



**BEFORE THE TAMIL NADU REAL ESTATE
REGULATORY AUTHORITY (TNRERA)
(Tamil Nadu, Andaman & Nicobar Islands)
at Anna Nagar, Chennai – 600 102
[Under the Real Estate (Regulation and Development) Act, 2016]**

**Bench 2 : Adv. M.Krishnamoorthy, Hon'ble Member
Dr.D.Jagannathan, I.A.S. (Retd.), Hon'ble Member**

**CCP. No. 275 of 2021
03rd day of June, 2026**

1. Ms. Nithya

2. Mr. R. Maghizhmaran

... Complainants

versus

M/s. CASA GRAND CIVIL ENGINEERING PRIVATE LIMITED,

Rep. by its Managing Director,

Mr. Arun Kumar

... Respondent

The above Complaint came up for final hearing before this Authority in the presence of M/s Chennai Law Associates – Counsel for Complainants and M/s Ganesh and Ganesh - Counsel for Respondent. Upon hearing both the parties and the arguments put forth on behalf of the Complainants and Respondent, this Authority passes the following order:

FINAL ORDER

The above complaint is filed by the Complainants seeking refund of amount under section 31 of the Real Estate (Regulation and Development) Act, 2016, hereinafter referred to as RERA Act.

Averments of the Complainants:

1. The Complainants averred in the complaint that, the Respondent has allotted 3BHK Flat bearing No. H-302, 3rd Floor in "Casa Grande BELLISSIMO" having super built up area of 1627 sq. ft. with Tandem Car Parking vide allotment letter dated 18.05.2017. The Complainants further stated that, the Respondent altered the allotment of car parking to one covered car park and one open car park as mentioned in the registered construction agreement dated 04.09.2020.
2. The Complainants aver that, the Deed of Guarantee dated 13.06.2017 was executed between the Complainants, Respondent and HDFC Bank Pvt. Ltd. which was providing housing loan then, that the project will be duly completed and delivery of the flat will be made in the month of November, 2019. Further, the Construction Agreement and Deed of Absolute Sale, dated 04.09.2020, were registered as Doc No: 2502 of 2020 and 2503 of 2020 before the Sub-Registrar, Alandur.
3. The Complainants further stated that, the Complainants have paid a total consideration for flat No. H-302 Rs. 1,36,44,773/- inclusive of Rs.9,55,134/- collected by the Respondent under the head of GST at the rate of 12%, whereas the Government of India had given the

benefit of availing 5% GST in ongoing projects. Thus, the Respondent is holding an excess of 7% of the total amount under the head GST.

4. The Complainants further aver that, they have booked the flat with the Respondent based on the assurance of delivery within November 2019 and allotment of Double Car Parking, as per the Agreement of sale dated 07.06.2017 and Deed of Guarantee dated 13.06.2017. Further, aver that, the Complainants came to know that the Apex Court has held that builders or promoters cannot sell parking areas as independent units as these areas are to be extended as "common area and facilities" for the owners. Therefore, the Respondent is liable to refund a sum of Rs.4,25,000/- collected towards open car parking from the Complainants.
5. The Complainants further aver that, the open car parking is allotted in the space between two blocks where there shall be a mandatory clean space of 6 m for group development as per CMDA's second master plan 3(iv). The entire car parking allotment, the driveways are messed up by the Respondent preventing easy passage of any emergency vehicle like Fire Engine, Ambulance etc., and the setback areas are utilized for allotting open car parking on chargeable basis.
6. Furthermore, the Complainants submitted that, as per the approval CMDA layout vide letter No. B1/18189/2016 dated 11/5/2017 and Greater Chennai Corporation building approval No. CEBA / WDCN12 / 00171 / 2017 dated 19.05.2017 ward 162, the parking allotted was 345 only whereas the parking allotted is 506. To accommodate the additional parking of 161 numbers, the Respondent has encroached

the common area more than allowed by CMDA / the data in the TNRERA website. The Complainants has paid for this common area and their share based on their UDS value in the encroached area is 67.7 sq.ft. i.e., the super built up area has come down to (1627-67.7) 1559 sq.ft. As the said area has been sold to other allottees, therefore the Respondent has to refund a sum of RS. 5,94,832/- along with applicable interest.

7. The Complainants further submitted that, a sum of Rs. 4,50,000/- (+12% GST) was collected by the Respondent towards EB, metro water, and sewage connections but except for the EB deposit which was reflected in the TNEB portal, no other progress has been made for metro water and sewage connection. Further, the EB card stands in the Respondent's name instead of the Complainants name.
8. Furthermore, the Respondent has called the 2nd Complainant to sign the Sale Deed and Construction Agreement dated 04.09.2020 without giving time to read. The Complainants trusted the Respondent under the impression that the same terms and conditions of the original agreements of Sale and Construction dated 07.06.2017 has been carried out in the new registered Sale Deed and Construction Agreement dated 04.09.2020. The Respondent tactfully took back the original of the unregistered construction agreement dated 07.06.2017 wherein the Respondent has mentioned the delivery date as November 2019 and unilaterally modified the double covered car parking into one covered car parking and one open car parking without the consent of the Complainants.
9. The Complainants further submit that, as per the Construction

Agreement dated 07.06.2017, the handing over of the said flat was in November 2019; however, the same was delivered only in December 2020, resulting in a delay of 12 months. Further, the promised amenities have not been provided as assured.

10. The aggrieved Complainants pray for refund the excess 7% GST amount of Rs. 9,55,134/-; payment of delay compensation of Rs. 14,59,990/- for the period from November 2019 to December 2020; refund of Rs. 4,25,000/- towards car parking charges; payment of Rs. 5,94,832/- towards encroachment of common area; and refund of Rs. 4,50,000/- collected towards EB, metro water and sewage connection charges or to transfer the said documents in favour of the Complainants, along with compensation of Rs. 1,00,000/- towards mental agony and Rs. 50,000/- towards litigation costs.

Counter averments of the Respondent:

11. The learned counsel for the Respondent avers that, the claim made by the Complainants is not tenable in terms of law and not maintainable on facts. The Respondent submits that, as per the decision of the GST council on 19.03.2019 regarding GST rate on real estate sector the Government has given options for the builders to follow the old tax regime i.e. 12% with Input Tax Credit (ITC) or the new Tax regime i.e. 5% without ITC for the ongoing projects. The Respondent further submits that, they have given a representation dated 08.05.2019 to commissioner of GST & Central Excise stating that, the Respondent would continue with 12% GST with ITC and the allegation of charging excess GST shall not arise. Furthermore,

the project Bellissimo was launched prior to 01.04.2019 and on the date of implementation of notification no. 3/2019 the said project got qualified as an ongoing project and the Respondent had opted to charge 12% GST.

12. The Respondent further submits that, the car park has been allotted by the Respondent as per the Construction Agreement dated 04.09.2020. Further, avers that it has been agreed one covered car park and one open car park shall be allotted to the Complainants. Furthermore, the Respondent submits that, the Respondent has not allotted the car park as a separate unit and collected additional charges. The car parks form part of the main allotment of the apartment as per the terms of the respective agreements.
13. The Respondent further avers that, the Respondent has not encroached any common areas or set back spaces or pathways for providing any additional car parks. Further, there is no restriction or difficulty in the provision of movement of emergency vehicles as falsely alleged. The Respondent has proposed certain revision in overall car parking allotment of the project to the Association of the subject development and the same are in process.
14. Furthermore, the Respondent submits that, the service connections of EB, metro water and CMWSSB have been duly applied for, processed and obtained for the project development. The service connections have been duly provided and the EB card assessment stands in the name of the Complainants and the same is evidenced by the receipt bearing consumer number 09241040291.
15. The Respondent stated that, the copy of the Construction Agreement

and Sale Deed was duly served to the Complainants two days prior to the date of Registration. Further, as per the Construction Agreement dated 04.09.2020, the Respondent agreed to complete and handover the possession by 31.12.2020. The application for completion certificate was submitted by the Respondent in the month of December 2019 and the same was obtained in the month of February 2020. The Complainants have received the handing over of the flat on 06.02.2021 upon full satisfaction without any claims. Hence, the Respondent prays to dismiss the complaint.

Issues and Findings:

16. An attempt to settle the matter amicably has failed.
17. The Authority, after hearing both the parties and examined the complaint, counter affidavit, typed set, written submission and the arguments made by both the sides, the following points arise for determination.
 - (i) Whether the Complainants are entitled to delay interest for the period of November 2019 to December 2020 from the Respondent?
 - (ii) Whether the Complainants are entitled to refund of excess GST amount paid by them to the Respondent?
 - (iii) Whether the Complainants are entitled to refund of car parking amount to the tune of Rs. 4,25,000/- paid by them to the Respondent?
 - (iv) Whether the Complainants are entitled for sum of Rs.5,94,832/- towards encroachment of common area shared by them?

(v) Whether the Respondent is liable to refund a sum of Rs.4,50,000/- towards the EB, metro water and sewage connection charges or to transfer the said documents in favour of the Complainants?

Answer to Point No.(i):

18. The Complainants had entered into the Respondent's project namely, "CASA GRANDE BELLISSIMO" and was allotted 3BHK flat bearing No.H-302 in the 3rd floor. The Complainants had paid a total consideration of Rs. 1,36,44,773/- towards the allotted flat. The registered sale deed (Ex.A5) and construction agreement (Ex.A4) were executed on favour of the Complainants on 04.09.2020. The Complainants prayed to pay the delay interest for 12 months i.e., November 2019 to December 2020 from the Respondent.
19. With respect to the claim for delay compensation for the period of November 2019 to December 2020, the Complainants have alleged that, as per the unregistered Agreement of Sale dated 07.06.2017, the handing over of the said flat was assured by the Respondent in the month of November 2019. However, this Authority observed that, the said unregistered Agreement of Sale dated 07.06.2017, does not stipulate any specific agreed date regarding the handing over of said flat to the Complainants.
20. However, the Complainants further alleged that, the Respondent has unilaterally altered the delivery timeline in the Registered Construction Agreement for their advantage. In view of above facts, it is evident that the Respondent, by email dated 02.09.2020 (Ex.B4),

intimated the Complainants regarding the "revised agreement as per the Complainant's request" and the Complainants had not raised any objection to the above email. Therefore, it is clear that, the Complainants were very well aware of the new Construction Agreement dated 04.09.2020.

21. Furthermore, the registered Construction Agreement dated 04.09.2020 was duly executed between the Complainants and the Respondent and the same was registered as Doc No: 2502 of 2020 respectively before the Sub-Registrar, Alandur. As per Clause 4 of the registered Construction Agreement, which determines the period for completion and delivery the booked flat as below;

"The Promoter shall endeavor to complete the construction of the Apartment by 31st December 2020. The Promoter agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement...."

While executing the Construction Agreement, which explicitly disclosed the details of completion of construction of the flat and same was accepted by the Complainants at the time of booking the flat and execution of construction agreement and sale deed. Hence, the Complainants claim for delay interest for the period of November 2019 to December 2020 (i.e., 12 months) is not entertained. Thus, the Point No. (i) is answered accordingly.

Answer to Point No.(ii):

22. The Complainants have prayed for refund of excess GST which has been collected by the Respondent, while he has charged the GST @

12%.

23. With respect to the refund of excess GST from the Respondent, this issue arose due to the Government of India GST Notification No. 03/2019 dated 29/03/2019. According to the said notification, the government gave the option to the promoter, in case of the project being an ongoing project, the Promoter has the option to choose the GST at the old existing rate of 8% or 12% with Input Tax Credit (ITC) or switch to the new rate of 1% in case of affordable residential project or 5% in case of non affordable residential project without Input Tax Credit.
24. The Respondent admitted in the counter that, the Respondent has made a representation dated 08.05.2019 to the Commissioner of GST and Central Excise (Ex.B2) and had chosen to continue with the old rate of GST @ 12% with Input Tax Credit (ITC) for ongoing project.
25. This Authority relied upon the judgment of the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in Appeal No. 48 of 2023, M. Shankar & another Vs M/s. Casa Grande Shelter LLP., which held that,
- "With regard to the refund of excess GST allegedly collected from the appellants, it is the case of the appellants that the respondent has charged 12% GST instead of 5%. According to the appellants, difference 7% of GST that was collected in excess, should be refunded to the appellants. In this regard, as per the decision taken by the GST council in the 34th meeting held on 19.03.2019 regarding GST rate on real estate sector, the respondent exercised the option to pay GST at the old rate i.e., at 12%. To prove their contentions,*

the respondent produced the copy of the option letter dated 08.05.2019 and marked as Ex.B2 on the side of the respondent during the course of enquiry before the learned Single Member, TNRERA. The said option letter would clearly prove that the rate of GST payable by the respondent was only 12%. Therefore, the GST was rightly collected at 12% from the appellants and there is nothing to be refunded."

26. From the above relied judgment it is settled law and upon the Perusal of documents filed by the Respondent, it is clear that, the Respondent has exercised and opted the GST for 12% with Input Tax Credit and it cannot be held that, any excess amount of GST has been collected from the Complainants by the Respondent. Therefore, no relief on this ground could be offered to the Complainants. Hence, the Complainants claim for refund of excess GST collected is not entertained. Thus, the Point No. (ii) is answered accordingly.

Answer to Point No.(iii):

27. With respect to refund of car parking amount charged from the Complainants by the Respondent to the tune of Rs.4,25,000/-, it is observed that, as per the Allotment Letter dated 18.05.2017, the Respondent had allotted two car parking spaces on a tandem basis. Subsequently, under the Deed of Guarantee dated 13.06.2017, the Respondent had allotted a double covered car park (one behind the other slot). However, in the subsequent registered Construction Agreement dated 04.09.2020, Schedule 'D' which clearly shows that,

SCHEDULE 'D'

"A residential unit bearing Apartment No. H302 in THIRD FLOOR measuring about 1157. sq.ft. carpet area [or 1627 sq. ft. Built-up area] in the apartment complex put up in Schedule 'C' along with One Covered Car Park and One Open Car Park in the residential project "CASA GRANDE BELLISSIMO".

The mentioned clauses would show that, the car park was an integral part of the project, which has to be handed over to the Complainants by the Respondent. Furthermore, the Complainant has not submitted any documentary evidence which would go on to show that, the car parking consideration has been paid separately.

28. Further, the Authority relies on the order passed by the Hon'ble Tamil Nadu Real Estate Appellate Tribunal in A.No 63 of 2022 dated 27.09.2023, which held that:

"With regard to the relief of refund of car parking charges allegedly collected from the allottees is concerned, the cost of construction includes one covered car parking as mentioned in the construction agreement. No separate charges have been collected from the allottees in respect of the car parking. The appellant/ Complainants association has not specifically stated as to the quantum of car parking charges collected from each allottee. In these circumstances, the prayer with regard to the refund of car parking charges allegedly collected from the allottees cannot be granted"

In the above mentioned Judgment, the relief with regard to refund of car parking charges, which were not proved to be collected separately was disallowed. Thus, following the above-mentioned

decision, the refund claimed by the Complainants with respect to car parking charges cannot be granted. Thus, the Point No. (iii) is answered accordingly.

Answer to Point No.(iv):

27. The Complainants have sought a relief against the Respondent to refund a sum of Rs.5,94,832/- towards encroachment of common area shared by the Complainants.
28. The Complainants alleged that, as per the approval CMDA layout vide letter No.B1/18189/2016 dated 11.5.2017 and Greater Chennai Corporation building approval No. CEBA/WDCN12/00171/2017 dated 19.05.2017, only 345 parking spaces were allotted. To accommodate the additional 161 parking spaces, the Respondent has encroached the common area more than allowed by CMDA and the data in the TNRERA website.
29. In view of the above, this Authority observed that, as per the RERA carpet area statement, the sanctioned number of car parking for the aforementioned project is 345. However, the Complainants alleged that, a total of 506 car parking spaces were allotted by the Respondent, there is a difference of 161 car parking spaces.
30. With respect to claim of additional car parking, it is pertinent to note that, this Authority vide its order dated 27.04.2022 in C. No. 202 of 2021, relating to the same project had already issued directions to the Respondent in this regard as follows,
"43. Regarding parking of vehicles, the Respondent Promoter shall obtain concurrence of the Allottees before 31.07.2022 for revised

plan, if any, and obtain necessary approval from CMDA, if permissible as per Tamil Nadu Combined Development and Building Rules, 2019 which is currently applicable to CMDA also, before 30.10.2022."

31. Therefore, the Respondent is obliged to obtain a necessary approval for additional car parking, as per the order of this Authority dated 27.04.2022. However, the Respondent in his written arguments submitted that, he has proposed certain revision in overall car parking allotment of the project to the Association of the subject development and the same are in process. Moreover, the current status of the revised plan for additional car parking has not been produced before this Authority by the Respondent.
32. This Authority observed that, the Respondent has not yet complied with the directions issued by this Authority vide its order dated 27.04.2022 in C.No.202 of 2021, to get the revised plan and necessary approval from the CMDA by the Respondent after confirming that the encroachment has been made. From the above facts, it is clear that, the issue relating to encroachment has neither been complied by the Respondent nor clarified by the Respondents by producing necessary documents before this Authority.
33. Hence, the encroachment was not yet rectified by the Respondent. Due to additional car parking provided by the Respondent, there has been encroachment upon the common area for which the Complainants have paid certain amount towards the common area.
34. Therefore, the Complainants are entitled for refund of Rs.5,94,832/- towards the encroachment of common area, as per the calculation

submitted by the Complainants which was not disputed by the Respondent.

Answer to Point No.(v):

35. The Complainants have sought a prayer to direct the Respondent either to pay sum of Rs. 4,50,000/- towards the EB, metro water and sewage connection charges or to transfer the said documents in favour of the Complainants.
36. The Complainants contended that, a sum of Rs. 4,50,000/- (+12% GST) was collected by the Respondent towards EB, metro water, and sewage connections but except for the EB deposit which was reflected in the TNEB portal, no other progress has been made for metro water and sewage. Further, the EB card stands in the Respondent's name instead of the Complainants name.
37. In view of the aforementioned facts and upon perusal of the documents submitted by the Respondent, it is evident that, the EB receipt (Ex.B6) issued by the Tamil Nadu Generation and Distribution Corporation stands in the name of the 1st Complainant. Hence, it is very clear that, the EB card has been duly effected in the name of the 1st Complainant namely, Ms. M. Nithya.
38. With respect to the metro water and sewage connection charges, this Authority observed that, by its order dated 27.04.2022 in C.No.202 of 2021 has issued directions as follows,
"39. Therefore, this Authority refrains from giving any further directions to the Respondent Promoter as bore wells and provision for Metro water connection have been provided by the Respondent

Promoter.

40. Regarding STP, the Respondent Promoter has stated that consent to operate has been received from TNPCB and the same requires renewal for which the Respondents have taken follow up action.

41. As consent to operate this STP has been obtained from TNPCB, this Authority does not consider necessary to issue any further direction to the Respondent Promoter in this regard."

39. In light of the above, the Complainants claim regarding the refund of Rs.4,50,000/- for EB, metro water and sewage connection charges does not arise. Thus, the Point No. (v) is answered accordingly.

In the result, the Respondent is directed as follows:-

Hence, the Respondent is directed to refund Rs. 5,94,832/- paid by the Complainants to the Respondent towards the encroachment of common area.

Sd/- 03.06.2026

MEMBER (J), TNRERA

Sd/- 03.06.2026

MEMBER (K), TNRERA

LIST OF WITNESSES

CW-1 – Thiru. R. Maghizhmaran

RW-1 – Thiru Y. Mohan Raj

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	18.05.2017	Allotment letter
Ex.A2	07.06.2017	Agreement of sale
Ex.A3	13.06.2017	Deed of guarantee
Ex.A4	04.09.2020	Construction agreement
Ex.A5	04.09.2020	Sale deed
Ex.A6	06.02.2021	Handing over certificate
Ex.A7	06.02.2021	No due certificate
Ex.A8	06.02.2021	Car park allotment letter
Ex.A9	14.06.2021	Legal notice
Ex.A10	01.02.2021	Special power of attorney
Ex.A11	---	Payment receipts
Ex.A12	---	Payment sheet by respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	19.03.2019	GST council decision
Ex.B2	08.05.2019	GST representation
Ex.B3	04.02.2020	Completion certificate
Ex.B4	02.09.2020	E-mail communication
Ex.B5	27.12.2021	Opinion by NKM & Associates
Ex.B6	---	EB Receipt
Ex.B7	---	Payment calculation sheet

Sd/- 03.06.2026
MEMBER (J), TNRERA

/TRUE COPY/FORWARDED/BY ORDER

Sd/- 03.06.2026
MEMBER (K), TNRERA

ADMINISTRATIVE OFFICER