

**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. 93 of 2021**

M.P. Pushparaj

..... Complainant

**Vs.**

M/s. Swetha Builders,  
Represented by its partner,  
R. Pushparaj

..... Respondent

**Complainant** : Rep. by M/s. Rahul J Krishnan, Advocates.

**Respondent** : Rep. by M/s. S. Ramesh, Advocates.

**Heard on** : 13.09.2022

**Delivered on** : 25.01.2023

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of a flat 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 had applied and was allotted Flat No. S1 in the Respondent's project situated at Alandur, Chennai which included common areas including a covered car park. The sale agreement was entered on 25.07.2018. The construction agreement was also entered on the same day. The complainant further avers that he had paid Rs.5,00,000/- out of the total amount of Rs.12,21,745/- and the remaining amount Rs. 7,21,745/- was to be paid at the time of registration of sale deed.

(b) The consideration for the construction was agreed at Rs.33,55,528/- putting the total consideration of the flat to be all inclusive Rs.45,77,273/-. The complainant had paid a sum of Rs. 10,00,000/-, Rs.10,00,000/-,

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Rs.10,00,000/-, Rs.14,00,000/-, Rs.32,00,000/- on 25.07.2018, 24.08.2018, 06.09.2018 and 04.09.2018 respectively for which the Respondent gave receipts on 01.01.2020. The Respondent was not given any satisfactory reply to the increased consideration from Rs.45,77,272/- to Rs. 78,10,000/-. The complainant has therefore pleaded to render justice by getting a refund at the extra amount demanded and paid by him besides seeking compensation of Rs.1,50,000/- towards car park and cost of legal expenses.

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

(a) The Respondent begins by questioning the maintainability of the complainant as the concerned project only consists of stilt + 2 floors being less than 8 units. The total area involved is 2204 sq.ft. and the total FSI achieved was around 307 sq.mtrs. The Respondent further avers that he had obtained the planning permission on 28.07.2016 and completed the construction by May, 2017.

(b) The project does not violate Section 3 (2) (a) of the RERA Act and thus is not maintainable under the RERA Act. With regard to disagreement over the consideration as claimed by the complainant, the Respondent submits that the complainant had suppressed the fact that the agreed consideration was Rs.6000/- per sq.ft.

(c) The complainant was in possession of cash, which he did not wish to include in the agreement. The Respondent however informed that he would be receiving the cash and had even issued receipts for the same and it was only at the insistence of the complainant that the lesser consideration was quoted. This would also be clear, the Respondent avers, by calculation of the consideration being Rs.45,77,273/- in which case the per sq.ft value comes to only Rs.4043/- which is not the going rate in that area.

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(d) The Respondent had sold 3 flats in the same complex for Rs.6000/- per sq.ft. The total price agreed was Rs.80,00,000/- which included other components like E.B., water expenses, car parking, registration and tax etc. The complainant even paid cheque for the balance cheque of Rs.3,30,000/- vide cheque dated 11.09.2019, which was also dishonoured, exhibiting the intention of the complainant to cheat. Finally on request of the complainant an amount of Rs.1,90,000/- was also waived off. As regards, car park the Respondent avers that the same was also handed over as early as September, 2018 and thus pleads to dismiss the case.

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 point arises for determination:

To determine whether the issue could be taken up where the transaction has happened in cash and where the Law has been flouted both with regard to the Income Tax as well as the registration stamp duty?

7. **Answer for the Point:-**

(a) The construction agreement between the complainant and the Respondent was entered on 25.07.2018 (Ex.A1). The sale agreement was also executed on the same day (Ex.A2). The complainant has paid a sum of Rs.5,00,000/- out of Rs. 12,21,745/- towards undivided share (UDS) requiring remaining to be paid in a manner laid down in the sale deed (Ex.A3). The consideration for the construction as mentioned in the construction agreement was Rs.33,55,528/- making a total consideration of Rs.45,77,273/- . The complainant claims to have paid a total of

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Rs.76,00,000/- of which Rs.24,00,000/- is in cash as shown in the table below at S.No. 3 and 4

Sl. No	Date	Payment details	Amount
1	25.07.2018	777329	10,00,000/-
2	24.08.2018	777333	10,00,000/-
3	06.09.2018	Cash	10,00,000/-
4	06.09.2018	Cash	14,00,000/-
5	04.09.2018	DD No. 587335	32,00,000/-
		<b>TOTAL</b>	76,00,000/-

(Ex.A4 series)

(b) The respondent has clearly stated that the complainant was in possession of cash, which he did not wish to include in the agreement. The respondent admittedly agreed to this offer but insisted on giving receipts for the cash received by him. The respondent also puts forth that the other apartment in the same project have been sold at the rate of Rs.6000/- per sq.ft whereas the complainant's apartment the cost would come to Rs.4043/- per sq.ft as claimed by him. The payments were required to be made stage wise thus it cannot be presumed that if the cost was to be Rs.45,77,273/-, the complainant would pay more than that more so as is seen the payment have been made from time to time on various dates in stages only.

(c) In such a manner, a sum of Rs.24,00,000/- paid in cash as submitted by the complainant (Ex.A4 series). The respondent on the other hand claimed to have received a sum of Rs.26,00,000/- in cash (Ex.B7) wherein the dates with regard to the cheque payment tally including payment of

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Rs.14,00,000/- which too tally's with the receipt put forth by the complainant and as shown in Ex.B7 by the respondent.

(d) Seeing the above, it is clearly a case where the transaction itself is not on firm legal grounds. In such a situation, it would be inappropriate for this Bench to intervene in a transaction which is faulting the Law. The Bench therefore refuses to interfere at this stage and orders the Office of the Authority to intimate the following Departments.

(i) Income Tax Department for taking up the issue of cash transaction paid by the complainant and received under acknowledgment by the respondent.

(ii) To the Registration Department for defaulting on payments on stamp duty.

**In the result, the above CCP No. 93 of 2021 is disposed off at this stage.**

Sd/- 25.01.2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER

**LIST OF WITNESSES**

CW-1 --- M.P.Pushparaj  
RW-1 --- R. Pushparaj

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	25.07.2018	Construction agreement
Ex.A2	25.07.2018	Sale agreement
Ex.A3	06.09.2018	Sale deed
Ex.A4	---	Payment receipts
Ex.A5	01.11.2019	Bank statement

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Ex.A6	18.10.2020	Encumbrance letter
Ex.A7	---	Receipt of breaking plan

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	28.07.2016	Building permission approval for property in question
Ex.B2	28.07.2016	Building planning permission for property in question
Ex.B3	05.11.2017	Statement for Flat F1
Ex.B4	13.06.2017	Statement for Flat F2
Ex.B5	12.08.2017	Statement for Flat S2
Ex.B6	14.12.2017	Statement for Flat S1
Ex.B7	04.09.2018	Statement of account of complainant
Ex.B8	29.12.2019	Copy of compromise memo
Ex.B9	28.07.2016	Approved building plan for property in question

Sd/- 25.01.2023  
**SUNIL KUMAR, I.P.S (Retd)**  
**SINGLE MEMBER**  
**TNRERA, CHENNAI**

