

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

**Quorum : Thiru. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member  
CCP No. 394 of 2021**

1. Dr. Thomas Alexander  
2. Alexander Thomas

..... **Complainants**

**Vs.**

M/s. Casa Grand Private Limited,  
Represented by its Managing Partner,  
Arun Kumar

..... **Respondent**

**Complainant** : Rep. by M/s Rohan K George, Advocates

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

**Heard on : 18/04/2023  
Delivered on : 18/08/2023**

**ORDER**

The above complaint by the complainant seeking refund with interest from the respondent towards purchase of the apartments 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 complainants have purchased a duplex flat from the respondent in his project by name "Monte Carlo" on 18<sup>th</sup> August, 2016 and entered into sale and construction agreement on 25.06.2019. The UDS has been registered on 25.06.2019 as sale deed document no. 1636 of 2019 at Sub-Registrar Office, Adayar. The total sale consideration was Rs.81,60,600/- for UDS which the

complainants have paid in full. The construction cost was agreed at 1,90,87,900/-. The date of completion and delivery was agreed at 31.07.2019. The complainant avers that he had made all the payments after much correspondence between the two parties and it was finally mutually agreed that the complainant was yet to pay a sum of Rs.2,61,350/- to the respondent. The complainant has paid Rs.2,72,48,500/- in all.

**(b)** The complainant submits that the completion certificate was obtained only on 18.08.2019. However, even at that stage the construction had not been completed. The complainant had inspected his unit in November, 2018 and had noticed several deviations from the construction plan and the major one was that the staircase had not been made as per the plan. These deviations were brought to the notice of the respondent vide the complainants email dated 29.09.2018. The respondent accepted the error and agreed to demolish and reconstruct the staircase.

**(c)** The complainant at this stage requested the respondent to construct a metal staircase rather than of concrete. The respondent agreed to do so at an extra cost which was mutually agreed and the complainant was required to pay the difference between the metal and the concrete stair case. The respondent also agreed to other modifications as well at their cost. The respondent had agreed to all these modifications without making any mention of any additional time requirement for handing over the completed unit.

**(d)** The respondent made no progress between March and July, 2020, due to the Covid pandemic situation. It was only in July, 2020 that all these works were completed but on inspection the complainant found other incomplete pending works as well. The final demand for Rs.16,24,466/- was raised on 07.08.2020.

(e) The respondent had issued a new demand notice on 23<sup>rd</sup> November, 2020, which was only a correction of the incorrectly imposed penalties and finally a request was made to the Hon'ble High Court of Madras by the complainant vide email dated 25.11.2020.

(f) The complainant also submits that even the GST was charged at the higher rate, where the respondent had claimed a sum of Rs. 2,70,319/- as an extra amount. Finally the key to the apartment was handed over on 08.12.2020. Aggrieved the complainant files the CCP seeking interest on the total sale consideration paid by the complainant Rs.3,13,52,900/- including GST and refund of the extra amount collected along with compensation and cost of litigation.

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

(a) The respondent concurs to the complainant purchase of the apartment no.1408 in the respondent's project. The sale and construction agreement was entered on 25.06.2019. The respondent firstly submits that the stage-wise payments were not correctly paid by the complainant. The respondent avers that the agreed date of delivery was 31.07.2019 wherein the respondent had received the completion certificate during September, 2019. The apartment was finally handed over to the complainant on 08.12.2020 and the delay in handing over was caused due to the alteration in staircase work at the complainant's request.

(b) The respondent goes on to submit that the complainant had defaulted the scheduled payment and thus cannot make any claims having failed to perform his part of the obligations. As regards excess amount received, the respondent submits that any late fee had been charged only till the brick work stage. The respondent also submits that the locality of the project site faced a

virtual embargo for months due to litigation pending before Hon'ble High Court of Madras and thus relief for claim is not maintainable and pleads to dismiss the complaint.

4. An attempt to settle the matter amicably as filed.

5. To prove their claim, both the parties have filed their respective evidence on affidavit with documents.

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

(i) Is the complainant entitled to be allowed with interest due to delay in delivery?

(ii) What are the reliefs made out?

**7. Answer for the point (i):**

(a) The construction agreement between the complainant and the respondent was entered on 25/06/2019 (EX-A2) and the UDS was registered in Document No. 1636/2019 in the office of the Sub-Registrar Office, Adayar (EX-A1). The construction agreement between the two parties was entered on 25/06/2019 (EX-A2). The complainant was allotted apartment No. 1408 in the respondent's project as is laid down in the Schedule "E" of the construction agreement. The sale consideration agreed between the complainant and the respondent as per the sale deed was Rs.81,60,600/-. The total cost including the cost of UDS was paid by the complainant is Rs.3,13,32,900/- in all. The clause 4(a) of the construction agreement lays down the completion by 31/07/2019. Clause 4(b) of the construction agreement requires the

respondent to intimate the completion of the apartment to the complainant whereupon the complainant was to take possession within 15 days.

**(b)** The complainant had visited sale apartment in November, 2018 when he noticed several deviations including a major one where the staircase had not been made as per the plan. The complainant pointed out this deviation in the staircase to the respondent. The respondent agreed to the mistake committed by him and offered to correct the error. It may be noted that, at this time, the construction agreement had not been executed. The construction agreement was executed on 25/06/2019 nearly 7 months after these errors in this staircase had been noticed. The respondent entered into this construction agreement without any mention of this rectification of the error and that date of delivery as mentioned in the construction agreement clause 4(a) in 31/07/2019. The respondent has not adduced any evidence to show that the rectification of the stairs required any extra time. The respondent at this stage was aware of the additional works he had to attend including to rectify the staircase. He remained silent on this issue and did not handover on 31/07/2019.

**(c)** The complainant has submitted that he was not given delivery of the completed apartment by the promised date that is 31/07/2019. The respondent blames it on the complainant where he has submitted that the delay happened due to staircase being rectified. The respondent submits that the complainant had requested for change in the specification and had wanted to bring in his own vendor which the respondent had permitted. This also happens in November, 2018 much before the construction agreement was signed. The respondent made no mention in the construction agreement for the requirement of any additional time for rectification of the staircase. In any

case, the rectification was being carried out by a 3<sup>rd</sup> party not belonging to the respondent and hence could not be accepted as a reason for delay in delivery as this would then not be a part of work to be done by the respondent.

**(d)** More so, when the construction agreement had been executed much after for the decision of rectification of staircase was taken. Hence, the following two points are established.

1) That there was a delay in handing over the apartment in contravention to the construction agreement.

2) Decision regarding the rectification of the staircase happened prior to the execution of the construction agreement, which incase, if the respondent had so felt, could have made a mention of the same in the construction agreement seeking extra time or even absolving himself of any delay due to this, as in any case a third party vendor called by the complainant himself had been chosen. The respondent did none of these too. Hence the reason cited for delay in handing over by the respondent is not acceptable.

**(e)** The respondent had obtained the completion certificate in September, 2019 as submitted by the respondent himself thereby, at this stage itself a delay is accepted by the respondent as the delivery was agreed by 31/07/2019. Further, the respondent has himself, admitted that he had offered to hand over the apartment to the complainant only on 08/12/2020 when the keys to the apartment were handed over to the complainant, thus taking the delay in delivery from 31/07/2019 to 08/12/2020. The respondent takes a plea of delay due to pandemic Covid-19 for which he submits a total of 6 months extension had been granted by the RERA. However, in this situation when the

due date of delivery was 31/07/2019, lying much ahead of the time pandemic Covid-19 started and the grace period of 6 months was even allowed. This being so the claim of the respondent to avail a 6 months grace period allowed due to pandemic Covid-19 and cannot be permitted. Hence it is established that there is a delay in delivery from 31/07/2019 to 08/12/2020 for which period, the complainant is entitled to payment of interest due to delay in handing over by the respondent along with refund of the excess amount collected by the respondent with interest. As regards, the extra amount paid and claimed by the complainant adequate evidences have not been produced to allow consideration of the prayer and thus the first point is determined.

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

(a) Therefore, the complainant is entitled interest on the amount paid by him from 31/07/2019 to 08/12/2020. The complainant is also entitled to refund of the excess amount collected from him with interest.

(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 from the date of respective payment till repayment by the respondents.

(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.

**9. In the result, the respondents are directed as follows:-**

- (i) The respondent shall pay the entire amount at 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.

Sd/- 18/08/2023  
SUNIL KUMAR, I.P.S (Retd.)  
SINGLE MEMBER,  
TNRERA, CHENNAI.

**LIST OF WITNESSES**

CW-1 --- Alexander Thomas

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

x.Nos	Date	Documents Name
Ex.A1	25/06/2019	Sale Deed
Ex.A2	25/06/2019	Construction Agreement
Ex.A3	---	(Series) E-Mail Communications between the Complainant and Respondent
Ex.A4	07/08/2020	Final Demand Letter-from Respondent
Ex.A5	---	Proof of Excess-payment (Sought for-refund)
Ex.A6	---	Copy of the all the Demand letter issued by the respondent
Ex.A7	---	HDFC Bank Statement of the Complainant

**TRUE COPY**



**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

RW-1 --- Y.Mohan Raj

Ex.Nos	Date	Documents Name
Ex.B1	28/01/2019	Madras High Court Order Copy
Ex.B2	18/09/2019	Completion Certificate
Ex.B3	---	Payment Calculation Sheet

Sd/- 18/08/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

