

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 269 of 2019**

1. Ramkumar
2. Roja Ramkumar Complainants

Vs

M/s. Ozone Projects Private Limited
Rep. By its CEO Jaiganesh Respondent

Complainants ✓ : Rep. by Mrs.Roja Ramkumar, Advocate.
Respondent ✓ : Rep. by M/s.BFS Legal, Advocates.

Heard on : 15.12.2020
Delivered on : 30.12.2020

ORDER

The above complaint by the complainants claiming compensation for the delay 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) One Dinesh Kumar booked an apartment with the respondent in their project, namely, "**The Metrozone**" at Pillayar Koil Street, Anna Nagar, Chennai, and by transfer of agreement the said Dinesh kumar transferred the booked apartment infavour of the complainants. The total sale consideration of the flat is Rs. 2,39,54,795/-.

(b) On 22.11.2017, complainants entered into an agreement of sale and a construction agreement with the respondent for the purchase of the flat. The complainants have paid a total sum of Rs.2,30,08,301/-.

(c) As per the terms of the agreement for construction, the respondent undertook to complete construction of deliver the flat by December 2018. The respondent failed to complete the construction and hand over the possession of the apartment as per the terms of the agreement. There is a balance due of sale consideration of a sum of Rs.9,46,494/- and balance

TRUE COPY

✓ 30/12/2020

amount has to be paid at the time of handing over possession of the flat with completion certificate. The complainants availed bank loan and are paying EMI for the loan. Hence the complaint is filed seeking compensation for delay, mental agony and cost.

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

(a) The respondent admits that the complainants entered into an agreement of sale and a construction agreement on 22.11.2017. The respondent undertook to complete the construction within 7 months from the date of the agreement with the additional grace period of 6 months.

(b) The complainants have not paid full sale consideration and a sum of Rs.9,46,494/- is due and payable over 1 ½ of years. The respondent handed over the residential unit to the complainants on 17.05.2018 for commencing fit out. The complainants have no cause of action to file this complaint when the amounts due is payable when the possession is already handed over to the complainants.

(c) The complainants filed the complaint to wriggle away from their liability to pay the balance amount to the respondent. Hence prays for dismissal of the complaint with cost.

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 contentions of the parties, the following points arise for determination:-

- i. Whether the complainants are entitled for compensation for the delay and for mental agony from the respondent on the ground of failure on the part of the respondent to deliver the constructed flat as per the terms of the agreement?
- ii. What are the reliefs the complainants are entitled to?

TRUE COPY

V.D.
30/12/2020

7. Answer for Point No. (i)

(a) The complainants filed written notes of argument and submitted that the flat was booked by the one Mr. DineshKumar on 23.09.2011 and the complainants and said DineshKumar entered into a transfer agreement dated 22.11.2017, by which the booking of the flat was transferred in favour of the complainants and the complainants entered into a construction agreement with the respondent and as per the agreement, the possession of the apartment was to be handed over on 22.12.2018 and the entire sale consideration was paid by the complainants and the flat was given possession to the complainants only for fit out on 17.05.2018 and not for possession and the completion certificate was yet to be issued by the statutory authority till date and the balance amount to be paid to handover as per the schedule and there was a delay of more than 10 months in handing over of possession of the flat and the complainants are entitled for all the reliefs.

(b) However, the learned counsel for the respondent also filed written notes of argument and submitted that complainants cannot rely on previous agreement with the said Dineshkumar and the construction agreement entered between the complainants and the respondent on 22.11.2017 is binding on both the parties and admittedly the complainants are in due of balance payments of Rs.9.85 lakhs to the respondent and the possession of the apartment has been handed over to the complainants on 17.05.2018 and the complaint is liable to be dismissed.

(c) It is not in dispute that after the transfer of booking in favour of the complainants, the complainants and the respondent entered into a construction agreement on 22.11.2017, and under Ex.A2, the clause 4(a) of the agreement, the respondent undertook to complete the construction within 7months from the date of the agreement with a grace period of additional 6 months. As per the clause 4(a) of the agreement, the period for completion and handing over of possession including the grace period expires by December 2018. Admittedly, the complainants took possession of the apartment on 17.05.2018.

TRUE COPY

VTD
30/12/2020

(d) It is the case of the complainants that the flat was given possession only for fit out and not for possession of the apartment in the proper sense and completion certificate was yet to be issued the CMDA. It is not the case of the complainants that after the flat were given possession to them for fit out and the fit out was made, the flat was handed over back to the respondent for handing over possession after getting completion certificate. Admittedly, the complainants continue to be in possession of the flat, since the flat was given to them for fit out on 17.05.2018.

(e) It is the contention of the complainants that as per the construction agreement, the possession should be given by October 2018 whereas the completion certificate was provided by the statutory authority only in the month of August 2020 and they were forced to pay EMI for the same as there was a delay of more than 10 months. As per the section 2(d) of the Act, completion certificate means the certificate issued by the competent authority certifying the project has been developed according to the sanctioned plan, layout plan specification. The question of obtaining the completion certificate by the respondent arises on partial or full completion of the project. Admittedly, the completion certificate was provided by the concerned authority in August 2020.

(f) When, admittedly, the possession of the flat was given by the respondent on 17.05.2018, no case was made out for any compensation under the proviso to section 18(1) of the Act. Under the section 18(3) of the Act, the promoter will be liable to pay compensation to the allottees, if they fail to discharge any other obligation imposed on him under the Act or the Rules or Regulations or in accordance with the terms and conditions of the agreements entered between them. In the absence of any pleading and evidence against the respondent for failure of any other obligations under the law, the complainants cannot be said to be entitled for any compensation.

(g) In the said circumstances, it is held that the complainants are not entitled for compensation on the ground of delay in completion and handing over of the flat by the respondent. Thus, the point is answered accordingly.

TRUE COPY

V.D.
30/12/2020

8. **Answer for Point No. (ii)**

In view of the answer for Point No.(i), the complainants are not entitled for any compensation on the ground of delay in completion and handing over of the flat. Therefore the complainants are not entitled for any reliefs. Thus the point is answered accordingly.

In the result, the complaint is dismissed. No cost.

G. SARAVANAN
ADJUDICATING OFFICER

List of witnesses

Cw-1 --- R. Ramkumar
Rw- 1 --- K. Krishnan

List of documents filed by the Complainants

Ex.Nos	Date	Documents Name
Ex.A1	22.11.2013	Construction agreement-Booking date
Ex.A2	22.11.2013	clause in construction agreement
Ex.A3	-----	Statement of accounts
Ex.A4	-----	Bank loan

List of documents filed by the Respondent

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2010	Board of resolution extract
Ex.B2	17.05.2018	Possession and keys handover letter
Ex.B3	11.07.2019	Mails issued by the respondent

CERTIFIED TO BE TRUE COPY

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

30.12.2020
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY