

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

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

CCP No.247 of 2021

1. T. Shanmuga Moorthy
2. R. Arianachi Latha

.... **Complainants**

Vs.

M/s. Casa Grande Shelter LLP
Rep. by its Managing Partner M.N. Arun
(Regn.No.TN/02/Building/0168/2017)

.... **Respondent**

Complainants : Rep. by Mr. T. K. Bhaskar, Advocate.
Respondent : Rep. by M/s. Ganesh & Ganesh, Advocates.

Heard on : 14.12.2022

Delivered on : 04.01.2023

ORDER

The above complaint by the complainants claiming compensation for the delay in delivery of the constructed flat and other reliefs 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 18.04.2018, the complainants booked a flat in the project of the respondent namely, "**CASAGRAN ASTA**", at Korattur, Chennai on advance payment of Rs.1,00,000/-. The total cost of the flat was Rs.78, 73, 000/- which was exclusive of corpus fund, tax and registration charges. The net cost of the flat was Rs.88, 39, 032/-. The UDS land intended for sale to the complainants was 833 sq.ft. The complainants and the respondent entered into agreements of sale and for construction on 18.07.2018. The respondent undertook to

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complete the construction and deliver the apartment by August 2019. The complainants made payments without any delay.

(b) After the payment of almost 90% of the total cost of the flat by the complainants, the respondent arranged for registration of the construction agreement. On 24.07.2020, the respondent executed sale deed and also registered the construction agreement in the Sub-Registrar Office at Konnur. The complainants were shocked to learn later that the respondent had deceived them by making them to sign a new construction agreement wherein the date of delivery of apartment had been changed to April 2021 from August 2019. On 19.08.2020, the respondent handed over the apartment to the complainants. On the date of delivery of possession of the flat, the respondent has not obtained the electricity connection, sewerage and water connection for the apartment. The complainants were forced to take possession of the flat since they were residing in a rental flat on payment of monthly rents. The respondent has not delivered the flat in a habitable condition.

(c) The respondent breached the fundamental terms in the agreement and is liable to pay compensation on various grounds. There was delay in delivery of possession of the flat by the respondent. At the time of booking of the flat, the respondent informed the complainants that the extent of UDS land of the flat was 833 sq. ft. But the respondent conveyed only 819 sq. ft. of UDS land under the sale deed. As per the construction agreement and allotment letter dated 18.04.2018, the respondent has allotted two car parking bays for the flat sold to the complainants, i.e., one open car park and one closed car park. Till date, the respondent has not allocated two car parking bays as promised and agreed. The respondent has not provided water supply amenities as agreed in the construction agreement. Apart from this above, the wall plastering of the flat

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and for entire building complex have been done poorly as a result of sub-standard materials being used by the respondent.

(d) The respondent was under obligation to provide maintenance charges for six months for the entire building complex under the construction agreement. The electricity connection was given only in the month of April 2021 to the flat of the complainants and other flat owners of the apartment. Until then, the complainants used only electricity connection given by the respondent. The respondent has not also provided sewerage connection from the CMWSSB. The respondent has not transferred the corpus fund to the association of the flat owners till date. Hence the complainants are entitled for compensation for the delay in delivery of the apartment and other reliefs.

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

(a) The claim made by the complainants is not maintainable. The respondent denies the allegations and averments in the complaint except admitted specifically. The project was registered with the TNRERA, Chennai on 08.11.2017. The complainants entered into a construction agreement dated 24.07.2020 registered on the file of SRO, Konnur. As per the terms of the construction agreement, the respondent agreed to construct and allot the apartment. The respondent also executed a sale deed dated 24.07.2020 for an extent of 819 sq.ft. of undivided share of land sold in favor of complainants. As per the agreements relied upon by the complainants, the UDS pertaining to the flat was only 819 sq.ft. The complainants made false claims relating to the same. After discussions on the terms of contract, the draft construction agreement with specified time lines and sale deed were furnished to the complainants. The complainants have deliberately abused the provisions of RERA Act for making wrongful claims.

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(b) The construction of the flat was completed and the flat was handed over to the complainants on 19.08.2020. Temporary E.B. connection was earlier provided and then regular permanent connection was also provided within the timelines. As per the construction agreement, the date of completion of the said project is 30.04.2021. The respondent adhered to the said deadline and had completed the project much prior to the deadline.

(c) The complainants had visited the flat before taking over possession and intimated the respondent certain plastering defects in the said flat. The respondent has undertaken to attend to the same and rectify the said defects. The respondent also provided defect liability certificate for five years to rectify the defects regarding the flat. The complainants suppressed the fact and arranged to get reports of the civil engineers only with an ulterior motive to raise false allegations against the respondent and demand money. The reports and quotations were manipulated to suit the requirements of the complainants. There was no necessity for the complainants to re-do the plastering work when the respondent had agreed to carry out the same.

(d) Apart from the above, the respondent almost completed the six months maintenance period and the association has taken over the maintenance. The corpus fund and other aspects of transfer are updated to the office bearers of the association. In the above circumstances, the respondent prays for the dismissal of the complaint filed by the complainants.

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 compensation on the grounds of delay in delivery of the constructed flat, shortage of UDS land area, issue of car parking bays and other issues, such as, water amenity, poor wall plastering, free maintenance and common amenities and transfer of corpus fund and cost from 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 filed written notes of argument submitting that on 18.07.2018, the complainants booked a flat in the project of the respondent and also entered into sale and construction agreements and paid the sale consideration of the flat and the respondent undertook to deliver the apartment by August 2019 in a habitable condition and failed to deliver possession of the flat as agreed in the construction agreement and they cannot take the plea that they delivered the flat within the period of delivery in the second agreement dated 24.07.2020 and the respondent has not obtained any consent from the complainants for extension of the time limit for delivery of the flat and the consent to execute the construction agreement dated 14.07.2020 was obtained by a blatant non-disclosure of material facts and the complainants were residing in a rented flat paying rents and the respondent also failed to provide water amenity in the apartment from the authorities and the respondent offered for sale of 833 sq. ft. UDS land for the flat but executed sale deed only for 819 sq. ft. and there was poor plastering work in the flat and the respondent has not also provided adequate car parking bay as per the

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construction agreement and also failed to provide all the amenities and common amenities and to transfer the corpus fund to the association of the owners and caused mental agony and hardship to the complainants and the complainants are entitled for compensation on all the above grounds and litigation costs.

(b) The learned counsel for the respondent also filed written notes of arguments contending that the complainants entered into a construction agreement dated 24.07.2020 registered on the file of SRO, Konnur and as per the terms of the said agreement, the respondent agreed to construct and deliver the flat with an extent of 819 sq. ft. of UDS land and also executed sale deed for the UDS land on 24.07.2020 and all the agreements establish that the UDS pertaining to the flat is only 819 sq. ft. and the respondent undertook to complete construction and deliver the flat by 30.04.2021 and the respondent completed construction and handed over the flat within the time limit on getting completion certificate from the authorities and before taking possession of the flat, the complainants pointed out certain plastering work defects in the flat and the respondent also undertook to attend the same and rectified the defects and the respondent provided defect liability certificate to the customers with 5 years period for rectification of defects in the flat and the complainants deliberately arranged the civil engineers to do the work and maintenance and common amenities are provided in accordance with the agreed terms and the complainants are not entitled to any reliefs and the present complaint is filed committing abuse of process of law and is liable to be dismissed.

(c) The complainants claimed compensation for the delay in delivery of possession of constructed flat by the respondent on the basis of Ex.A4 (series), the first construction agreement entered with the respondent on 18.07.2018.

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However, the respondent relied on the registered construction agreement dated 24.07.2020, which is also marked in Ex.A4 (series) of documents, in support of their contention of delivery within the time limit. The complainants claimed that the respondent deliberately registered the construction agreement with a change of date of delivery, i.e. from August 2019 to 30th April 2021 without their knowledge and consent.

(d) In the counter statement, the respondent has not at all made any mention of the first construction agreement dated 18.07.2018 entered with the complainants. Admittedly, under the registered construction agreement dated 24.07.2020, the respondent undertook to complete the construction and deliver the flat by 30.04.2021 and as per the unregistered first construction agreement dated 18.07.2018, the date of delivery is by August 2019. Ex.A10, the payment receipts prove that at the time of registration of the second construction agreement on 24.07.2020, the respondent has already received a substantial portion of the sale price of the flat by then from the complainants. On a comparative reading of both the agreements, it is seen that the registered agreement is only a reproduction of the unregistered first agreement, but for the change in the date of delivery of the constructed flat. The amounts received till the date of the registration of the construction agreement by the respondent and the earlier first construction agreement dated 18.07.2018 are not at all mentioned in the registered second agreement. It is not the case of the respondent that the unregistered first agreement was cancelled and then the registered agreement was entered into. It is clearly established that the respondent acted upon the first unregistered agreement dated 18.07.2018 in receiving the payments of the sale consideration.

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(e) The learned counsel for the respondent conceded that without cancellation of the first agreement, the second agreement was entered between the parties but contended that revision without cancellation of the first agreement is not prohibited in view of sections 62 and 63 of the Indian Contract Act and the allegation of deception has not been proved by the complainants. Section 62 of the Indian Contract Act reads as "If the parties to a contract agreed to substitute a new contract for it, to rescind or alter it, the original contract need not be performed". It means that the substituted agreement must be valid and enforceable contract to be effective as a novation or as also the original contract, if the new contract is enforceable. Importantly, it should rescind or extinguish the previous contract. In the decision of the Hon'ble Supreme Court in H.R. Basavaraj(dead) and Another Vs. Canara Bank and Others in (2020) 12 SCC 458, relied by the learned counsel for the complainant, the same is clearly laid down. As already pointed out, there was no termination of the first agreement which was acted upon and substantial amount has already been received by the respondent. There was no express or implied consent for substitution. The respondent was bound by the construction agreement dated 18.07.2018 to deliver the constructed flat by the date mentioned in it. Therefore, the respondent is liable to pay compensation for delay in construction and handing over of the flat to the complainants.

(f) The learned counsel for the complainants pointed out that at the time of booking of the apartment, the respondent offered 833 sq. ft. of UDS land for the flat and the complainants were willing to buy the apartment. A perusal of Ex.A3, the agreement of sale dated 18.07.2018 reveals the extent of UDS land in the total extent of land to be conveyed is mentioned only 819 sq. ft. In Ex.A5,

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the sale deed by the respondent in favor of the complainants also, only 819 sq. ft. of the UDS land was conveyed in favor of the complainants.

(g) The complainants relied on Ex.A8 (series) of email communications which contains the communications between the complainants and the officials of the respondents. In the email communications dated 14.05.2018, the Senior Executive-Operations of the respondent company assured to send revised allotment letter with revised square feet. But, the Ex.A3, the agreement of sale signed on 18.07.2018 clearly mentions the UDS land extent as only 819 sq. ft. Ex.A5, the sale deed dated 24.07.2020 also mentions the extent of UDS land conveyed only 819 sq. ft. It is not the case of the complaints that they took up the issue with the respondent prior to the execution of the sale deed. There is no evidence of any objection raised by the complainants with regard the conveyance of only 819 sq. ft. of UDS land in their favor subsequently. Therefore, the claim of compensation on the ground of conveyance of UDS land for lesser extent is not sustainable.

(h) On the issue of car parking area allotted, the complainants contended that the respondent has not provided one open car park and one closed car park in accordance with the construction agreement and provided car parking in the parking bays 45 and 45-S as car parking spaces which measures to an extent of 13 ft. only, whereas other parking bays have 18 ft. and the same is not sufficient for parking two cars. The complainants relied on Ex.A20 (series) of photographs and also Ex.A18, the report of the structural engineer. The photographs show that spaces for two car parks are provided by the respondent. However as per the report, there was no door opening space in the car parking on either side. From the above, it is clear that parking area for two cars with space in between is provided by the respondent. The grievance of the complainants

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is that the other parking areas have 18 ft. width for which no documentary evidence is provided by the complainants. Therefore, the claim of compensation on the issue of car parking area is not sustainable.

(i) Regarding the water amenity issue, the complainants submitted that when they interacted with the other flat owners, they understood that metro water connection has not been obtained and that they have to rely on tanker lorry water and the official of the respondent company also stated that they have to rely on tanker lorry water only. In their counter, the respondent stated that metro water connection has been provided. Therefore, if necessary, it was open to the complainants to approach the Authority for appropriate directions to the respondent. Since the complainants has not ascertained the mode of water supply made available to the apartments and conceded that water supply has been provided through water lorry tankers and the complainants have not produced any evidence on purchase of water by them, the claim of compensation on the ground is not sustainable.

(j) On the issue of corpus fund, the complainants stated in the complaint that the respondent has not transferred the corpus fund to the association of the flat owners. But in the written argument notes, the complainants admitted the transfer of corpus fund in October 2021 and the association of apartment owners was formed on 18.12.2020 and bank account of the association was opened on 22.02.2021, i.e. much prior to the filing of the complaint. Hence the association only has the locus standi to claim compensation on the point. In the decisions in C.No.093 of 2020 dated 19.07.2021 of the Authority, M/s. Vijayashanthi Builders Ltd. Vs. Lotus Pond Residents Welfare Association in O.P.No.762 of 2018 dated 17.07.2019 before the Hon'ble High Court and Pavankumar Atmaram Lihla and Another Vs. Milestone Enterprise and Another

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in 2020 SCC Online NCDRC 368, the legal proceedings were initiated only by the association of the owners/residents. In the decisions in C.Nos.246 & 247/2019 dated 10.06.2021, the Authority only passed direction to the respondent promoters regarding the corpus fund. Therefore, the claim of compensation by the complainant is not maintainable.

(k) Further the complainants sought compensation on the ground of deficiencies of service in the quality of construction work and for re-plastering and repairing of the flat. The complainants produced Ex.A8(series), the documents and also Ex.A20(series), the photographs. In their email letter dated 12.06.2021, the complainants intimated to the respondent that they have shifted to the flat and facing problems of water leaking and other problems and asked the respondent to rectify the same immediately. Ex.A20(series) are the photographs on the damages in the wall. But there is no evidence with regard to quantum of damages. The above documents and photographs are not sufficient in evidence for assessment of compensation towards damages. The complainants also claimed compensation directing the respondent to pay monthly maintenance at a specified rate till the date of providing all amenities and common amenities. The complainants are at liberty to approach the Authority for necessary direction to the respondent for such amenities.

(l) The leaned counsel for the complainants relied on various decisions in support of his contentions. At this juncture, it is relevant to mention that in Union of India Vs. Amrit Lal Manchanda reported in 2004 (3) SCC 75 and other cases in 2004 (4) SCC 205, 2002 (3) SCC 496 and 533, the Hon"ble Supreme Court clearly laid down that precedents and observations made therein are to be read in the context in which they appear and circumstantial flexibility, one additional or different fact may make a world of difference.

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(m) It is often reiterated that judgments cannot be read as Euclid's theorem. The words of Lord Denning in the matter of applying precedents which had been oft quoted with approval in more than one judgment of the Supreme Court is that while applying precedents "each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect".

(n) In the above circumstance, it is held that the complainants are entitled for compensation on the ground of delay in completing the construction and delivery of the flat to the complainants and also compensation for mental agony and litigation expenses. Thus, the point is answered accordingly.

8. **Answer for Point No.(ii):-**

(a) In view of the answer for the point No. (ii), the complainants are entitled for compensation on the ground of delay in construction and delivery of the flat as per the terms of the construction agreement. The complainants claimed compensation by way of interest on the sale consideration of the apartment for the delay and also compensation towards rental expenses with interest and also relied on the decisions of the Hon'ble Supreme Court in Ghaziabad Development Authority Vs. Balbir Singh in (2004) 5 SCC 65 and also in Wing Commander Arifur Rahman Khan and Aleya Sultana and Others Vs. DLF Southern Homes Private Ltd. and Others in (2020) 16 SCC 512 in support of his contentions. Both the decisions were rendered under Consumer Protection Act, 1986. So far as the RERA Act is concerned, it is a special enactment taking care of all the disadvantages of the flat purchasers in providing compensation. Nowhere in the RERA Act compensation towards rental loss is provided in addition to compensation by way of interest for the amount paid as sale consideration. Therefore, the above decisions cannot be made applicable

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under the RERA Act. 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 from the date of promised delivery in the agreement.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest 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. plus 2%, i.e. 9.30% p.a. for the amount of Rs.88,39,032/- from September, 2019 till the delivery of possession of the constructed flat, i.e. 19.08.2020.

(c) The claim of compensation towards rental expenses is rejected in view of the compensation for the delay in handing over is ordered by the Forum.

(d) Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed as compensation towards mental agony and hardships and a sum of Rs.25,000/- is fixed as litigation expenses. The claims of compensation on other heads are rejected. 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 and cost 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.

Sd/- 04.01.2023
G. SARAVANAN
ADJUDICATING OFFICER

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C.C.P.No.247/2021**LIST OF WITNESSES**

CW-1 --- T. Shanmuga Moorthy

RW-1 --- Y. Mohan Raj

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	....	Brochure of Project
Ex.A2	18.04.2018	Allotment Letter
Ex.A3	18.07.2018	Agreement for Sale
Ex.A4(Series)	18.07.2018 & 24.07.2020	Construction Agreements (Unregistered and Registered)
Ex.A5	24.07.2020	Sale Deed
Ex.A6	19.08.2020	No Due Certificate
Ex.A7	19.08.2020	Handing Over Certificate
Ex.A8(Series)	....	Email Communication between the Respondent and Complainant
Ex.A9(Series)	....	Bank Statement
Ex.A10(Series)	....	Payments and Rental Receipts
A11	18.12.2020	Registration Certificate of CAAOA
Ex.A12(Series)	12.06.2021	Invoice and Receipts of Maintenance charges
A13	14.07.2020	Completion Certificate
A14	13.05.2022	Electricity Consumption Bill
A15(Series)	....	Status of CTO applied by Respondent and etc.
A16	07.05.2022	Section 65B - Certificate
A17	30.12.2021	Copy of the Order in C.No.122 & 123/2020
A18	28.04.2022	Car Parking Report
A19	04.02.2022	Letter from CMWSSB
A20(Series)	....	Photographs of project

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	14.07.2020	Completion Certificate
Ex.B2	22.07.2020	Email Communication
Ex.B3	....	Payment Calculation Sheet
Ex.B4(Series)	....	Photographs

Sd/- 04.01.2023

G. SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI

