

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

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
CCP No. 145 of 2020**

1. S. Kulandaiswamy
2. K. Sindhu

.... **Complainants**

Vs.

M/s. Casa Grande Engineering Pvt Ltd.,
Rep by its Founder & MD,
Arun Mn & Anirudh Iyer

..... **Respondent**

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

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

Heard on : 04.08.2022

Delivered on : 08.08.2022

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of an apartment with interest and costs is filed under section 31 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) The complainants booked an apartment in the project of the respondent namely 'CASAGRAND MIRO' at Varadharajapuram Village, Sriperumbudur Taluk, Kancheepuram District by paying an initial amount of Rs.1,00,000/- on 09.04.2018. The complainants were allotted Flat No. G202 on 14.04.2018. The consideration to be paid was Rs.47,91,260/-. The complainants paid the stage wise payment timely making a total of Rs.45,52,643/- which includes a sum of Rs.5,13,456/- collected by the respondent under the head of GST at the prevailing rate of 12%, whereas the Government of India had given the benefit of availing 5% GST in ongoing projects, thereby requiring the benefits to be

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passed on to the buyer / customer by filing necessary returns. The complainants therefore hold that the respondent was keeping an excess amount of 7% under the head of GST.

(b) The construction agreement dated 06.12.2018 projects the delivery of the apartment in October, 2019. When this passed the due date the complainants raised an enquiry with the respondent and, it was found that they had obtained one year extension from TNRERA, shifting the delivery date to 31.10.2020, thus extending it by one year. The complainants claim that they were not informed of this extension and that construction agreement had no provision for covering any delayed delivery. The complainants therefore seek refund of the total amount paid as also refund of the excess GST amount collected. The complainants further submit that various amenities which were promised still remain to be completed.

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

(a) The respondent concurs that the complainants with regard to the allotment of flat No.G202 in the project of the respondent vide allotment letter dated 14.04.2018. The respondent submits that the construction agreement was signed on 06.12.2018. The respondent says that the complainants had utterly failed to meet the schedule of payment as per the agreement. He concedes that a payment of Rs.48,42,256/- was made and that there was delay varying from 4 days to 30 days while paying the instalments.

(b) With regard to GST, the respondent maintains that he had charged 12% with ITC (Input Tax Credit) only in accordance with the Ministry of finance notification with regarding to new GST rate structure for Real Estate Sector on 19.03.2019 and thus the GST collected was only as per the provisions of GST rate structure covered by the Ministry of Finance.

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(c) As regards the delayed delivery of the apartment, the respondent submits that they were in a situation where there was no availability of sand and there was scarcity of water for development of the project and due to such force majeure conditions, it became impossible for the respondent to complete the work in time. He submits that he had obtained extension for the project from 01.11.2019 to 31.10.2020, a period of 12 months. He also submits that this extension was intimated to the bank which had extended loans to the home buyers which was accepted by the State Bank of India in this case, and they had restructured the loan accordingly and the respondent further contends that the same was communicated to the complainants vide e-mail dated 31.03.2020. The respondent also submits that the complainants had signed the handing over certificate on 19.01.2020 after visiting the complainant's unit office for carrying out interior works. The respondent therefore submits that there is no liability which makes out from him towards 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.

6. On the basis of rival contentions of the parties, the following points arise for determination.

(i) Whether there is any delay in delivery of the apartment by the respondent to the complainants?

(ii) Whether the complainants are entitled for the difference in GST collected by the respondent?

(iii) Whether the complainants are entitled for refund of the amount paid to the respondent?

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

(a) The complainants had entered into a construction agreement (Ex.A4) with the respondent on 06.12.2018 and as agreed by both the parties, a sum of Rs.47,91,260/- was agreed as sale consideration for the said apartment. The construction agreement Page No. 16 of typed set of the complainants stipulates the delivery of the apartment by October, 2019. The respondent by his own admission was not able to complete the project on the agreed date due to which he had sought extension for the project completion (Ex.B2). The extension was granted for a period of 12 months from 01.11.2019 to 31.10.2020. The respondent had submitted handing over certificate dated 19.01.2021 (Ex.B3). However, even this certificate clearly lays down that ***“Unit has been handed over only for the interior purpose and not for occupancy”***. The project got the completion certificate on 21.05.2020 (Ex.B5). However, this was only for interior purpose and not for occupancy. A residential building could only be one which is fit enough to be used for living and a mere handing over for interior would not make it livable. The provisions of extension of the project given by RERA (Ex.B2) clearly stipulates vide para-2(i) ***“This extension of registration is granted subject to the following conditions;***

(i) Without prejudice to the rights of the buyers in the sale/construction agreement as well as the Act and Rules”.

The construction agreement at Page No. 23 of the type set of the complainants vide para 5 (b) (3) reads as follows:-

“In case of default by promoter under the conditions listed above, the allottee(s) is entitled to be paid, by the promoter, the interest at the rate of the interest, which shall be the State Bank of India

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highest marginal cost of lending rate plus two percent as prescribed under Tamil Nadu Real Estate (Regulation and Development) Rules 2017, for every month of delay till the handing over of the possession of the apartment”

(b) The condition stipulated in extension granted to the project (Ex.B2) clearly laid down that the extension was granted subject to being without prejudice to the right of the buyer in the sale of the construction agreement as well as Act and Rules. The stipulated date for handing over was October, 2019 and by their own admission the respondent was able to get the completion certificate on 21.05.2020. This being so, there is a delay in delivery of the apartment by the respondent to the complainants. The complainants therefore are entitled to be paid for the delay in handing over from November, 2019 till the date of handing over i.e. 19.01.2021 (Ex.B3). Thus, the point is answered accordingly.

8. Answer for Point No (ii):

The complainant seeks refund of difference in the GST. The complainants submit that while the applicable rate of GST was 5%, the respondent had charged 12%, thereby holding an excess of 7% with him. The respondent on the contrary provides documents (Ex.B1) wherein decision has been taken by the GST council in its 34th meeting held on 19.03.2019 regarding the GST rate on real estate sector. The promoters were given one time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC on on-going projects (buildings where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019. The above was to be exercised once within a prescribed time frame. The respondent vide Ex.B7 dated 08.05.2019 has

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exercised the option and opted for 12%. The Ex.B7 is only a declaration and not an order of the competent Authority. However, the document bears the seal of having been received with the office of GST and also that the same has not been countered by the complainants at any stage. The details of the project, location and survey numbers matching, it cannot be held that any 7% has to been collected and held by the respondent and this would clearly imply that no refund of the GST as alleged needs to be refunded and thus the point is answered accordingly.

9. Answer for Point No. (iii)

(a) In view of the answer for Point No. (i) and (ii), the complainants are entitled for refund amount of Rs.45,52,643/- paid to 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 complainants are entitled for the interest at the rate of 7.30% 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., 9.30% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. 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:-

1. The respondent shall pay the amounts at the interest rate, as per the findings in answer for Point No.(iii), Para No.9 of this order within 30 days of issue of this order.

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2. The complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.

3. The charge of the aforesaid amount as encumbrance if any shall be on the flat booked by the complainants till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance if any created by charge in the order to the Sub-Registrar concerned.

4. On repayment of the claim as per the order, the complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd/- 08.08.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

CW-1 --- S. Kulandaiswamy

RW-1 --- Y. Mohan Raj

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

| Ex.Nos | Date | Documents Name |
|--------|-------------------------------|--|
| Ex.A1 | --- | Payment receipts |
| Ex.A2 | 14.04.2018 | Allotment letter |
| Ex.A3 | 14.06.2018 | Agreement for sale |
| Ex.A4 | 06.12.2018 | Construction agreement |
| Ex.A5 | --- | Email communications |
| Ex.A6 | 30.01.2020 | Deed of absolute sale |
| Ex.A7 | 21.02.2020 & 18.08.2020 | Legal notice and addendum notice by complainants |

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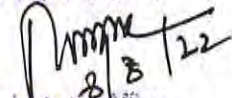
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| | | |
|-------|------------|------------------------|
| Ex.A8 | 21.05.2020 | Completion certificate |
|-------|------------|------------------------|

LIST OF DOCUMENTS FILED BY THE RESPONDENT

| Ex.Nos | Date | Documents Name |
|--------|------------|--|
| Ex.B1 | 19.03.2019 | GST Council notification |
| Ex.B2 | 16.10.2019 | RERA extension certificate |
| Ex.B3 | 19.01.2021 | Post handover guidelines |
| Ex.B4 | --- | Emails sent by the respondent |
| Ex.B5 | 21.05.2020 | Completion certificate |
| Ex.B6 | --- | Excel sheet on default payment by complainants |
| Ex.B7 | 08.05.2019 | GST representation |
| Ex.B8 | 03.07.2018 | Modification agreement |
| Ex.B9 | 19.01.2021 | No due certificate |

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N. 
8/8/22
Administrative Officer

Sd/- 08.08.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

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

Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member

CCP No. 145 of 2020

17th August, 2022

1. S. Kulandaiswamy
2. K. Sindhu

.... **Complainants**

Vs.

M/s. Casa Grande Engineering Pvt Ltd.,
Rep by its Founder & MD,
Arun Mn & Anirudh Iyer

..... **Respondent**

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

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

AMENDMENT

The following typographical error is ordered for rectification in the Para No. 9 on Page 6 of the order.

The existing portion reads as follows:-

"9. Answer for Point No. (iii)

(a) In view of the answer for Point No. (i) and (ii), the complainants are entitled for refund amount of Rs.45,52,643/- paid to 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 complainants are entitled for the interest at the rate of 7.30% 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., 9.30% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondent.

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(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainants are entitled for the reliefs as detailed above. Thus, the point is answered accordingly”.

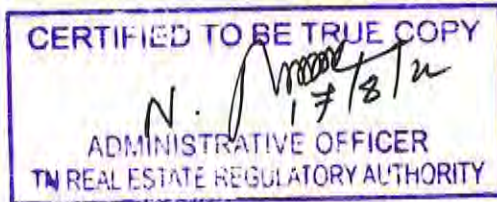
The above is replaced and shall be read as follows:-

“9. Answer for Point No. (iii)

(a) The relief sought at Para 6 (i) answered in Para 7 amounts to compensation for which the complainants are at liberty to move the Adjudicating Officer.

(b) In view of the answer to Para 6 (ii) answered in Para 8, the complaint is dismissed as no refund is made out”.

The remaining order shall remain intact.



Sd/- 17.08.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

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

Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member

CCP No. 145 of 2020

07th February, 2023

1. S. Kulandaiswamy

2. K. Sindhu

..... **Complainants**

Vs.

M/s. Casa Grande Engineering Pvt Ltd.,

Rep. by its Founder & MD,

Arun Mn & Anirudh Iyer

... **Respondent**

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

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

AMENDMENT

In view of the petition filed by the complainants in CCP No. 145 of 2020 dated 08.08.2022, the following in Point No. (iii) in Para 9 at Page 6 of the order as follows:-

9. **Answer for Point No. (iii)**

" (a) In view of the answer for Point No. (i) and (ii), the complainants are entitled for refund amount of Rs.45,52,643/- paid to the respondent".

shall be read as follows:-

9. **Answer for Point No. (iii)**

" (a) In view of the answer for Point No. (i) and (ii), the complainants are entitled for interest for the delay in handing over from the stipulated date of delivery, which was on November 2019 till the handing over on 19.01.2021".

In the result portion, Point Nos. 3 and 4 are deleted.

Other part of the order shall remain intact.



Sd/- 07.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI