

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 05 of 2020**

1. Rajan Amuthan
2. R. Arulmozhi Complainants

Vs.

M/s. Casa Grande Builder Pvt Ltd.,
Rep by its Authorised Signatory
(TN/29/Building/0029/2017) Respondent

Complainants : Rep by Mr. C.A. Theagarajan, Advocate.
Respondent : Rep by Mr. T. Gowthaman, Advocate.

Heard on : 02.07.2021
Delivered on : 23.07.2021

ORDER

The above complaint by the complainants claiming refund of the amounts paid towards purchase and construction of flat booked with the respondent together 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 complainants , in brief, as follows:-

(a) On 13.10.2016, the complainants booked an apartment with the respondent in their project, namely, Casa Grande "Monte Carlo", at Adyar, Guindy Taluk, Chennai. On 01.11.2016, the respondent issued the allotment letter and allotted the apartment. The total cost of the apartment including all charges is Rs.1,90,74,000/-. The complainants availed bank loan and paid a sum of Rs.1,31,97,376/- through bank and Rs.44,96,044/- by own arrangement.

(b) The respondent undertook to complete the project within 24 months with a grace period of 3 months. No agreements were executed by the respondent. The complainants have paid almost 86% of the total sale

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consideration and are paying interest to the bank for the loan amount. The complainants came to know that the respondent is having a dispute going on with the land owners of the project and therefore the delay occurred. This was not informed by the respondent to the complainants. The respondent even charged penalty for payments made by the complainants without any progress of construction.

(c) Subsequently, on 29.08.2019, the respondent sent a sale agreement for UDS land. There was contradicting amounts mentioned in the draft sale agreement and the demand notices. In view of the inordinate delay on the part of the respondent, the complainants were not interested in the project and sought withdrawal from the project. Hence, the complainants are entitled for refund of the entire amount paid to the respondent with interest, compensation and cost.

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

(a) All the averments except admitted are false and baseless. The complainants booked a 3 bedroom flat in the project of the respondent. The complainants have not made payments in time and were repeatedly defaulting in their payments.

(b) The respondent is ready and willing to adhere to any of its commitments, including payment of appropriate compensation for any delay. The delay occurred purely on account of factors that are outside the control of the respondent. On account of litigation before the Hon'ble High Court, the construction faced a virtual embargo for months together.

(c) There is no inordinate delay on the part of the respondent for completion of the project and the delay occurred are outside the control of the respondent. There is a written agreement between the complainants and the respondent. There is no violation of the provisions of the RERA Act. Hence, the respondent prays for the dismissal of the complaint with cost.

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4. An attempt to settle the matter amicably has failed.
5. The complainants have filed their respective evidence on proof affidavit with documents. On the side of the respondent, proof affidavit only filed. No documents produced.
6. On the basis of rival contentions of the parties, the following points arise for determination:-
 - i. Whether the complainants are entitled for return of the amount paid to the respondent towards purchase of apartment with interest, compensation and cost on the ground of failure to commence construction and deliver apartment in pursuance of the allotment letter issued by the respondent?
 - ii. What are the reliefs, the complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that the respondent launched the project on 29.07.2016 and the complainants booked the flat on the assurance of the respondent to complete the project within 24 months with a grace period of 3 months and the respondent issued allotment letter dated 01.11.2016 and the complainants paid almost 86% of the sale consideration of the project i.e., a sum of Rs.1,77,05,071/- and till date, no agreement for sale and construction entered and the respondent levied penalty and interest on the amounts paid by the complainants for no fault of them and the complainants withdraw from the project seeking refund of the amount paid to the respondent with interest, compensation and cost.

(b) The learned counsel for the respondent contended that the complainants booked a 3 bedroom flat in the project of the respondent and there were specific agreements governing the construction and sale of UDS

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land and the complainants had not made payments in time and were defaulting in their payments and delay in construction occurred purely on account of factors that are outside the control of the respondent and a pending litigation before the Hon'ble High Court and the complainants well aware of the same and there was no inordinate delay on the part of the respondent and therefore the complaint is liable to be dismissed with cost.

(c) Ex.A1, the allotment letter dated 01.11.2016 reveals that the complainants booked the apartment on 13.10.2016 and the complainants were allotted a 3 bedroom flat in the project. Ex.A6 and Ex.A7 are the draft agreements for construction and sale of UDS respectively dated 22.03.2017. Ex.A6, the draft construction agreement contains a clause as the promoter has agreed to complete the entire construction of the flat within 24 months with a grace period of 3 months. Even though, the respondent stated that there were specific agreement governing the construction and sale of UDS land between the complainants and the respondent, no documents were produced by the respondent.

(d) It is not in dispute that the respondent received Rs.1,77,05,071/- out of the total sale price of Rs.1,90,49,900/- of the apartment . Section 13 of the RERA Act mandates a promoter not accept a sum more than 10% of the cost of the apartment as an advance payment without first entering into a registered written agreement for sale. The respondent has made allotment of the apartment on 01.11.2016, i.e., after the RERA Act came into force.

(e) The project of the respondent is registered with TNRERA. Ex.A5, the registration certificate was issued By TNRERA on many conditions such as the promoter is to enter into an agreement of sale with the allottee as provided in the rule and also to execute and register conveyance deed as per section 17 and the promoter to comply with the provisions of the Act

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and Rules and Regulations. The respondent not only violated the conditions under the registration certificate, but also section 13 of the RERA Act by collecting sale consideration of nearly 92% without entering into agreements of sale and construction with the complainants.

(f) Considering the facts and circumstances of the case, it is held that the complainants are entitled for refund of the entire sale consideration paid to the respondent together with interest, compensation and costs. 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 refund of the amount paid to the respondent with interest and compensation. The complainants paid Rs.1,77,05,071/- to the respondent for purchase of the flat. Therefore, the complainants are entitled for refund of the amount of Rs.1,77,05,071/- with interest and compensation and cost from the respondent.

(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 8.25% 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., 10.25% p.a for the entire amount paid from the dates of respective payments till repayment by the respondent.

(c) Apart from the above, considering the facts and circumstances of the case, a sum of Rs.5,00,000/- towards compensation for mental agony and inconvenience and a sum of Rs.50,000/- towards legal

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expenses is fixed. The complainants are entitled for reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows:-

1. The respondent 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 of issue of this order.
2. The charge of the amount as encumbrance shall be on the flat booked by the complainants till repayment of the claim as per this order.

G. SARAVANAN,
ADJUDICATING OFFICER.

LIST OF WITNESS

CW-1--- R. Arulmozhi

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	01.11.2016	Allotment letter
Ex.A2	---	Payment details
Ex.A3	01.04.2016 to 11.08.2018	Ledger account by respondent company
Ex.A4	---	E-mail communications
Ex.A5	23.08.2017	TNRERA registration certificate
Ex.A6	22.03.2017	Construction agreement
Ex.A7	22.03.2017	Agreement of sale of UDS land

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

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LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY

sd: 23.07.2021
G. SARAVANAN,
ADJUDICATING OFFICER,
TNRERA, CHENNAI.