

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

Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member

**I.A. No. 31 / 2022 in
CCP No.326 of 2021**

**I.A. No. 32 / 2022 in
CCP No.327 of 2021**

9th September, 2022

M/s. A. Victory Home
Rep. by its Proprietor M.K. Faizal

.... Petitioner/Respondent

-Vs-

Kavitha w/o Parthiban

**.... Respondent/Complainant
In CCP No.326 of 2021**

Santha w/o Natarajan

**.... Respondent/Complainant
In CCP No. 327 of 2021**

IA No. 31 / 2022 and 32 / 2022 have been filed in connection with the CCP No. 326/2021 and CCP No. 327/2021 respectively. Both IAs are being dealt with together since it pertains to the same subject filed by the same Petitioner / Promoter (hereinafter referred as promoter) against the two Respondent / Home buyer (hereinafter referred as Home buyer) making similar prayers.

In the IA, the Promoter has submitted that the complaint filed by the Homebuyer is not maintainable before the Hon'ble Authority. The Promoter avers that the Home buyers were attempting to cause a loss to the promoter by initiating the CCP No. 326/2021 and CCP No. 327/2021 and hence these should be dismissed.

The Promoter submits that the home buyer had booked the apartments in the project of the Promoter (in CCP No. 326/2021) for Rs.62,00,000/- (Rupees Sixty two lakhs only) inclusive of the project registration charges of Rs. 2,26,000/- . It was on the request of the Home buyer the documented amount for the apartment

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was mentioned as Rs. 32,00,000/- in the construction agreement and Rs.11,06,500/- in the sale deed agreement making the total Rs.43,06,500/- in CCP No. 326/2021. Similarly in CCP No. 327/2021 the promoter submits that the total cost of the apartment was Rs 46,00,000/- and again on the request of the home buyer it was documented as Rs. 23,36,513/- for the construction agreement and Rs. 10,35,700/- for sale agreement making the total to 33,72,213/-. The actual cost according to the promoter is Rs. 62,00,000/- (Rupees Sixty Two lakhs only) in CCP 326/2021 and Rs.46,00,000/- (Rupees Forty-six lakhs only) in CCP No. 327/2021. Since the amounts have been incorrectly mentioned in the documents relating to the two CCPs the Promoter pleads to reject the complaints for which he has filed the two IAs.

The Homebuyer denies that the total cost of the apartment is Rs.62,00,000/- in CCP No. 326/2021. Similarly, the home buyer in CCP 327/2021 also denies that the apartment cost was Rs 46,00,000/-. They allege that many signed blank papers were obtained by the promoter at the time of booking the apartment. They reiterate that the cost of the apartment were as shown in the table below and submit that their contention would be confirmed from the Construction and the Sale agreement entered between the promoter and the home buyer:

Sl. No. (1)	CCP No. (2)	Construction Agreement / Amount (3)	Sale agreement / Amount (4)	Total (3+4) (5)	Amount claimed by the Promoter (6)
1	326/2021	Rs.32,00,000/-	Rs.11,06,500/-	Rs.43,06,500/-	Rs.62,00,000/-
2	327/2021	Rs.23,36,513/-	Rs.10,35,700/-	Rs.33,72,213/-	Rs. 46,00,000/-

The contention of the Promoter is that the cost of the apartment booked was Rs. 43,06,500/- (Rupees Forty three lakhs six thousand five hundred only) in CCP No. 326/2021 and Rs. 33,72,213/- (Rupees Thirty three thousand seventy two thousand two hundred thirteen only) in CCP No. 327/2021 based on the **booking form**. However, the same does not find reflection in the sale and construction agreement. There is absence of the claimed amount by the promoter being entered in the sale and construction agreement in both CCPs. In the absence of such an entry only the amount reflected in these two documents i.e. the sale and construction agreements alone can be taken as the amount agreed upon between the Promoter and the Home buyer. Reliance on the booking form would

not be a substantive evidence to rely upon, as the total cost of the project in a situation where a construction and sale agreement duly signed by both the parties have been submitted as evidence by the Homebuyer.

The petition is so restricted to primarily claiming refund, and not for determining the cost of the property, therefore, the IA is not allowed and only the amount mentioned in the sale deed and the construction agreement alone would be taken up as the value of the apartments while considering the refund request of the Homebuyer.

Hence, the IAs are dismissed with no cost.

Sd/- 09.09.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

