complainants : Rep. by M/s. Chennai law Associates, Advocates
Respondent : Rep. by M/s. Ganesh & Ganesh, Advocates

Heard on : 18.11.2021

Delivered on: 07.12.2021

ORDER

The above complainants filed the complaint claiming compensation for the delay in handing over possession of the flats, return of excess GST paid and other reliefs from the respondent 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 29.06.2017, the complainants booked two apartments with the respondent in their project namely "CG BELLISSIMO" at Pazhavanthangal Village, Alandur Taluk, Kancheepuram District. On 29.06.2017, the respondent allotted flats and issued allotment letters. The sale consideration for the allotted flat No.416 is Rs.52,82,183/- and for the other allotted flat No.417 is Rs.51,71,383/-. In total, the complainants paid Rs.96,28,698/- which includes Rs.10,31,646/- charged under the head of GST at the rate of 12%.

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(b) The government has given the benefit of availing 5% towards GST for all ongoing projects. The benefit has to be passed on to the customers. However, the respondent charged excess 7% on the total amount. Under the agreements for construction, the respondent undertook to complete the construction and handover the flats by November 2019. But, till date the construction has not been completed.

(c) On 08.08.2020, the complainants made a visit to the construction site and found several lapses on the part of the respondent, such as, no EB connection, pavement flooring not completed fully, no approach road to the site, and other amenities were also not completed, apart from drainage system have not been completed. Two covered car park were not provided. The complainants are entitled for return of the excess GST, compensation for the delay and other reliefs.

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

(a) Except admitted, all the averments are denied. The complaint is not maintainable. The respondent and the complainants entered into agreements for sale and construction for two flats allotted to them. The complainants have not made stage-wise payments as per the agreed terms. They were liable to make payment of sale consideration as per the payment schedule. But, still a sum of Rs.71,380/- is pending due payable by the complainants. The delay in handing over the flats occurred only due to the irregular payments by the complainants.

(b) As per the notification of the government, the builders were given option to follow payment of tax under the old tax regime i.e., 12% with ITC or new tax regime at 5% without ITC for the on-going projects. The

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respondent followed the old tax regime and the allegations of charging excess GST does not arise. The apartments are ready for handing over and the common amenities have been completed and the same will be delivered on payment of the remaining amount due as per the payment schedule to the complainants.

(c) There was delay in getting EB connection due to non availability of raw materials from TNEB. The respondent arranged to provide electricity by way of GENSET at their own cost till permanent connection is provided. The pavement flooring has been completed. A portion of the road was gifted to Corporation of Chennai towards development of the project. The gifted portion of the land comprises the approach road.

(d) The construction work had been halted and disturbed due to pandemic covid-19 and non availability of laborers during the period. The respondent allotted covered car parks to the complainants. But while securing the approval, they have not obtained sanction for 1/3rd covered car park area as against the original plan. The same was intimated to the complainants. The complainants also accepted the offer of discount from the respondent. The construction of the project was completed during 2019 itself. The respondent also applied for completion certificate during December 2019. In the above circumstances, the respondent prays for dismissal of the complaint.

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 compensation for the delay in construction and delivery of possession of the flats, compensation for mental agony, refund of excess GST charged, refund towards extra car parking charged and cost of litigation?
- ii. What are the reliefs, the complainants are entitled to?

7. Answer for Point Nos.(i)

a) The learned counsel for the complainants filed written notes of argument and also submitted that on 25.09.2017, the complainants and the respondent entered into agreements of sale and construction for two flats and the complainants made stage-wise payments as per the payment schedule and out of the total sale consideration of Rs.1,04,53,566/-, the complainants paid Rs.96,28,698/- which includes a sum of Rs.10,31,646/- towards GST at the rate of 12%, instead of 5% to be collected for all the ongoing projects and on a personal visit to the site, the complainants found several works not completed and the complainants are entitled for all the reliefs. .

(b) However, the learned counsel for the respondent also filed written notes of arguments and also contended that the complainants have not made stage-wise payments as per agreed terms and still a sum of Rs.71,380/- was pending for payment by the complainants and the respondent never charged any excess GST against the notification of the government and the respondent has not made any false claims or promises and the EB connection got delayed due to non-availability of raw materials from TNEB and the respondent arranged electricity on their own cost and

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permanent EB connection has been provided and the respondent completed all the pavement works in a good condition and the approach road was arranged and a portion of the road was gifted to the Corporation of Chennai towards development of the project and the gifted portion comprises the said approach road and other common amenities have been halted and disturbed due to the pandemic situation and non-availability of workers and the complaint is liable to be dismissed. The learned counsel also relied on the decision of the MAHARERA in complaint No.CC005000000053896 where the Authority directed the home buyer to pay the interest for not adhering to the payment schedule of the construction agreement.

(c) While the case was pending, admittedly, the respondent handed over possession of the constructed flats to the complainants. As per proviso to section 18 of the RERA Act, an allottee is entitled for compensation for delay, if the promoter fails to complete or is unable to give possession of the apartment in accordance with the terms of the agreement for sale and construction. It is not in dispute that as per Ex.A6 and A7, construction agreements, the respondent undertook to complete the construction and deliver possession of the flats to the complainants by November 2019.

(d) It is the contention of the respondent that the complainants have not made stage-wise payments as per the terms of the agreements. A perusal of the payment schedule in the construction agreements reveals that the amounts to be paid subsequent to the date of booking till the handing over of the flats are given stage-wise without any specific date for completion of the particular stage. The respondent has not even produced any notice of intimation of completion of any particular of the stage of construction with

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a demand to make the payment for completion of the particular stage. Therefore, the contention of the respondent on stage-wise payment is vague and unacceptable. So far as the decision of the MAHARERA is concerned, it was a case where the allottee has paid only Rs.1,00,000/- out of the total sale consideration and in spite of several demand letters, the allottee has not made any payments to the promoter, except the initial amount. The decision is not at all applicable to the facts of this case.

(e) So far as the rate of GST applicable to ongoing projects is concerned, as per the 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. However, in case of on-going projects the promoter has an option to pay GST on old rates, i.e., 8% for affordable residential apartments and 12% on other residential apartments and consequently to avail permissible input tax credit and pass the benefit of the credit availed to the home buyers.

(f) It is the contention of the respondent that they legitimately followed the old tax regime i.e. 12% GST with ITC and therefore charging of excess GST does not arise. The GST charged is not paid by the respondent from their own pockets, but passed on to the allottees. No doubt the respondent has the option either to follow the old tax regime at 12% with ITC or the new tax regime at 5% without ITC. But once the respondent chose to follow the old tax regime of 12%, the obligation is on the respondent to avail the Input Tax Credit (ITC) and pass on the benefit to the home buyers i.e. to the complainants. Since the handing over of the possession of the constructed

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flats was made to the complainants, the respondent is duty bound to work out the input tax credit and pass on the benefit to the complainants.

(g) So far as the allotment of covered car parks are concerned, in C.No.100/2020 by order dated 10.06.2021, the Authority directed the respondent to provide one covered car park to each of the flats and to file compliance report and also to pay the discount given by the promoter at the time of taking possession of 2 covered car parks from the respondent. Therefore, there is no necessity to pass any further order by this Forum with regard to car parks for the flats.

(h) In the above circumstances, it is held that the complainants are entitled for compensation for delay, benefit of GST input tax credit, compensation for mental agony and costs. Thus, the point is answered accordingly.

8. 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 and A3, the allotment letters, the total cost of the flats are Rs.10,04,53,566/- and the complainants in total paid Rs.96,28,698/-. As per Ex.A6 and A7, construction agreements, 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 @ 7.30%, which was the highest marginal cost of lending rate of S.B.I. at the time of filing the

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complaint, plus 2% per annum i.e.,9.30% p.a. for the amount of Rs.96,28,698/- from 01.12.2019, till delivery of possession of the constructed flats by the respondent.

(c) 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 complainants and Rs.25,000/- towards litigation expenses. 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:-

The respondent shall pay the compensation for delay, mental agony, discount for car park, the benefit GST input tax credit 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.

**Sd/- 07.12.2021
G. SARAVANAN
ADJUDICATING OFFICER**

LIST OF WITNESS

CW-1 ... Nivrutha
RW-1 ... Y. Mohan Raj

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	...	Payment receipts (series)
Ex.A2	29.06.2017	Allotment letter for Flat D-416
Ex.A3	26.06.2017	Allotment letter for Flat D-417

Ex.A4	25.09.2017	Agreement of sale for Flat D-416
Ex.A5	25.09.2017	Agreement of sale for Flat D-417
Ex.A6	25.09.2017	Construction agreement for Flat D-416
Ex.A7	25.09.2017	Construction agreement for Flat D-417
Ex.A8	15.04.2019	Sale deed for flat D-416
Ex.A9	15.04.2019	Sale deed for flat D-417
Ex.A10	15.04.2019	Registered construction agreement for flat D-416
Ex.A11	15.04.2019	Registered construction agreement for flat D-417
Ex.A12	...	Photos
Ex.A13	...	E-mail communications (series)
Ex.A14	...	Project details
Ex.A15	...	Approved carpet area details
Ex.A16	10.06.2021	Copy of order in C.No.100/2020
Ex.A17	04.02.2021	E-mail communication
Ex.A18	14.04.2021	Copy of handing over certificate

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	19.03.2019	GST counsel notification
Ex.B2	04.02.2020	Completion certificate
Ex.B3	09.04.2021	E-mail communication
Ex.B4	...	Accounts statement
Ex.B5	...	Photos
Ex.B6	03.09.2020	Copy of order by MAHARERA
Ex.B7	08.05.2019	Representation filed by respondent
Ex.B8	14.04.2021	Handing over certificate

Sd/- 07.12.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE

7.12.2021
LAW OFFICER

TN REAL ESTATE REGULATORY AUTHORITY