

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI  
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 190 of 2019**

M/s. Brizozone Property Holdings Private Limited  
Rep. by Director, Shikha Goyal

.... COMPLAINANT

**Vs.**

M/s. Ozone Projects Private Limited  
Rep. by Authorised Signatory  
Regn. No. TN/29/Building/0036/2018

....RESPONDENT

Complainant : Rep. by Mr. Shobhan M. Padmanabhan, Advocate

Respondent : Rep. by M/s. BFS Legal, Advocates

Heard on : 20.02.2020

Delivered on : 06.03.2020

**ORDER**

The above complaint by the complainant claiming compensation for the delay in handing over possession of residential unit by the respondent is filed under section 71 read with 31 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred as RERA ACT).

**2. Averments of the complainant in brief as follows:**

- (a) The complainant, a Private Limited Company, booked a residential flat with the respondent in their project "the Metrozone" at No.44, Pillaiyar Koil Street , Jawaharlal Nehru Road, Anna Nagar, Chennai and paid amounts.
- (b) On 31.08.2012, the complainant entered into sale agreement and also construction agreement towards the purchase of the flat. As per the agreements, the respondent undertook to handover the flat by February 2014. The total sale consideration of the flat is Rs.1,96,14,146/-. The complainant paid Rs.1,33,46,638/- to the respondent. In spite of payment of approximately 70% of the total sale consideration, there was delay in the construction of flats in the project.
- (c) The complainant continued to make payment still September 2015. The respondent insisted for further payment. The respondent also failed to pay compensation as per the agreement. The complainant is entitled for interest and compensation on the ground of failure on the part of the respondent to deliver the constructed flat as per the terms of the agreement.

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**3. Averments of the respondent in brief as follows:**

(a) Except admitted, the respondent denies all the allegations and averments. The complaint is not maintainable in law or in facts. The respondent entered into agreements for sale and construction on 31.08.2012 for purchase of a residential flat in their project.

(b) The complainant breached the mile stone payment schedule. The delay in progress of construction was due to reasons beyond the control of respondent, such as natural calamities, shortage of construction materials and skilled labourers, labour restriction imposed by the Government and delay in approval and renewal of approvals and also delayed payment by the customers.

(c) Out of the total sale consideration of Rs.1,97,79,221/-, the complainant paid only Rs.1,33,85,884/- and a sum of Rs.63,93,337/- is outstanding till date. The complainant is not entitled to seek in relief before this Forum.

(d) The project is registered with TNRERA. As per the registration certificate issued for the project, the handing over date is 2022. There is no delay at all. The complainant is enjoying almost 150% of the appreciation of the unit cost. The entire payment as per the terms of the agreement is to be made in order to be eligible for compensation and the contract. As per the section 19(6) of the RERA Act read with rule 19(2) of TNRERA Rules, the complainant is not entitled to any compensation from the respondent. Hence, the respondent prays for the dismissal of the complaint with cost.

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

5. On both sides, 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) Whether the complainant is entitled for compensation on the ground of delay in handing over possession of the flat as per the terms of the agreements?

ii) What are the reliefs, the complainant are entitled to?

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

(a) There is no dispute that as per the construction agreement dated 31.08.2012, the respondent undertook to complete the construction of the flat for delivery in February, 2014 with a grace period of 3 months and as on date, the construction of the flat is not completed.

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However, the learned counsel for the respondent contended that there is outstanding due to Rs.63,93,337/- by the complainant and the complainant cannot seek compensation without paying the due amount and the complainant cannot withhold payment and the complainant stopped making payments after February 2015 and without complying reciprocal obligation, the complainant is not entitled for any relief. The learned counsel also relied on decision of the Hon'ble Delhi High court in V.G. Duggal Vs. Delhi Development Authority reported in MANU/DE/0821/1995 and also The High Court of Bombay in Shanti Builders Vs. CIBA Industrial Workers' Co-op. Housing Society Ltd. and Ors. in MANU/MH/0651/2012 and Rakesh Anand & ANR Vs. M/s. Royal Empires (Royal Minaar) in First Appeal No.1378 of 2016 in support of his contentions.

(b) The learned counsel for the complainant submitted that the construction agreement was entered on 31.08.2012 and till date the flat is not ready for delivery and the delay for more than 6 years is unreasonable and also against the terms of the construction agreement and as per the agreement, the complainant is entitled for compensation and also compensation for mental agony. The learned counsel also relied on various judgments in his favour.

(c) It is also not in dispute that clause 7(b) of the construction agreement provides for compensation payable by the respondent to the complainant at Rs.15/- per sq.ft. per month till the delivery of the residential unit and in the event of delay exceeding 6 months, at the rate of 10% per annum on the amount received by the respondent.

(d) Where the promises are reciprocal, each party has the option to perform his part of contract but cannot insist on the other party performing his part without himself performing what he has agreed to do. Even according to the respondent the complainant was making payments till February 2015, i.e., even after the due date for delivery which is February 2014. It is obvious that the respondent failed to perform their obligation incompleting the construction of the flat for delivery by due date. Hence the respondent cannot insist the complainant to perform their part without themselves performing what they have agreed to do under the agreement.

(e) In a similar situation on facts and circumstances, the National Consumer Dispute Redressal Commission, in its decision in Rakesh Anand and Another Vs. Royal Empires in First Appeal No.1378 of 2016, held that and when the builder failed to raise the construction of the project as per the time schedule in the agreement, the complainant were justified in not paying further instalments according to the terms of the agreement. RERA Act is a special enactment and the

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**In the result, the respondent is directed as follows:-**

- 1) The respondent shall pay the compensation and cost as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.
- 2) In case of adjustment of any due payable by the complainant, the balance shall be payable within the time limits specified above.

Sd/-06.03.2020  
G. SARAVANAN  
ADJUDICATING OFFICER

**LIST OF WITNESSES**

CW-1 --- Shikha Goyal  
RW-1 --- K. Krishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

EX. No.	Date	Documents
A1	31.08.2012	Construction Agreement
A2	31.08.2012	Sale Agreement
A3	28.02.2012	Receipt
A4	02.04.2012	Receipt
A5	03.05.2012	Receipt
A6	26.06.2012	Receipt
A7	11.06.2014	Receipt
A8	18.12.2014	Receipt
A9	14.05.2015	Receipt
A10	09.09.2015	Receipt
A11	26.12.2016	Letter
A12	30.01.2017	Email Communication
A13	--	Project Application form with RERA
A14	21.09.2017	Email Communication
A15	--	Working of Compensation

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

EX. No.	Date	Documents
B1	30.09.2008	Letter from CMDA
B2	13.04.2009	Planning Permit
B3	18.06.2009	Building Permit
B4	05.09.2009	Newspaper Article
B5	20.12.2010	Newspaper Article
B6	07.01.2011	Newspaper Article
B7	08.01.2011	Newspaper Article
B8	21.10.2011	Letter from CMDA

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B9	01.11.2011	Receipt issued by CMDA
B10	10.03.2012	Newspaper Article
B11	09.04.2012	Letter from CMDA
B12	21.08.2012	Letter from CMDA
B13	03.09.2012	High court order copy
B14	10.01.2013	Letter from TN Fire & Rescue Service Dept.
B15	26.02.2013	Letter from TN Pollution Control Board
B16	25.03.2013	Compliance Certificate
B17	03.05.2013	Newspaper Article
B18	31.05.2013	Letter from Housing and Urban Dept. to CMDA
B19	10.07.2013	No Objection Letter From CMRL
B20	31.07.2013	No Objection Letter From Police Dept.
B21	22.08.2013	Planning Permission
B22	13.12.2013	Building Permission
B23	20.11.2013	Newspaper Article
B24	03.01.2014	Newspaper Article
B25	27.02.2014	Letter of Clearance
B26	29.04.2014	Consent from the TN Pollution Control Board
B27	29.04.2014	Consent from the TN Pollution Control Board
B28	22.05.2014	Partial Completion Certificate
B29	17.08.2015	Newspaper Article
B30	31.08.2015	Compliance Certificate from fire & Rescue Service Dept.
B31	28.01.2016	Partial Completion Certificate
B32	26.12.2016	Letter issued by respondent to complainant
B33	--	Delay Statement
B34	--	Demand notice , letters and Email Communication
B35	07.09.2010	Board Resolution Extract
B36	--	Site Plan 2009 and 2013 by CMDA

**CERTIFIED TO BE TRUE COPY**

*[Handwritten Signature]*  
 6/3/2020  
 Administrative Officer

Sd/-06.03.2020  
 G. SARAVANAN  
 ADJUDICATING OFFICER  
 TNRERA, CHENNAI