

**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. 01 of 2021**

Vishnukumar Balasubramanian

..... **Complainant**

**Vs.**

M/s. Casa Grand Builder Private Ltd.,  
Rep by its Managing Director, Mr. Arun MN

..... **Respondent**

**Complainant** : Rep by Mr. T. Raghavan, Advocate.

**Respondent** : Rep by Mr. T. Gowthaman, Advocate.

**Heard on : 09.03.2022**

**Delivered on : 31.03.2022**

**ORDER**

The above complaint by the complainant 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 complainant, in brief, as follows:**

(a) The complainant booked a flat in the project, namely, "Casa Grande Monte Claro", on 21.07.2015 promoted by M/s. Casa Grand Builder Private Limited and was allotted Flat No. 906 (Ex.A2). At the time of making the booking (Ex.A1), the respondent was assured that the project will be launched in seven months (Ex.A1) and later in their letter dated 30.12.2018 (Ex.A4) committed that the apartment would be handed over by 31.07.2019. Therefore, the handover of the said flat got shifted to 31.07.2019. The complainant have made a total payment of Rs.2,02,80,259/- from the period 22.07.2015 and 16.06.2018 (Ex.A3). The complainant further prays that no agreement of sale or construction has been made originally despite having paid a sum of Rs.2,02,80,259/- to the

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respondent. Finally on 10.01.2020, the construction and sale agreement was signed with a delay.

(b) Based on the failure of the respondent to deliver the flat in time based on the commitment given, the complainant has sought for refund of entire amount of Rs. 2,02,80,259/- beside compensation to the tune of Rs.50,00,000/- and Rs.50,000/- for litigation expenses.

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

(a) The respondent in his counter has admitted that on mutual agreement the said flat was booked by the complainant in the project, namely, "Casa Grande Monte Claro", for a sum of Rs. 2,21,10,520/-. The respondent denies the charges of not entering into the sale and construction agreement and blamed the complainant for failing to do so as he was either out of the country or out of Chennai. The respondent further submits that he had always been making the complainant aware of status of the project through picture sent through e-mails and claims to have obtained all the clearances required for the project much before the complainant sent his letter dated 27.12.2019 seeking refund. The respondent finally says that the flat was ready and the completion certificate has been obtained which was shared with the complainant through e-mail dated 20.09.2019 and hence contends that in this situation no case for refund is made out.

4. An attempt to settle the matter amicably has failed.

5. On the side of the complainant they filed their respective evidence of affidavit with documents. No documents have been filed by the respondent.

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

- i. Whether the handing over of the flat is delayed warranting refund or not and what is the relevant date to decide the issue of delay?

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ii. What are the reliefs, the complainant is entitled to?

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

(a) The complainant had booked the apartment on 21.07.2015 and was allotted Flat No. 906 in the project, namely, "Casa Grande Monte Claro", (Ex.A2). The complainant has paid a sum of Rs.2,02,80,259/- between the 22.07.2015 and 16.06.2018 (Ex.A3). There was no sale or construction agreement signed at the time of allotment until 10.01.2020. The respondent vide their booking acknowledgment letter dated 25.07.2015 (Ex.A1) have committed to launch the project in seven months. Later, the respondent in their letter dated 30.12.2018 had committed to complete the project by 31.07.2019 (Ex.A4). The complainant vide his letter dated 27.12.2019 has sent for the termination of the agreement and demanded reimbursement of the paid amount as the committed date 31.07.2019 had crossed over (Ex.A5). For whatever reasons, the agreement for sale and construction agreement, were not entered into till 10.01.2020. The only document till 10.01.2020 which indicated the date of completion on 31.07.2019 was the letter received by the complainant from the respondent dated 30.12.2018 (Ex.A4). It would be clear from the proof affidavit submitted by the respondent that they had informed the complainant that the completion certificate had been obtained which was shared vide email dated 20.09.2019 by the respondent to the complainant.

(b) The Ex.A4 clearly indicated that the apartment was to be delivered on or before 31.07.2019

*"In case if we are not able to deliver your apartment on or before 31<sup>st</sup> July 2019, we are liable to pay you an interest which shall be SBI highest marginal lending rate +2% for every month till the handing over of the possession of the apartment,*

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*provided the Allottee/customer should have paid the stage payments on time as per the demand due date"*

Since the delivery was not made, the complainant vide his letter dated 27.12.2019 (Ex.A5) requested for termination of the contract and the reimbursement of the amount paid.

(c) At this stage, the complainant stood on strong ground, to claim compensation as the delivery of the said flat had not taken place on the committed date which will be taken as 31.07.2019 in the absence of any construction agreement and relying solely on the commitment of the respondent vide Ex.A4.

(d) However, the agreement for construction (Ex.A7) was signed between the complainant and the respondent on 10.01.2020 whereby the date of delivery got changed to 31.01.2020.

*"The promoter shall endeavor to complete the construction of the apartment by 31<sup>st</sup> January 2020"*

The new construction agreement changes the date of delivery from 31.07.2019 to 31.01.2020 and the same was mutually agreed between the complainant and the respondent as is clearly evident from Ex.A7. The agreement dated 10.01.2020 is later in time then committed which the promoter have given vide Ex.A4 in his letter dated 30.12.2018 or even Ex.A1, the allotment letter which had shown likely the date of launch the project within 7 months from the date the letter was issued on 25.07.2017. The proof affidavit of the respondent clearly states that the promoter had sent an e-mail on 20.09.2019 to the complainant regarding having obtained completion certificate for the project. This issue was also discussed at the time of oral argument wherein while the respondent made a mention of this crucial date the complainant did not refute this claim of the respondent. The above being the situation, the first question is clearly

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answered that the project was handed over to the complainant within the mutually agreed date of 31.01.2020 and therefore, the question of delay in handing over the project does not arise. Hence, no refund is made out.

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

The claim for refund does not work out for the complainant. Hence, no refund is ordered.

However, the complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant, as the same, falls in his jurisdiction.

Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH

**LIST OF WITNESSES**

CW-1 --- Subha Sree (POA)

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	25.07.2015	Booking acknowledgment
Ex.A2	02.09.2016	Allotment letter
Ex.A3	09.08.2016	Details of payment issued by respondent
Ex.A4	30.12.2018	E-mail by the respondent
Ex.A5	27.12.2019	Letter sent by the complainant
Ex.A6	10.01.2020	Agreement for sale
Ex.A7	10.01.2020	Construction agreement
Ex.A8	26.10.2020	Special power of attorney

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

**NIL**



Sd/- 31.03.2022  
Mr. SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER BENCH  
TNRERA, CHENNAI