

**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. 325 of 2021**

G. Dhanapal

..... Complainant

**Vs.**

M/s. Casagrand Magick Rufy Pvt Ltd.,  
Rep. by its Managing Director

..... Respondent

**Complainant** : Party – In- Person

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

**Heard on** : 30.09.2022

**Delivered on** : 16.11.2022

**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) Responding to an advertisement, the complainant entered into a project known as "*Casagrand Athens*" wherein the newspaper advertisement assured delivery of the apartment in the project phase-I in 24 months. The complainant has paid a booking advance for Rs.1 Lakh on 20.11.2020 and subsequently an amount of Rs. 5,27,052/- on 21.12.2020. No construction or sale agreement was entered into at this stage.

(b) The complainant subsequently received the draft construction agreement by e-mail on 12.01.2021, wherein Clause 4 (a) mentioned a different projection regarding the completion and projected it to take 41 months and an additional 3 months as grace time from the date of booking i.e. 20.11.2020. This was in contrast to the advertisement dated

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20.11.2020, which mentioned the completion of phase-1 in 24 months. The complainant brought this to the notice of the management and requested them to make the required change in the Construction agreement. The Respondent did not carry out the said change in the Construction agreement regarding the completion clause. The complainant requests the Respondent to refund the amount paid by him which has still not been refunded. Aggrieved the complainant prays direction to the Respondent to pay the sum of Rs.6,27,052/- paid by him to the respondent with interest. He also request for compensation and cost for the legal expenses.

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

The learned counsel for the Respondent submits that the averments and allegations made by the complainants are incorrect and false excepting any facts, which are specifically admitted by the Respondent. The Respondent avers that while entering into the project, the complainant had visited the site of the Respondent's project namely, "*Casagrand Athens*", made enquiries and on full satisfaction regarding the terms and conditions had entered into the project and was allotted Flat No. A502. The Respondent agrees to the payment of Rs.6,27,052/- on 23.11.2020 and 22.12.2020. The allegations raised by the complainant were false as the complainant had chosen to cancel the allotment for his own reasons not attributable to the Respondent. Despite not being at fault the Respondent submits that he had sent a cheque which was not accepted by the complainant. The complainant all this while had only demanded refund of the principal amount paid by him and had made no plea for interest. However, as a afterthought the complainant demanded interest on the amount paid by him as also compensation. The Respondent submits that he is not liable to pay any interest or compensation.

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

(i) Whether the contention of the complainant regarding the date of the delivery in the advertisement and the proposed construction agreement were different entitling refund to the complainant?

(ii) What are the reliefs made out?

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

(a) The referred advertisement appears in the *Times of India* newspaper (Ex. A1) which indicates the completion of the project in 24 months for phase -1. The complainant claims advertisement came on 20.11.2020, but the date is not clearly visible in the Exhibit submitted. However, this has not been disputed by the Respondent at any stage. Hence, it is taken as such. 24 months from November, 2020 would project that the delivery date as 20.11.2022. The draft construction agreement submitted by the complainant as Ex.A7 confirms the allotment of apartment No.A502 in the *Casagrand Athens* in the complaint. However the period of completion and handing over possession which appeared as para-4 of the draft construction agreement stipulates the delivery date to 26.01.2024 and a period of 3 months a period of grace time thus projecting the delivery in 41 months. The complainant had got this draft Construction through email.

(b) A letter from the complainant dated 22.07.2021 (Ex.A5) makes a prayer to the Respondent to withdraw from the project seeking refund on grounds of the project taking 41 months to complete as against 24 months in the advertisement shown in the newspaper advertisement (Ex A1). A list of e-

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mails (Ex.A3) would also indicate that the complainant had agitated over the prolonged delivery period in several times, but was not satisfied by the respondent.

(c) It is clear from the evidences that the complainant had given an advance of Rs.1 Lakh (Page 2 of the complainant typeset) and Rs.5,27,052/- (Page 3 of the typeset) based on information contained in the newspaper advertisement even before entering into any written agreement. This information turned out to be false when the draft construction agreement was sent to the complainant. The Respondent has therefore clearly violates the section 12 of the RERA Act:

*"Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

*Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act"*

(d) Since the complainant wishes to withdraw from the project he is entitled to refund of the entire amount investment by him along with interest as per Section 12 of the RERA Act. The Respondent submission that he was willing to pay the principal and that claiming of interest was an afterthought is not sustainable. A clear violation of Section 12 of the RERA Act is also made out against the respondent for which a penalty would be

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imposed on him under Section 60 of the RERA Act. Thus, the point is answered accordingly.

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

(a) Therefore, the complainant is entitled for refund amount of Rs.6,27,052/.

(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 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 complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (i) The respondent shall pay the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 of this order within 30 days of issue of this order.
- (ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (iii) A penalty of Rs.50,000/- shall be paid by the respondent for violation of Section 12 of the RERA Act.
- (iv) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance

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created by charge in the order to the Sub-Registrar concerned.

- (v) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

Sd.- 16.11.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- G. Dhanapal

RW-1 --- Y. Mohan Raj

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	---	Time of India newspaper advertisement
Ex.A2	19.12.2020	Allotment letter
Ex.A3	---	Email communications
Ex.A4	10.02.2021	Handing over letter from respondent
Ex.A5	22.07.2021	Letter to respondent by speed post
Ex.A6	12.08.2021	Legal notice to respondent by speed post
Ex.A7	05.01.2021	Construction agreement

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	18.02.2022	Cheque
Ex.B2	---	E-mails

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Secretary (Finance & Admin.),  
TNRERA, Chennai - 8.

Sd/- 16.11.2022  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI