

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

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
RCP No. 133 of 2022**

Selvakumar.V **Complainant**

Vs.

St. Angelo's VNCT Ventures **Respondent**

Complainant : Mr. Selvakumar.V (PIP)

Respondent : Rep by M/s. Thirumalai Rajagopal, Advocates

Heard on : 21/04/2023

Delivered on : 24/04/2023

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 was allotted D3, 2 BHK Villa on 16/08/2017. The complainant avers that the construction agreement was signed on 29/11/2017. The complainant had obtained a loan and paid a sum of Rs. 26,15,768/- to the respondent for the construction of the Villa. The complainant avers that he conducted the house warming function on 28/01/2018. The complainant made a request to the respondent to hand over the keys by 07/05/2018. The complainant finally avers that he obtained the Villa keys on 04/08/2018 which still stands with 75% construction. The complainant further avers that he had

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been overcharged with the amount of GST collected from him and the claims refund of the excess amount so collected by the respondent. The complainant made a request to the respondent to refund the GST ITC vide E-Mail dated 14/07/2018 and even sent a remainder for the same on 14/07/2018. The complainant had made repeated effort to get this refund, but failed. Hence aggrieved, he prays for refund of excess GST collected from him by the respondent to the tune of Rs.3,53,336/- with interest. The respondent has still not paid the refund of GST.

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

The Learned counsel for the respondent avers that the respondent had entered into a construction agreement to construct the 'Residential Individual House' with super built up area of 735 sq.ft. with one car park on 29/11/2017. On 22/12/2017, the sale deed for the plot measuring 1133 sq.ft, was registered. The respondent avers that the complainant had individually purchased land to an extent of 1131 sq.ft, under sale deed on 22/12/2017. The complainant requested the respondent to construct the Individual Residential House measuring 735 sq.ft, with one car park on the said land. The respondent avers that the present complaint is with regard to refund of extra GST alleged to have been collected by the respondent to the tune of Rs.3,35,336/- with interest from the complainant. The respondent avers that the complainant is not maintainable before this Hon'ble Forum and thus prays to dismiss the complaint.

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

5. To prove their claim, 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 points arise for determination:

- (i) Is the complaint maintainable and is the complainant eligible to claim refund of excess GST allegedly charged by the respondent?
- (ii) What are the reliefs made out?

7. Answer for the Point No. (i)

(a) The construction agreement was entered between the complainant and the respondent on 26/11/2017 (EX-A1) on land which was later registered in sale deed dated 22/12/2017 (EX-A2). The construction agreement was to construct a Individual House measuring 735 sq.ft, in a plot of land measuring 1131 sq.ft, purchased individually. The construction consideration was agreed at Rs.24,52,565/- as enumerated in the schedule D of the construction agreement. The complainant has paid a sum of Rs.26,15,768/- in various installments starting from 16/08/2017 to 30/12/2017. The construction agreement stipulated the delivery of the constructed unit in 24 months with a grace period of 6 months. However, the complainant in his complaint has admitted that he had conducted House Warming in 28/01/2018 and also that he had got the keys collected from the service manager at the site on 04/08/2018. Thus, it is cleared that whatever taxes are to be levied would be at the rates as on 04/08/2018 by which the payments have been completed and the keys handed over.

Notification no. 03/2019 of the Ministry of Finance, Government of India dated 29/03/2019 laid down as follows (Ex-B3):

(3)	(4)	(5)
(i) Construction of affordable residential apartments by a promoter in a Residential Real	0.75	Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is,

Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.
(Provisions of paragraph 2 of this notification shall apply for valuation of this service)

by debiting the electronic cash ledger only;
Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;

(b) The GST leviable was at the rate of 0.75 for construction of affordable Residential Apartment by a promoter in a Residential Real Estate Project with effect from 01/04/2019. This being so the 0.75% of GST would become applicable only from 01/04/2019. It has been admitted by the complainant himself that he had got the keys by 04/08/2018 which falls before 01/04/2019

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in which case the claim of getting the refund of GST for affordable Residential Apartment would not be applicable and thus the 1st point is answered.

8. Answer for the Point No. (ii)

In view of the findings to the 1st question, no relief is made out.

9. In the result, the complainant is dismissed as not maintainable.

Sd/- 24/04/2023
SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- Mr. Selvakumar
RW-1 --- Mrs. Gnanalakshmi

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	29/11/2017	Construction Agreement
Ex.A2	22/12/2017	Sale Deed
Ex.A3	---	Payment Schedule
Ex.A4	---	Receipts
Ex.A5	---	Mails
Ex.A6	---	TNRERA Registration Details
Ex.A7	---	Fortnight site progress report dated 27/01/2018, 03/02/2018, 04/08/2018
Ex.A8	---	Advertisement
Ex.A9	07/12/2021	(Series) Order in CCP 154/2020, CCP 138/2019 and CCP 17/2021

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	28/06/2017	Notification regarding GST dated 28/06/2017
Ex.B2	08/08/2019	RERA Registration Certificate
Ex.B3	29/03/2019	GST Notification dated 29/03/2019
Ex.B4	10/04/2019	RERA Registration Certificate
Ex.B5	10/04/2019	RERA Registration Certificate
Ex.B6	21/10/2020	Order of TNRERA dated 21/10/2020
Ex.B7	12/11/2020	Letter dated 12/11/2020 of TNRERA
Ex.B8	31/03/2021	Letter of TNRERA dated 31/03/2021

Sd/- 24/04/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

