

**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. 71 of 2021**

**Hitender Singh Walia** ..... **Complainant**

**Vs.**

**1. M/s. Casagrand Builder (P) Ltd**

**2. M/s. Dawning Developers LLP** ..... **Respondents**

**Complainant** : Rep by M/s. B.Manoharan, Advocates

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

**Heard on : 11/04/2023**

**Delivered on : 24/05/2023**

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of a plot 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 respondent's project in Casagrand Crescendo and was allotted flat no. D-202 of payment of an advance of Rs.1,00,000/- on 16/06/2018. Based on the allotment letter, the complainant paid balance sum of Rs.5,70,000/- as the remaining part of the booking advance. The complainant avers that the allotment letter issued on 16/06/2018 did not mention a covered car park. The complainant avers that he continuously followed up with the respondent for 5 months thereafter, the respondent allotted a closed car park with a additional cost of Rs.76,000/- and

A.I.S.  
24/5/23

**TRUE COPY**

consequently the intimation letter received from the respondent dated 16/06/2018 had revised for Rs.50,000/-.

(b) The respondent further avers that at the time of booking the respondent had committed to the complainant of the flat being 1197 Sq.ft. @ 4850/- Per Sq.ft., while the allotment letter so received mentioned as 820 Sq.ft. The complainant was also not clear with regard to other charges of Rs.7,75,000/-. The complainant avers that since he did not receive any documents from the respondent he had decided to withdraw from the project and seeks refund of Rs.6,70,000/- paid by him to the respondent along with compensation and cost of legal expenses.

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

(a) The learned counsel for the respondent begins by objecting the maintainability of the complainant as also on grounds of the complainant being factually incorrect and false. The respondent avers that it was only after fully being satisfied with regard to the respondent's project "Casagand Crescendo" and on full satisfaction only that the complainant had accepted the allotment of flat D-202 with a carpet area of 820 Sq. ft and super built up area of 1197 Sq.ft along with one car park. The complainant had paid a sum of Rs.6,70,000/-.

(b) The respondent avers that they had issued a demand letter for making the further payment vide the email dated 03.01.2020, which the respondent avers as exhibiting failure on the part of the complainant to make further payment and only on completing this obligation that only the respondent could enter into the necessary contract to secure the allotment. The respondent avers that despite repeated efforts on their part to get the payments they could not succeed. This conduct of the complainant shows lack

of interest for his own reasons. The respondent avers that it is only on after thought that the complainant had sent emails and remains silent thereafter.

(c) The respondent infers that the complainant does not want to proceed on his own reasons as wants to exit the project by putting complaint on the respondent. The respondent avers that the complainant did not come forward to execute the documents and also failed to make payments. The respondent avers that in spite of this, the respondent had made efforts to reach out to the complainant to refund the advances received from the complainant. The complainant on other hand had insisted on demanding interest and compensation while refusing to receive the refunds and thus pleads to dismiss the complainant.

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

5. In the complaint, both the parties have filed their respective evidence on affidavit.

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

(i) Is the complainant entitled to seek refund of the money paid by him with interest on the ground of cancelling allotment due to the respondent charging for the covered car park in lieu of the OCP proposed as also for offering lesser area in the allotted flat as compared to the promise made?

(ii) What are the reliefs made out?

7. Answer to Point No. (i)

(a) The complainant had approached and was allotted flat no. D-202 in the respondent's project by name "Casagrand Crescendo" (Ex-A2) on 16.06.2018.

This was following a news paper advertisement by the 1<sup>st</sup> respondent (Ex-A9). No sale and construction agreements were executed between the parties. The allotment letter (Ex-A2) indicates the total cost of the unit to be Rs.67,10,000/- The consideration paid by the complainant is Rs.6,70,000/-. The consideration was paid in 2 installments which includes Rs.1 lakh on 16.06.2018 (Ex-A1) and Rs.5,70,000/- on 04.07.2018 vide a bank transfer (Ex-A4). The total consideration paid by the complainant is Rs.6,70,000/-. The total consideration as indicated in the allotment letter was Rs.67,10,000/-, wherein 10% works out Rs.6,71,000/-.

**(b)** The complainant is entitled to cancel and get refund of the money paid by him to the respondent. It only needs to be determined whether the provisions of the Tamil Nadu Real Estate Regulatory Authority Act, 2016 would entitle the complainant to refund with interest or not.

**(c)** Two reasons have been cited to withdraw from the project by the complainant:

1) That the respondent had allotted a Open Car Park instead of covered car park. When the complainant requested for being given a covered car park, it was finally allotted but at an additional cost which was being objected by the complainant.

2) That the respondent was giving a covered area of 820 Sq.ft instead of 1197 Sq.ft.

The issue is to determine whether the two reasons in this CCP would fall in the provisions of the Tamil Nadu Real Estate Regulatory Authority Act, 2016 to allow the complainant to get refund with interest.

(d) The first dispute arose between the complainant and the respondent on the issue of allotment of covered car park. The allotment letter shows the allotment of one Open Car Park (OCP). The complainant has demanded covered car park. Emails from the complainant to the respondent dated 04.01.2019 (Ex-A6) comes out with evidence to show that the covered car park, as demanded by the complainant, was allotted on 08.10.2018, admittedly after nearly 4 months of allotting the unit to the complainant. However, as it is seen from the subsequent emails from the complainant to the respondent, it would show that car parking was charged and the complainant was protesting for the same (Ex-A7).

(e) The evidence extended by the complainant, the allotment letter (EX-A2) issued by the respondent on 16.06.2018, mentions the details of the allotment of one Open Car Park (OCP). Since the covered car park was not committed at the time of allotment, charge raised by the respondent for providing one cannot be objected by the complainant. The plea of the complainant objecting to the respondent asking payment for the covered car park at an additional cost cannot be objected to by the complainant.

(f) The second issue which needs to be determined between the complainant and the respondent pertains to allotment of a flat having 820 Sq.ft of area as against the promised 1197 Sq.ft. The complainant has cited the newspaper advertisement (EX-A9) to put forth his claim. The reading of the said advertisement indicates availability of flats in the Casagrando Crescendo project for 2,3 and 4 BHK apartments ranging from 1197 to 2193 Sq.ft. The price too is shown as starting from Rs.77,00,000/-. The complainant was allotted unit no. D-202 in the respondent project on 16/06/2018. The allotment letter clearly mentions the carpet area as 820 Sq.ft wherein the cost of the unit has also been indicated to be Rs.67,10,000/-. The complainant has

paid a sum of Rs.1,00,000/- on 16/06/2018 (EX-A1). The complainant has later paid a sum of Rs.5,70,000/- on 04/07/2018 (EX-A4). This clearly shows that the respondent is clearly aware of the laid down carpet area and the price of the unit where after only, the complainant has paid the money in 2 installments on 16/06/2018 and 04/07/2018. This, on the one hand, does not show any effort on the part of the respondent to have any ambiguities in their offer. It also exhibits that the complainant also had enough opportunity to understand the terms of allotment and payment of the part consideration without objection amounts to acceptance of the details given in the allotment letter. The complainant has objected to the same only vide is E-Mail dated 04/01/2019 (EX-A6) where, for the first time, he raised the issue of the reduced area which the respondent has clearly indicated in the allotment letter much after allotment on 16/06/2018.

(f) The reason cited by the complainant for cancellation of the unit would not fall under provisions of the Tamil Nadu Real Estate Regulatory Authority, 2016 wherein he could be allowed to claim interest on the refund of the amount from the respondent and thus the complainant is not allowed refund with interest. However, the complainant is entitled to the refund of money paid by him to the tune of Rs.6,70,000/-. The respondent shall refund the money as such with no deduction as they have submitted in their counter at clause 10 wherein they have agreed to refund the advance paid by the complainant and thus the first point is answered accordingly.

#### 8. Answer to Point No. (ii)

There is no liability made out on the respondents hence no claims arise, except refund of Rs.6,70,000/- to be paid to the complainant by the respondent. Thus the point is answered accordingly.

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

- a) On cancellation of the booking as prayed by the complainant, the respondent shall pay Rs.6,70,000/- to the complainant on or before 30 days from the issue of this order.
- b) The allotment letter issued by the respondent shall stands cancelled on this refund of the money.

Sd/- 24/05/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

**LIST OF WITNESSES**

CW-1 --- Mr.Hitender Singh Walia  
RW-1 and RW-2 --- Mr. Y.Mohan Raj

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	16/06/2018	Receipt
Ex.A2	16/06/2018	Allotment Letter
Ex.A3	08/07/2018	Offer Letter
Ex.A4	---	Bank Transfer Details
Ex.A5	06/08/2018	Reply
Ex.A6	04/01/2019	Mail
Ex.A7	---	Mail
Ex.A8	---	Notice board photo
Ex.A9	---	Newspaper advertisement

**LIST OF DOCUMENTS FILED BY THE RESPONDENT-NIL**



Sd/- 24/05/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI