

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 26 of 2020

1. V. Lalitha
2. V. Ramakrishnan

..... Complainants

Vs.

M/s. Casa Grande Engineering Private Ltd.,
Rep by its MD, ArunMn and Anirudh Iyer

..... Respondent

(TN/01/Building/012/2019)

Complainants : Rep. by M/s. Chennai Law Associates, Advocates.

Respondent : Rep. by M/s. Ganesh & Ganesh, Advocates.

Heard on : 15.04.2021

Delivered on : 22.06.2021

ORDER

The complaint filed by the above complainants seeking refund of amount paid to the respondent towards purchase and construction of booked flat with interest, compensation and cost 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 complainants, in brief, as follows:

(a) On 23.09.2019, the complainants booked a flat with the respondent in their project namely, Casa Grande," Savoye", at Karapakkam Taluk, Sholinganallur, Chennai on payment of advance of Rs.1,00,000/-. On 12.10.2019, the complainants made further payment of a sum of Rs.28,70,000/-. On 01.10.2019, the respondent issued allotment letter.

(b) Subsequently, the complainants observed several irregularities and deviations from the RERA Rules with regard to the area of the flat and breakup details of the entire cost of the flat and registration charges.

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Therefore, the complainants issued a detailed e-mail on 25.10.2019, and subsequent e-mails seeking clarification with regard to difference in total area shown in the documents submitted by the respondent to RERA. The respondent gave a vague reply.

(c) The total cost of the flat which is Rs.82,23,735/- is excessive and the actual permissible cost within the Rules of RERA comes only to Rs.69,02,569/-. The complainants were made to pay more than the permissible advance amount under the rules. Therefore, the complainants sought refund of the amount paid to the respondent. However, the respondent issued an e-mail dated 07.12.2019 as the amount paid by the complainants was forfeited as per the policy of their company.

(d) The complainants issued legal notice dated 12.12.2019 demanding refund of the amount with interest, and also compensation for mental agony. The respondent received the notice and failed to comply with the legitimate demand of the complainants. Hence, the complainants are entitled for the reliefs.

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

(a) The claim by the complainants is not tenable in terms of law and not maintainable on facts. Except admitted, all the averments and allegations of the complainants are incorrect and false. The complainants booked a flat and were allotted flat vide the allotment letter dated 01.10.2019 by the respondent. The complainants have totally paid a sum of Rs.29,70,000/-.

(b) There has been no omission with regard to area of the flat. The project was launched prior to the GST slash down. Therefore, the GST

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is 8% for affordable home buyers under PMAY scheme. The total cost of the flat is Rs.78,50,325/- and not Rs.82,23,735/-. The respondent has not demanded any excess consideration.

(c) The car park allotment is made as committed in the booking form. The respondent never charged for car park area. The respondent requested 10% of the total consideration before execution and registration of the agreement. The complainants has voluntarily provided a cheque for Rs.28,70,000/-. The draft sale and construction agreements were sent to complainants.

(d) The execution of the agreement and the registration of the same are bilateral act and the respondent cannot unilaterally execute the agreement. Therefore, the complainants cannot make allegation of payment of more than 10% without registering the agreement. The respondent has not violated the Section 13 of the RERA Act. The respondent was entitled to deduct the necessary charges towards the cancellation of the transaction due to non performance of the complainants.

(e) The respondent refunded the entire amount paid by the complainants by a cheque dated 20.01.2020. The notice of the complainants was given reply by the respondent. The reliefs sought by the complainants are not maintainable. The complaint is liable to be dismissed.

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 the rival contentions of the parties, the following points arise for determination:

- i. Whether the complainants are entitled for interest on the amounts paid to the respondent towards sale consideration and compensation on the ground of violation of section 13 of the RERA Act and failure to furnish proper and correct information?
- ii. What are the reliefs, the complainants are entitled to?

7. **Answer for Point No.(i)**

(a) The complaint has been filed by the complainants for refund of the amount paid to the respondent towards purchase of the apartment of Rs.29,70,000/- and other reliefs. Admittedly, subsequent to the filing of the complaint, the respondent has refunded the sale consideration of Rs.29,70,000/- to the complainants. Therefore, the question as to whether the complainants are entitled for the reliefs of seeking interest on the sale consideration and compensation only arises.

(b) The learned counsel for the complainants filed written notes of argument and submitted that even though no agreement was entered or registered between the parties, the respondent demanded payments with the payment schedule and collected more than 10% of the sale consideration in violation of Section 13 of the RERA Act and the respondent failed to give proper explanation and clarification regarding the difference in area of the allotted flats in the area plan given to them as opposed to the documents available in the RERA website with intention to cheat the complainants and also charged for car parking allowed in the common area and therefore, the complainants are

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entitled for interest on the amount paid to the respondent, compensation and cost.

(c) The learned counsel for the respondent also filed written notes of argument and contended that the reliefs sought by the complainants under Section 18 of the RERA Act do not arise as agreements were not entered between the parties and there is no consummation of contract between the parties to allege a breach or violation and claim of damages in the form of interest and compensation and violation of Section 13 of the RERA Act is not at all attracted in the case as the complainants voluntarily and willfully made the payments with the understanding of completing registration and the terms and conditions as recorded in the allotment letter were fully performed and the complainants preferred to cancel the allotment for their own reasons and no fault, breach or misrepresentation is committed by the respondent and the complaint is liable to be dismissed.

(d) Section 13 of the RERA Act mandates a promoter not accept a sum more than 10% of the cost of the apartment, plot or building as an advance payment from the purchasers without first entering into a written agreement for sale and register the said agreement under the law. Admittedly, prior to entering into any registered agreements of sale and construction, the respondent accepted a sum more than 10% of the cost of the apartment from the complainants. It was also contended by the respondent that the complainants were also fully aware of the implications of the Section 13 of the RERA Act and they made the payments with an alternate motive to make claim against the respondent.

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(e) In his proof affidavit, CW-1, the second complainant specifically stated that in the first week of October 2019, the officials of the respondent approached and asked them to pay a bulk amount of around Rs.30,00,000/- at that stage itself, including the statutory limit of 10%, so as to make them eligible for price reduction at the rate of Rs.35/- per Sq.ft and when once again they asked the officials of the respondent about the execution and registration of the necessary documents, they pacified them by saying that the offer was for a limited time and that they should deposit the money immediately to avail the offer. The evidence of CW-1 was not seriously disputed and contradicted by the respondent.

(f) Even otherwise, if the cheque was given voluntarily by the complainants, it was for the respondent either to refuse or return the cheque and to encash the cheque after registration of the agreement for sale and construction. The respondent has not preferred to do so. Therefore, it is clear that the respondent violated Section 13 of the RERA Act.

(g) On the GST rate applicable, the respondent contended that the project was launched prior to the GST slash down and under such circumstances GST at 8% for affordable home buyers under PMAY scheme was applicable. 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. The respondent issued the allotment letter on 01.10.2019 to the complainants. The tax liability under GST Act would arise at the time of supply of goods or

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services rendered. The reply of the respondent without mentioning the date of launch of the project is vague and not proper. Therefore, the contention of the counsel is not acceptable.

(h) It is also seen that the respondent charged for car parking allotted in the common area. Even though, the respondent denied charging of the car park area, as pointed out by the learned counsel for the complainants, the cost sheet which is marked as Ex.B3 on the side of the respondent reveals that the respondent charged Rs.3,00,000/- towards car park.

(i) Regarding the difference in area of the flat, the respondent categorically admitted the difference in the area statement and the details in RERA website submitted by the respondent and stated that any technical error occurred in RERA approvals is rectifiable and can be revised in accordance with the provisions. The very object of the RERA Act is to ensure sale of plot, apartment or building in an efficient and transparent manner and to protect the interest of consumers and also to ensure greater accountability towards consumers. The respondent acted in an unfair manner with total lack of transparency.

(j) In the facts and circumstances of the case, it is held that the complainants are entitled for interest on the amount paid to the respondent and compensation. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

(a) In view of the answer for Point No.(i), the complainants are entitled for interest on the amount paid to the respondent from the date of payment till the date of repayment by the respondent, compensation and litigation expenses.

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(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 complainants are entitled for the interest at the rate of 8.20% per annum which was the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 10.20% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondent.

(c) Apart from the above, the complainants are entitled for Rs.50,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses. The complainants are entitled for reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows:

The respondent shall pay the complainants the interest on the amount repaid, compensation and other charges as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

**G. SARAVANAN
ADJUDICATING OFFICER**

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LIST OF WITNESSES

CW-1--- V. Ramakrishnan

RW-1--- Y. Mohanraj

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	23.08.2019	Modification agreement
Ex.A2	01.10.2019	Allotment letter
Ex.A3	03.10.2019	Payment receipt
Ex.A4	19.10.2019	Payment receipt
Ex.A5	16.11.2019	Letter
Ex.A6	18.11.2019	RPAD Acknowledgment card
Ex.A7	-----	E-mail communications
Ex.A8	03.12.2019	Sketch of the flat
Ex.A9	05.12.2019	Complaint filed in TNRERA
Ex.A10	12.12.2019	Legal notice
Ex.A11	12.12.2019	Postal track consignment

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	01.10.2019	Allotment letter
Ex.B2	---	Area statement
Ex.B3	---	Cost sheet
Ex.B4	20.01.2020	copy of refunded cheque
Ex.B5	12.12.2019	Legal notice
Ex.B6	12.02.2020	Reply notice

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 LAW OFFICER
 TN REAL ESTATE REGULATORY AUTHORITY

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 ADJUDICATING OFFICER
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