

**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. 98 of 2021**

S.S. Subramanian

..... Complainant

Vs.

M/s. Stepsstone Promoters Pvt Ltd.,
Rep by its Managing Director,
Mothish kumar Kotiswaran
(TN/11/Layout/0018/2018)

..... Respondent

Complainant : Rep by M/s. R. Vinodh Prabhu, Advocates.

Respondent : Rep by M/s. A. Shabanal, Advocates.

**Heard on : 08.07.2022
Delivered on : 22.08.2022**

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 had booked a villa No. 1B at the respondent project, namely, "Srinivasa", (hereinafter referred as "Projector") at a cost of Rs.33,28,263/-. The complainant has paid booking advance of Rs.1,00,000/- on 21.01.2019. Subsequently, on 27.01.2020 the complainant did not find the villa suitable for him and thus requested for change. This was accepted by the respondent who exchanged the allotted Villa No. 1B with a freshly allotted for Villa No. 75 for which the complainant paid a further sum of Rs.4,00,000/- on 27.01.2020.

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(b) The respondent failed to issue fresh allotment letter or adjustment letter while changing the villa from Villa No. 1B to Villa No. 75. The respondent also did not confirm the total cost of Villa No. 75 and neither issued any allotment letter nor entered into any construction agreement or sale agreement. The respondent was very well aware that the complainant had proposed to sell off one of his property to meet the financial requirement to buy the villa in this project thus the information regarding the cost of the new villa was essential to be known by the complainant. The respondent in August 2020, asked the complainant to pay further money without giving proper response to the queries raised by the complainant. The complainant was not happy with the way the project was progressing and also his property which he had planned to sell did not happen the way he expected due to which the complainant wishes to withdraw from the project.

(c) As per the conditions as laid down he had requested the respondent to refund the amount after deducting of Rs.25,000/- as mentioned in the booking form of Villa No. 1B. The respondent on the other hand informs the complainant regarding the cancellation charges which he claims would be 10% of total cost of the Villa No. 75. The complainant therefore has sought refund of the amount paid by him.

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

(a) The complainant had booked a Villa No. 1B in the project "Srinivasa Palm", at a cost of Rs.33,28,263/-. The complainant had paid an advance of Rs.1,00,000/- on 21.01.2019. Subsequently, on 27.01.2020 the complainant has requested for change of villa which was finally accepted in accordance with Villa No. 75 for further amount of Rs.4,00,000/- to be paid while making the change.

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(b) The respondent denies all the allegations by the complainant as frivolous except those that are specifically admitted. The respondent submits that he had developed a residential villa in the name, "Srinivasa Palm", in Pollachi Taluk, Coimbatore. The complainant was allotted Villa No. 1B in the project. The respondent also concurs with the same value of Rs.33,28,263/- for the villa. The respondent submits that in 2019, the complainant without stating any specific reasons requested the respondent to re-allot any other villa more specifically an independent villa.

(c) The respondent had first refused for the change but with good intention changed the allotment as requested by the complainant. Thus, the complainant allotment was changed and the complainant booking advance was accordingly changed for Villa No. 75. The respondent had informed the complainant with regard to the financial loss suffered due to the change to the tune of more than Rs.5,00,000/-. The complainant paid only a sum of Rs.4,00,000/- making the total amount paid by him to Rs.5,00,000/- for Villa No. 1B and subsequently changed to Villa No. 75.

(d) The respondent submits that there was no sale deed executed, in fact the respondent goes on to submit that the representative of the respondent on a decided date ready for registration reached the Sub Registrar Office at Pollachi with necessary documents. The complainant unilaterally cancelled the registration and could not be reached thereafter for performing his part of the act for ensuring the registration of the agreement. The complainant had actually backed-off from the sale deed due to his financial hardships and not because of any other reasons.

(e) The respondent goes on to submit that he had invested money in developing the project and had suffered loss due to unilateral cancellation

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of registration. The act of the complainant had resulted in loss to a tune of more than Rs.10,00,000/- to the respondent.

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

5. To prove his evidence the complainant has filed his respective evidence on affidavit with documents.

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

- i. Is there any violation of the RERA Act by the respondent warranting relief to the complainant?
- ii. What are the reliefs made out?

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

(a) Both the complainant and the respondent are in agreement with regard to the basic facts pertaining to the project. They agree that the complainant had booked a Villa No. 1B in the project "Srinivasa", at the cost of Rs.33,28,263/-. Both also agree with regard to the payment of Rs.1,00,000/- advance on 21.01.2019. There is no difference of opinion even on the issue of the request of change of villa from Villa No. 1B to Villa No. 75. There is agreement between the two also on the payment of Rs.4,00,000/- towards the cost for change of villa in addition to Rs.1,00,000/- earlier. The difference only crops up on the issue of refund of the money paid by the complainant to the respondent where the respondent is ready to refund the money but proposed to deduct 10% of the total cost of the villa as cancellation charge. The complainant on the other hand, relying on document wants to restrict the cancellation charge to be Rs.25,000/- only.

(b) The total payment was made to the tune of Rs.5,00,000/- by the complainant to the respondent. No registration has been done for the sale

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or construction agreement. The complainant has paid an advance amount of Rs.1,00,000/- (Ex.A2). The booking form (Ex.A1) is not signed by the respondent however since the booking advance amount has been received by the respondent marked as Ex.A2. Subsequent allotment of Villa No. 75 (Ex.A4) also confirms the claim made by the complainant of having paid the amount for the villa allotted to him. Thus, the booking form (Ex.A1) becomes a document which could be relied upon in the absence of any other document. The balance of justice weighs in favour of the complainant who had been given an assurance of deduction of Rs.25,000/- to be charged as cancellation charges entitling the complainant to receive the balance amount. This has been clearly mentioned in the booking form and as shown above the booking form remains the lone document which could be relied upon in the absence of any sale and construction agreement.

"6. I/We shall agree in case of cancellation/withdrawal of the application after a period of 30 days for any reason whatsoever, will forfeit Rs.25,000/- of the amount paid by melus till such date, as cancellation charges and will be entitled to receive the balance as refund amount".

(c) The respondent on the other hand puts forth a demand of 10% of the total cost of the villa as an amount to be charged for cancellation by the complainant. However, the respondent has not been able to put any evidence to support the claim of payment of 10% of the total cost of the new villa as cancellation charges. It is only in the reply to the legal notice of the complainant (Ex.A7) that the respondent refers to a deduction of 10% of the total cost which he submits in the reply of the legal notice whereby he refers to it as a norm. Ex.A7 reads as follows:-

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“Once villa is in hold for your client, on cancellation of the villa your client will be liable to pay 10% total cost of the villa, which is the usual norms and procedure followed by the company”.

It is therefore clear that the respondent is only entitle to retain Rs.25,000/- entitling the complainant to refund of the entire amount after deduction of Rs.25,000/-. The respondent also violated Section 13(2) when he fails to give specific details with regard to the cost of the apartment.

(d) This norm as relied by the respondent has not been either spelled out in the booking form nor penned down in any agreement. It could be concluded that the cancellation amount should be restricted to Rs.25,000/- alone. The respondent is also liable under Section 13(2) for having failed to give specific details of cost of the villa and thus the point is answered accordingly.

8. Answer for Point No. (ii)

(a) In view of the answer for Point No.(i), the complainant is entitled for refund of amount Rs.5,00,000/- paid to the respondent after deducting a sum of Rs.25,000/- as cancellation charges. Thus, the complainant would get back a sum of Rs.4,75,000/- (In Rupees Four Lakh and Seventy Five Thousand Only) and the respondent can retain Rs.25,000/- (In Rupees Twenty Five Thousand Only) as cancellation charges.

(b) Considering the facts and circumstances of the case, a sum of Rs.5,000/- 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:

1. The respondent shall pay the amount as per the findings in answer for Point No.(ii), Para No.8 of this order within 30 days of issue of this order.

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2. For violation of Section 13(2) of the RERA Act, the respondent is directed to pay a penalty of Rs.5,000/-.
3. The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

Sd/- 22.08.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESSES

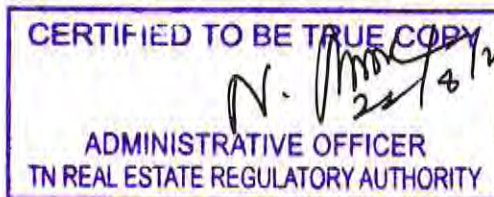
CW-1 --- S.S. Subramanian

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	21.12.2019	Booking form
Ex.A2	23.12.2019	Payment receipt
Ex.A3	27.01.2020	Payment receipt
Ex.A4	05.02.2020	Allotment letter
Ex.A5	---	E-mail correspondence
Ex.A6	03.11.2020	Legal notice to respondent
Ex.A7	16.11.2020	Reply to legal notice by respondent
Ex.A8	30.11.2020	Rejoinder to reply legal notice

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 22.08.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI