

**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. 82 of 2022**

Jagadish Venati

..... **Complainant**

Vs.

M/s. G.K.S Technology Park Pvt. Ltd

..... **Respondent**

Complainant : M.R. Gokul Krishnan, Advocates

Respondent : Exparte

Heard on : 31/03/2023

Delivered on : 13/04/2023

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 joined the respondent project by name Tulive Viha. The complainant was allotted Flat No. B301 in B block at 3rd floor. The UDS for the sale was registered vide sale deed dated 25/09/2017 registered as Document No.4079/2017 at SRO Anna Nagar. The complainant avers that the construction agreement was also registered vide Document No.4078/2017. The total sale consideration was Rs.1,94,09,718/-. The complainant avers that the respondent has violated the sanctioned plan and has increased the number of car parking in

contravention of the sanctioned plan. The sanctioned plans provided for 91 car parking which was increased by the respondent to 153 car parking thus providing more car parkings than sanctioned. The complainant avers that when he questioned the respondent for this violation he was informed that the project does not require RERA Approval and challenged the complainant to take it or leave it. The complainant finally paid up Rs.5,00,000/- for the car parkings. It was only subsequently, that the complainant came to know that the respondent was directed to register the project by this Hon'ble Authority and also that only garage can be sold and not what he has paid for as car parking. The complainant refers to complaint no.1/2020 wherein directions were issued for registering the project with the TNRERA. The complainant also refers to the Hon'ble Tribunal appeal no.86/2021 and 11/2020 with Hon'ble Tribunal to **supplement his claim.**

(b) The complainant has sought refund of Rs.5,00,000/- paid by him for the car parking. However, he had received no response to the legal notice sent by him to the respondent. Aggrieved, the complainant seeks to the refund of Rs.5,00,000/-. The complainant also prays for penalty on the respondent for plan violation.

3. The respondent failed to appear, despite being given opportunity hence he has been treated as exparte.

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

5. The complainant has filed his evidence on affidavit with documents. The respondents did not file any documents and were treated as Ex-parte.

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

- (i) Is the complainant entitled to relief claimed by him?
- (ii) What are the reliefs made out?

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

(a) The complainant entered into a sale agreement which was registered on 25/01/2017 (EX-A4). The construction agreement was also entered on the same day (EX-A3). The project was completed and the complainant has reportedly entered into the apartment. The E-Mail given by the respondent (EX-A2) indicates provision of car parks for cost of Rs.5,00,000/-. The approved plans at (EX-A1) indicate approval of 100 car parks. So far as refund for the car park is concerned, it is found out that the complainant had entered into the project in 2017 as is evident from the handing over from (EX-A7) for which a plan had already been approved in building plan no. B/SPL.BLDG/228/D/F/2015 dated 2008, 2015 (EX-A1). Since, the project approval is before the RERA came into existence, the details of the payment for amenities would be as per the mutually agreed and signed agreements between the two parties and thus the RERA Act would not apply. However the issue of excess car parking in addition to the sanctioned plan would be take up in this RCP. The saleable area may not fall within the definition of section 2k which defines carpet area. The benefit of specific definition would go in favour of the respondent where in charging for a car park it would not be a contravention since the RERA Act had not come into force, thus no refund is made out.

(b) Therefore, the complainant is not entitled for the refund of the amount for Rs.5,00,000/- paid for the car parking. The approved plans at (EX-A1) indicate approval of 100 car parks of which 91 are meant for the residence, while 9 are meant for visitors. The order of the Hon'ble Authority in C.No.001/2020 in its order dated 19/04/2021 (EX-A11) has directed the respondent to register the project following which the registration was done. The complainant has pleaded that it was only subsequently that he came to know that charges for the car parking had been collected.

(c) The respondent has provided a total of 153 car parks as against the sanction of 100. This issue has already been taken up as a contravention by the Hon'ble Tribunal who in the Order Appeal No.11/2020 in its order dated 10/02/2020 where already directions have been issued to the CMDA to verify and take necessary action.

"What was approved was only for 91 car parks 87 flat, i.e., only 4 flats will only have extra car park and it is not the case of the promoter/builder that the flat area is less than 800 Sq.ft., which does not called for a car park at all. Therefore even at the time of grant of permission, when the builder was aware that 52 flats will have 2 car parks, would it not be mandatory for him to specify the car parks as he numbered the flats then and there. If such a thing has been done, no controversy could have arisen. We feel that it was deliberately not done only to circumvent the law and to capitalize and extract more money from the buyers, that is why, in the later part of judgment, we are referring this anomaly to CMDA to verify, check and take necessary action under the law as against the builder for any violation".

The complainant has submitted that the respondent has provided car parking in excess of the approved plan and sold the same to the allottees.

(d) The respondent has therefore violated section 14(1) of the RERA Act which reads as follows:

“The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities”.

The respondent is fined Rs.1,00,000/- for violation of section 14(1) as per provision of section 61 of the RERA Act. The office of this authority shall take it up with the CMDA for taking necessary action for this violation at their end.

8. Answer for the Point No. (ii):-

The complainant is accordingly not entitled for the refund of the amount paid for car parking. However, penalty of Rs.1,00,000/- is imposed on the respondent for a violated section 14(1) of the RERA Act.

9. In the result, the following directions are ordered:-

- (a) The respondent shall pay as penalty amount of Rs.1,00,000/- as per the findings in the answer for Point No. (ii) in para 8 of this order within 30 days of issue of this order.
- (b) The office of this authority shall intimate the CMDA for taking necessary action for the plan violation at their end.

Sd/- 13/4/23
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- Mr. Jagadish Venati

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex-A1	----	B/SPL.BLDG/228-D/F/2015
Ex-A2	05/08/2017	Mail
Ex-A3	25/09/2017	Construction Agreement
Ex.A4	25/09/2017	Sale Deed
Ex-A5	29/03/2018	Receipt
Ex-A6	---	Ledger Account
Ex-A7	---	Handing over form
Ex-A8	10/02/2020	Order in Appeal No. 11/2020 dated 10/02/2020
Ex-A9	---	Car Park Allotment
Ex-A10	---	Water Card
Ex-A11	19/04/2021	Order in C No. 1/2020 dated 19/04/2021
Ex-A12	08/10/2021	Property Tax Receipt
Ex-A13	09/10/2021	Legal Notice
Ex-A14	29/11/2021	Order in Appeal No. 61/2021
Ex-A15	09/02/2022	Order in Appeal No. 86/2021

Sdt- 13/4/23.

SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

