

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 265 of 2019

(1) C. Venugopal
(2) Radha Venugopal

..... Complainants

Vs.

M/s. Ozone projects Pvt Ltd.,
Rep by its Managing Director.

..... Respondent

Complainants : Rep. by Mr. Vikram Ramakrishnan, Advocate
Respondent : Rep. by M/s. BFS Legal, Advocates

Heard on : 10.12.2020
Delivered on : 31.12.2020


ORDER

The above complaint by the complainants seeking compensation for the delay in handing over the booked apartment and also compensation for mental agony with future interest and costs from the respondent 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) The complainants booked a residential apartment with the respondent in their project, namely, " METROZONE " at No.44, Pillaiyar Kovil Street, Anna Nagar, Chennai- 600 040. The total sale consideration for the unit was Rs.2,22,24,415/-. As on 15.11.2016, the complainants paid a total sum of Rs.1,07,17,925/-.

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(b) On 30.09.2016, the complainants and the respondent entered into a construction agreement. As per the terms of the agreement, the due date for delivery of the completed apartment was August 2017 with a grace period of six months. On 09.11.2017, the respondent executed a registered sale deed for the UDS in favor of the complainants. On the same day another construction agreement was also executed by the respondent, by which the respondent agreed to hand over the residential unit within two months with a grace period of three months from the date of the agreement. The time fixed for delivery was over by 08.04.2018.

(c) The respondent was delaying completion of the apartment and has sent e-mail dated 25.06.2019 asking the complainants to pay Rs.50, 99,548/- as the balance amount payable for the residential unit. Without prejudice to claim delay compensation, the complainants paid final payment to the respondent. On 01.07.2019, the possession of the apartment was made to the complainants. The complainants took possession of the apartment with incomplete works. The complainants are entitled for compensation for the delay in handing over the possession of the apartment and other reliefs.

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

(a) All the averments and allegations, except admitted, are denied. The complainants and the respondent entered into the construction agreement on 09.11.2017 for the residential unit. On the same day, the sale deed was executed for UDS land. Subject to payment of milestone payments and other conditions, the date for hand over the apartment was fixed on January 2018.

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(b) Out of the total sale price of Rs. 2.16 Crores, the complainants paid only Rs. 1.71 Crores and a sum of Rs. 45,00,000/- was due and payable for more than two years. The complainants paid the balance amount only on 27.06.2019. The possession has been handed over.

(c) The respondent took all the efforts to hand over the apartment by the date fixed under the agreement. Due to several reasons beyond the control of the respondent, there was delay in execution of the project. Under the TNRERA Rules, the complainants are not entitled to any compensation on their failure to make payment as per the terms of the agreement. The complaint is liable to be dismissed.

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


5. Both 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 complainants are entitled for compensation for delay on the ground of failure on the part of the respondent to complete construction and give possession of the apartment booked by them in accordance with the date as per the agreement?

(ii) Whether the complainants are entitled for all the reliefs as prayed for?

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7. Answer for point No (i):-

(a) The learned counsel for the complainants submitted that the complainants made payment as per the first construction agreement entered on 30.09.2016 and paid 50% of the total cost of the plot as on 06.11.2017 and they paid in excess of the amount and also paid subsequent balance amount on receiving the e-mail notice from the respondent and the apartment was handed over possession with a delay of 15 months and they are entitled for the reliefs.

(b) However, the learned counsel for the respondent submitted there was delay in making the payment by the complainants and the respondent raised a demand on 01.11.2016 for a sum of Rs. 54,15,426/- and the payment of Rs. 50,99,548/- was finally made on 27.06.2019 and as per Section 19(6) of RERA Act read with rule 19(2) of the TNRERA rules, the complainants are not entitled for any compensation and there were several reasons beyond the control of the respondent for the delay and alternate accommodation was provided by the respondent to the complainants and apart from the same, the appreciation of the property value is also to be considered in computing the compensation and therefore the claim of the complainants is liable to be dismissed.

(c) Ex.A1, the construction agreement, was entered between the complainants and the respondent on 30.09.2016 fixing the date of delivery by August 2017 with a grace period of six months. Ex.B4, the account statement of the respondent, shows that the payment by the complainants started from the date of booking on 23.09.2016. Ex.A2, the construction

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agreement, was subsequently entered on 09.11.2017 with an undertaking by the respondent to complete the construction of the apartment within two months with a grace period of three months from the date of the agreement. The due date for delivery of the completed apartment under the second agreement expired by 09.04.2018. Even though both the agreements contain payment schedule, the payment schedule was not linked with any stage wise time schedule for completion of the construction of the apartment.

(d) On perusal of Ex.B4, the statement, filed by the respondent, it is seen that as on 08.11.2017, i.e., at the time when the second construction agreement was entered on 09.11.2017, the complainants had already paid Rs.1,71,25,721/- out of the total sale price of Rs.2,22,89,577/- to the respondent. The balance amount was paid by the complainants immediately prior to the handing over possession of the apartment.

(e) In the absence any time schedule for stage wise completion of construction followed by the respondent so as to provide the flat within the date fixed under the agreement, the respondent cannot expect the complainants to make payment as per the payment schedule without specific dates for payment. Where the promises are reciprocal, each party has the option to perform his part of the contract but cannot insist on the other party performing his part without himself performing what he was agreed to do. Therefore, the complainants cannot be blamed for not adhering to the payment schedule when the project itself was delayed due to various reasons and not for any lapses on the part of the complainants.

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(f) It is not in dispute that the constructed apartment was handed over to the complainants only on 01.07.2019. There was a delay of 15 months. As per the proviso to Clause 5 (b) 3 (ii) of the construction agreement, in case of delay, the allottee is entitled for interest at the rate specified in the rules for every month of delay till the handing over the possession of the apartment. The complainants invoke the above clause in the agreement. Since the claim of the complainants is made as per the terms and conditions of the agreement, the complainants are entitled for compensation for the delay in handing over possession of the completed apartment. Thus, the point is answered accordingly.

8. Answer for point No (ii):-

(a) The learned counsel for the complainants submitted that the compensation for the delay is worked out to a sum of Rs. 21,60,929/- and the complainants are entitled for compensation for the mental agony and inconvenience caused by the respondent at a sum of Rs.25,00,000/- and also relied and the decision of this Forum in CCP No.077 of 2019 dated 26.09.2019 and submitted the case on hand is also an identical matter.

(b) In the case referred above, the construction agreement was entered between the parties on 24.05.2010, i.e. prior to the commencement of RERA Act and Rules and possession of constructed apartment was not made till the date of the order. There was specific clause under the terms of the agreement entered between the parties fixing rate per sq.ft for arriving at compensation. It is settled law that the compensation is to be fixed on the facts and circumstances of each case and such compensation is

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to be just and fair in the circumstances of the case. Therefore, the above decision cannot be applied to this case.

(c) Admittedly, the flat was handed over to the complainants only on 01.07.2019, i.e., after 15 months from the due date for delivery of flat under the agreement. It is not in dispute that during the delay period, the complainants were provided alternate accommodation for over one year. However, the contention of the learned counsel for the respondent that since the complainants was provided alternate accommodation, the complainants are estopped making any claim of compensation is not sustainable.

(d) It is also contented by the learned counsel that appreciation of property value ought to be taken into consideration while computing the compensation. In the absence of any evidence on the value of the property on appreciation during the delay period, such a contention is vague, general and is not acceptable. The respondent undertook to pay the complainants interest at the rate specified in the rules for the delay in handing over possession of the apartment under the agreement.

(e) Considering that the complainants were provided alternate accommodation for about one year, it is held that the complainants are entitled for 7% of the total sale consideration of the apartment as delay compensation. The complainants are entitled for a sum of Rs.1,00,000/- towards mental agony and inconvenience and also a sum of Rs.25,000/- towards litigation expenses. Thus the point is answered accordingly.

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In the result, the respondent is directed as follows:

The respondent shall pay the compensation for delay and mental agony and cost as directed in above Point No.(ii), paragraph 8 to the complainants within 30 days from the date of this order.

**G. SARAVANAN
ADJUDICATING OFFICER**

List of witnesses

CW-1 --- C. Venugopal

List of documents filed by the complainants

| Ex.Nos | Date | Documents Name |
|--------|------------|-------------------------------------|
| Ex.A1 | 30.09.2016 | Construction agreement |
| Ex.A2 | 09.11.2017 | Construction agreement |
| Ex.A3 | 09.11.2017 | Sale deed |
| Ex.A4 | 23.03.2017 | Sale deed |
| Ex.A5 | 12.12.2017 | Rental agreement |
| Ex.A6 | 30.06.2018 | Invoices for fit out installation |
| Ex.A7 | 29.11.2018 | Payment receipt of rented furniture |
| Ex.A8 | 19.08.2019 | E-mail to respondent |
| Ex.A9 | 25.06.2019 | E-mail from respondent |
| Ex.A10 | 01.07.2019 | E-mail to respondent |
| Ex.A11 | 27.06.2019 | E-mail to respondent |
| Ex.A12 | 01.07.2019 | Possession letter |
| Ex.A13 | 24.07.2019 | E-mail to respondent |
| Ex.A14 | 04.07.2019 | E-mail to complainants |
| Ex.A15 | 09.11.2017 | Sale agreement |
| Ex.A16 | 01.11.2016 | Payment request letter |
| Ex.A17 | ----- | Payment receipts |

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List of witnesses
RW-1 --- K.Krishnan

List of documents filed by the Respondent

| Ex.Nos | Date | Documents Name |
|--------|------------|----------------------------------|
| Ex.B1 | 07.09.2010 | Board resolution extract |
| Ex.B2 | 28.01.2016 | Partial completion certificate |
| Ex.B3 | 03.11.2016 | E-mail by respondent for payment |
| Ex.B4 | ----- | Delay statement |
| Ex.B5 | 22.11.2017 | Possession letter for fit out |
| Ex.B6 | 27.06.2019 | Final statement |
| Ex.B7 | 01.07.2019 | Possession letter |

CERTIFIED TO BE TRUE COPY

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

[Handwritten Signature]
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY
12/12/2020