

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 31 of 2022

1. Pushpa Suryanarayanan Gopalan
 2. Suryanarayanan Kalyanaraman
- **Complainants**

Vs.

M/s. Casa Grand Builder Pvt. Ltd.
Rep. by its Managing Director, Arun Kumar
(Regn No.TN/29/Building/0029/2017)

.... **Respondent**

Complainants : Rep. by Mr. V.S. Senthil Kumar, Advocate
Respondent : Rep. by M/s. Ganesh & Ganesh, Advocates

Heard on : 15.05.2023
Delivered on : 07.06.2023

ORDER

The above complaint by the complainants claiming compensation for the delay in delivery of the apartment by the respondent and other reliefs is filed under Section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. **Averments of the complainants, in brief, as follows:**

(a). On 31.07.2015, the complainant booked an apartment with the respondent in their project namely "**Casa Grande Monte Carlo**" at Mount Road, Adayar village, Guindy, Chennai. The total cost of the apartment was Rs.1,45,89,610/-. On 03.08.2016, the respondent issued the allotment letter allotting Flat No.1006 in the project. On 27.10.2017, the respondent entered into a construction agreement and undertook to complete the construction and deliver possession of the apartment by November 2018 and also executed a sale deed for UDS land in favor of the complainants.

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(b). The complainants made entire payment as per the terms and conditions of the construction agreement. The delivery of the construction of the apartment was made by the respondent to the complainant only on 14.11.2019. There was undue delay in completion and handing over of possession of the apartment. The complainants are entitled for compensation and other reliefs.

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

(a). Except admitted, all the averments are denied. The project development was schemed and commenced during the year 2015 when the RERA Act was not implemented. When the RERA Act came into force, the respondent submitted necessary application for project registration and completed the registration. The construction agreement dated 24.08.2018 was entered between the parties and the respondent has only provided 31.07.2019 as the date for completion of the construction of the unit. However, the complainants requested the respondent to incorporate the earlier agreed date of November 2018 for their own personal reasons. The respondent had on good faith accepted the request of the complainants and accordingly entered into the agreement and registered the same. The respondent had completed the construction in all respects within the agreed time line of 31.07.2019.

(b). The complainants committed substantial delay in payments of sale consideration. There was delay in payment of the stage wise payments. On 14.11.2019, the complainants were handed over the constructed apartment to their satisfaction.

(c). Section 63 of the Indian Contract Act is applicable to the facts of the case. Even assuming that the complainants got any entitlement of claims, the same stood discharged and waived as acknowledged the handing over of the apartment to the complainants. The complainants acknowledged absolute satisfaction vide the terms of handing over letter dated 14.11.2019. In the above circumstances, the complainants are not entitled for any relief and the complaint is liable to be dismissed.

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4. An attempt to settle the matter amicably has failed.
5. Both the parties have filed their respective evidence on affidavits with documents.
6. On the basis of the rival contentions of the parties, the following points arise for determination:
 - i. Whether the complainants are entitled for compensation for the delay and mental agony on the ground of failure on the part of the respondent to complete the construction and to handover possession of the flat as per the terms and conditions of the agreement?
 - ii. What are the reliefs the complainants are entitled to?

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

(a). The learned counsel for the complainants submitted that the complainants booked a three bed room flat and the allotment letter dated 03.08.2016 was issued by the respondent and the complainants availed loan from the bank and on 27.10.2017, entered into construction agreement with the respondent and undertook to complete the construction and handover delivery of the apartment by November 2018 and subsequently, the respondent entered into a registered construction agreement dated 24.08.2018 and the respondent undertook to complete the construction of the apartment and handover delivery of the possession of the apartment by November 2018 and the complainants was given possession of the apartment on 14.11.2019 and there was inordinate delay caused by the respondent in completion and handing over of the apartment to the complainants and the complainants are entitled for compensation and other reliefs.

(b). However, the learned counsel for the respondent filed written notes of arguments and contended that the project was commenced in the year 2015 by the respondent and when the RERA Act was implemented and the respondent registered the project under the RERA Act as per their registration the date of completion was 31.07.2019, but the complainants requested the respondent to incorporate the earlier agreed date of completion as November 2018 for their own personal reasons and the

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respondent completed the construction in all respects within the agreed time line of 31.07.2019 and the respondent submitted the application for completion certificate on 12.06.2019 and the Authority issued the completion certificate on 18.09.2019 and the complainants committed default in payments and the complainants had received the handing over on 14.11.2019 by recording that they have no claims and therefore the complaint is liable to be dismissed.

(c). On perusal of the records, it is seen that as per Ex.A4, construction agreement dated 24.08.2018, the respondent undertook to complete the construction and handover the possession of the apartment to the complainants by November 2018. As per Ex A7, the handing over certificate issued by the respondent, the above constructed apartment was delivered to the complainants on 14.11.2019. Even though, the respondent claims that section 63 of the Indian Contract Act is applicable, the complainants have never dispensed with the time limit prescribed under the agreement entered by them with the respondent. Therefore, the section is not applicable to the case. Considering on the above, it is held that the complainants are entitled for compensation for the delay and also mental agony and inconvenience due to the delay and cost of the litigation. Thus, the point is answered accordingly.

8. Answer for Point No. (ii) :

(a). In view of the answer for Point No.(i), the complainants are claimed compensation as provided under the construction agreement. Rule 18 of TNRERA Rules prescribes the rate of interest payable by the promoter to the homebuyer. The total sale consideration of the flat including the cost of the UDS land is Rs.1,45,89,610/-. Hence, the complainants are entitled for the interest at the rate of 7.30% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 9.30% per annum on the amounts paid, i.e., Rs.1,45,89,610/- from November 2018, till the date of delivery, which is 31.07.2019, by the respondent.

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(b). Considering the facts and circumstances of the case, it is held that the complainants are entitled for compensation of Rs.2,00,000/- towards mental agony and inconvenience and also a sum of Rs. 25,000/- towards litigation expenses from the respondent.

In the result, the respondent is directed as follows:

The respondent shall pay the complainant the amounts of compensation and cost as per the findings in Answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

Sd/- 07.06.2023
G. SARAVANAN
ADJUDICATING OFFICER

CCP.NO. 31 of 2022

LIST OF WITNESSES

CW-1 --- Suryanarayanan

RW-1 --- Y. Mohanraj

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	31.07.2015	Booking Ack. Letter
Ex.A2	03.08.2016	Allotment Letter
Ex.A3	27.10.2017	Agreement for Sale
Ex.A4	24.08.2018	Construction Agreement
Ex.A5	24.08.2018	Sale Deed
Ex.A6(Series)	Email Communications
Ex.A7(Series)	Letters from Respondent during handover of the Flat
Ex.A8	30.12.2020	Copy of the Order in CCP 53/2020

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1	18.09.2019	Completion Certificate

Sd/- 07.06.2023
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

