

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 251 and 252 of 2019**

(1) Sushma Sesetty
(2) Kumaran Thangaiyan(in CCP: 251 of 2019)

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(2) Sushma Sesetty(in CCP: 252 of 2019)

..... **Complainants**

Vs

Ozone Projects Private Ltd.,Rep.by.its
Managing Director,Vasudevan sathiamoorthy
(Regn No.TN/29/Building/0036/2018)

..... **Respondent
(in both CCP's)**

Complainants : Parties-in-Person

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

Heard on : 10.06.2021

Delivered on : 06.07.2021

ORDER

Both the above complaints by the respective complainants claiming refund of entire amount paid to the respondent towards purchase of the flats booked with interest, compensation are filed u/s 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).

2. Since the complaints are relating to same project of the respondent, both the complaints were heard together and disposed of by a common order.

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

(a) On 20.03.2016, the complainants in both the above cases booked each one flat with the respondent in their project, namely, "**Pinnacle at the Metrozone**" at Anna Nagar, Chennai on 20.03.2016 and and on

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25.04.2016, entered into two separate sets of agreements for sale and construction with the respondent.

(b) The flats allotted to the complainants, the agreed price, the amounts paid by the complainants and the due dates for delivery of the constructed flats to the complainants are as follows:-

CCP Nos.	Allotted Flat No.	Price Agreed in Rs.	Amount Paid in Rs.	Due Date for delivery
(1)	(2)	(3)	(4)	(5)
251/2019	AG1012	66,17,365/-	19,48,906/-	March-2019
252/2019	AG1011	70,01,665/-	20,64,248/-	March-2019

(c) The complainants paid the amounts to the respondent as per the demand letter raised by them. On 19.08.2018, when the complainants visited the project site, they were shocked to know that no construction works were started at the site and were told that the completion of flat would take 3 more years and be delivered only in the year 2023.

(d) The complainants sought for cancellation of the booking and the refund of the entire amount including compensation and interest. Till date, the respondent has not returned the amount. The complainants are entitled for the refund of the entire amount with interest, compensation and cost.

4. On the side of the respondent, no counter was filed. But, the respondent has chosen to file a common memo in both the cases stating that the respondent has offered to settle the dispute amicably and due to the present pandemic crisis, the respondent needs a deferred repayment schedule and they will refund Rs.10,00,000/- every month from December 2020 and the entire amount will be paid to the complainants by April 2021, subject to force majeure circumstances.

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5. The complainants in both the cases filed proof affidavit with documents on their side. However, the respondent has not filed any counter or let in any evidence on their side.

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

- i. Whether the complainants in both the cases are entitled for refund of the amounts paid to the respondent with interest and compensation on the ground of no progress of construction by the respondent in the project site?
- ii. What are the reliefs, the complainants are entitled to?

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

(a) The complainants submitted that they booked flats in the project of the respondent and on 28.03.2016, paid the booking advance of Rs.2,00,000/- for each flat and subsequently on 05.04.2016, paid further amounts and on 25.04.2016, entered agreements of sale and construction agreements with the respondent and the respondent undertook to complete the construction and hand over the flats by March 2019 and the complainants were making payments as per the demands made by the respondent and on 19.08.2018, when they visited the site to see the progress of the construction, they came to know that no construction work was started at the site and subsequently sought cancellation of the booking and refund of the amount paid to the respondent with interest and compensation.

(b) The contentions of the complainants were not at all disputed by the respondent by filing any counter specifically denying the averments made in the complaints. The respondent only filed the memo with an undertaking to repay the amount with a deferred repayment schedule. It is not

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disputed that the amount received from the complainants by the respondent were utilized in the construction of the project.

(c) Considering the facts and circumstances of the cases, it is held that the complainants are entitled for refund of the entire amount paid to the respondent with interest, compensation and cost on the ground of no progress of construction activities by the respondent in the project site. 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 entitled for refund the entire amounts paid to the respondent with interest and compensation in the following manner.

(b) **CCP No. 251 of 2019**

The complainants have paid Rs.19,48,906/- in total to the respondent towards purchase of the flat. The complainants has produced documents and proved the payment of Rs.19,48,906/- to the respondent. Therefore, the complainants are entitled for refund of the entire amount of Rs.19,48,906/- from the respondent with interest and compensation. As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainants are entitled for the interest at the rate of 8.25% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 10.25% per annum for the amounts from the date of respective payment till repayment by the respondent. Apart from the above, the complainants are entitled for compensation of Rs.1,00,000/- and a sum of Rs.25,000/- towards litigation expenses.

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(c) **CCP No. 252 of 2019**

The complainants has paid Rs.20,64,248/- in total to the respondent towards purchase of the flat. The complainants has produced documents for payment of Rs.20,64,248/- to the respondent. Therefore, the complainants are entitled for refund of the entire amount of Rs.20,64,248/- from the respondent with interest and compensation. As per Rule 18 of TNRERA Rules, rate of interest shall be at the highest marginal cost of lending rate of SBI plus 2%. Hence, the complainants are entitled for the interest at the rate of 8.25% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 10.25% per annum for the amounts paid from the date of respective payment till repayment by the respondent. Apart from the above, the complainants are entitled for compensation of Rs.1,00,000/- and a sum of Rs.25,000/- towards litigation expenses.

d) The complainants are entitled for reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows:

- (i) The respondent shall pay the amounts at the interest rate, compensation and litigation cost as per the findings in answer for Point No.(ii), Para No.8 of this order within 60 days of issue of this order.
- (ii) The charge of the aforesaid amounts shall be on the flats booked by the complainants till the repayment. The office of the forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.

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(iii) The Complainants shall execute the cancellation of agreements as the case may be, on satisfaction of their claims as per the order at the respondent's expense.

G. SARAVANAN
ADJUDICATING OFFICER

CCP.NO. 251 of 2019

LIST OF WITNESSES

CW-1 --- Kumaran Thangaiyan

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.No	Date	Documents Name
Ex.A1	20.03.2016	Application form for booking
Ex.A2	---	Payment receipts
Ex.A3	---	E-mail communications
Ex.A4	25.04.2016	Agreement for sale
Ex.A5	25.04.2016	Construction agreement
Ex.A6	---	Demand letter from respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Nil

CCP.NO. 252 of 2019

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Ex.A6	---	Demand letter from respondent

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LIST OF DOCUMENTS FILED BY THE RESPONDENT

Nil

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


6.7.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY