

**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. 31 of 2022**

Mrs. S. Jeyapradeepa **Complainant**

Vs.

M/s. Casagrand Magick Rufy (P) Ltd.,
Represented by its Managing Director **Respondent**

Complainant : Rep by M/s. J.Ravikumar, Advocates

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

Heard on : 27/06/2023

Delivered on : 01/08/2023

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondents 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 and was allotted Unit No. A702 in "CG Athens" project being developed by the respondent. The complainant paid a sum of Rs.6,00,000/- in 2 instalments. The complainant avers that the respondent released a receipt for the 1st booking amount of Rs.1,00,000/- paid by her, while the 2nd instalment for Rs.5,00,000/- was received by the respondent but no receipt was issued. The complainant avers that they had entered into the project on an assurance of the unit being delivered within 24 months. The complainant avers that she was also informed that the GST would be at the

rate of Rs.12%. The complainant avers that she received an E-Mail dated 17/12/2020 from the respondent requiring her to pay the initial amount of Rs.24,41,892/-.

(b) The complainant avers that since this would have amounted to more than 10% of the total consideration, she had made a request to the respondent to complete the agreements for the deal. Subsequently, on 31/12/2020, the respondent sent a draft agreement to the complainant for execution. The complainant avers that she found three major changes in the terms of offer which included:-

- (i) The draft agreement send by the respondent had a change in the project completion date from 24 months to a much later date.
- (ii) The GST which was promised at the rate of 12% was revised to be charged at the rate of 5% which would thereby reduce the total consideration for the unit.
- (iii) The complainant avers that GST was included for the UDS and labour cost which was not conveyed to the complainant earlier.

(c) The complainant avers that thereafter she continued her efforts to reach out to the respondent. The complainant received an E-Mail dated on 20/01/2021 from the respondent reiterating the demand for release of Rs.24,41,892/-. The complainant avers that since she was not able to get the reply to the queries to her satisfaction, she decided to cancel the booking and sought refund of the amount paid by her. The complainant avers that the respondent accepted the cancellation but intimated the cancellation charges

to be Rs.1,36,741/- along with 18% GST. Thereafter, despite repeated efforts made by the complainant to reach out to the respondent, she neither got any reply from the respondent nor was she refunded the amount paid by her. Aggrieved, the complainant pleads for refund of Rs.6,00,000/- paid by her with interest, besides praying for compensation and litigation charges.

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

(a) The Learned counsel for the respondent denies all allegations made by the complainant. The respondent however accepts to have received a sum of Rs.6,00,000/- in 2 instalments as also for the allotment of Unit No. A702. The respondent avers that they had shared the agreement with the complainant who failed to execute the same and avers that they also did not make any further payments. The respondent avers that they were ready to perform their part of the commitment to complete the unit within the stipulated timeline in accordance with the approvals. The respondent avers that the complainant choose to cancel the allotment for her own reasons which could not be attributed to the respondent. The respondent further avers that she had kept the refund cheque ready, but it was the complainant who had failed to collect the cheque which was kept ready from 16/09/2021. The respondent avers that they were entitled to collect the cancellation charges, as the cancellation was opted by the complainant herself, the respondent accordingly prays to dismiss the complaint.

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

5. Both the parties have filed their respective evidence on affidavit with documents.

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

(i) Whether the contention of the complainant regarding the date of the delivery in the advertisement which was different from the proposed construction agreement entitles her to refund of the money paid by her upon cancellation?

(ii) What are the reliefs made out?

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

(a) The complainant had entered into the respondent's project CG Athens by paying an advance of Rs.1,00,000/- (Ex-A2). The complainant had subsequently paid another Rs.5,00,000/- for which the respondent did not issue any receipt. She had done the booking following information which she has submitted in the form of a CD as evidence. In addition, the complainant further submits that this advertisement had also appeared in a daily newspaper clearly showing the promise of delivery in 24 months (Ex-A1), which has been so shown in the CD as well. The complainant submits that the said information had appeared in a daily on 20/11/2020 (Ex-A1), however the Ex-A1 as submitted by the complainant does not show the date and the source. However, in the absence of any objection to the same by the respondent as also relying on the CD submitted as evidence, it is so taken and the delivery of the completed apartment is taken to be as 24 months. The period of 24 months would start from 02/03/2020, the date on which the cheque of Rs.1,00,000/- was received by the respondent (Ex-A4).

(b) The complainant had been allotted Unit No. A 702 by the respondent in their project for a total cost of Rs.60,83,784/- (Ex-A5). The complainant has

paid a sum of Rs.6,00,000/- which has not been disputed by the respondent. This clearly establishes the promoter allottee relationship between the two parties. The completion in 24 months would project the delivery date to March 2022 while the draft agreement projected the delivery to 26.01.2024 making the period to be much more than the one shared with the respondent and an additional grace period of 3 months.

(c) The complainant had received a draft construction agreement whereby the clause 4, the promoter has changed the duration of completion to 26.01.2024 which makes it more than the information shared with the complainant which was that of 24 months. The relevant portion of the clause 4 of the draft construction agreement is as follows:-

- (i) ***"The promoter shall endeavour to complete the construction of the Apartment by 26th January 2024 + three months grace period."***

(d) The complainant has raised this issue of discrepancy within 13 days of the receipt of the draft agreement in the commitment vide their E-Mail dated 13/01/2021 (Ex-8 Series). The complainant in the said email dated 13/01/2021 had clearly mentioned about this discrepancy and had sought clarification which was not provided by the respondent. The complainant is aggrieved that the duration for completion as advertised was different from the one on which the respondent offered in the draft construction agreement. Any attempts to seek clarification from the respondent too did not yield any results. The respondent has therefore violated section 12 of the RERA Act for which penalty shall be imposed on the respondent.

Section 12:-

" 12. Obligations of promoter regarding veracity of the advertisement or prospectus.—Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or

prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

(e) In the instant case, the respondent has shared information with the complainant which turned out to be false with regard to the period of completion earlier showing in 24 months, but in draft construction agreement offered to complete the unit by 26/01/2024 with a grace period of 3 months. Since, the complainant feels aggrieved by the false statement contained in the information provided to her she intends to withdraw from the project. She is entitled to return of entire amount paid by her to the respondent along with interest. Thus the first point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.6,00,000/- with interest.

(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 7.30% per annum which was the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 9.30% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

9. In the result, the respondent is directed as follows:-

(i) The respondent shall pay the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 of this order within 30 days of issue of this order.

(ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

(iii) A penalty of Rs.50,000/- shall be paid by the respondent for violation of Section 12 of the RERA Act.

Sd/-01.08.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- S.Jeyapradeepa

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

| Ex.Nos | Date | Documents Name |
|--------|------------|----------------------|
| Ex.A1 | --- | Photos (CD Separate) |
| Ex.A2 | --- | Letter |
| Ex.A3 | 26/02/2020 | Cheque |
| Ex.A4 | 02/03/2020 | Pre-Booking Receipt |
| Ex.A5 | 26/11/2020 | Allotment Order |
| Ex.A6 | 27/11/2020 | Demand Letter |
| Ex.A7 | --- | Bank Statement |
| Ex.A8 | --- | Series E-Mails |
| Ex.A9 | --- | Whats app Chat |

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

| Ex.Nos | Date | Documents Name |
|---------------|-------------|-----------------------|
| Ex.B1 | 16/09/2021 | Cheque |
| Ex.B2 | --- | Mail |

Sd/-01.08.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY
N. Anandhan
ADMINISTRATIVE OFFICER
TN REAL ESTATE REGULATORY AUTHORITY