

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP Nos. 302 and 303 of 2019**

CCP No. 303/2019

1. C.Balu  
2. B. Indirani ..... Complainants

**Vs**

M/s. Ozone Projects Private Limited  
Rep. by CEO, Jaiganesh ..... Respondent

CCP No. 302/2019

M/s. Ozone Projects Private Limited  
Rep. By its Authorized signatory, M.Premnath .....Complainant

**Vs**

1. C.Balu  
2. B. Indirani ..... Respondents

Complainants/Respondents : Rep. by Ms.Roja Ramkumar, Advocate.  
Respondent/Complainant : Rep. by M/s.BFS Legal, Advocates.

**Heard on : 30.11.2020  
Delivered on : 18.12.2020**

**ORDER**

The complaint in CCP.No.303/2019 is filed by the allottee against the promoter for compensation for the delay and other reliefs u/s 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA Act).The complaint in CCP.No.302/2019 is filed by the promoter against the allottee for amounts due under section 19(6) & (7) of the RERA Act.

2. Since both the above complaints are relating to the construction and sale of same apartment, both the above complaints are heard together and disposed of by a common order. For the sake of convenience, the parties are referred in the manner as they are arrayed in CCP.No.303/2019.

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

(a) The complainant booked an apartment with the respondent in their project, namely, "The Metrozone" at Pillayar Koil Street, Anna Nagar, Chennai and paid booking advance and further amounts. The total sale consideration of the flat is Rs. 1,54,60,281/-.

(b) On 30.06.2012, complainant entered into agreements for sale and construction with the respondent for the purchase of the flat. The complainant has paid a total sum of Rs.1,36,38,455/-.

(c) As per the terms of the agreement for construction, the respondent undertook to complete construction and deliver the flat by December 2014 with a grace period of 3 months. The respondent failed to complete the construction and hand over the possession of the apartment as per the terms of the agreement. The complainant is entitled to compensation for the delay in handing over the possession of the apartment to the complainant.

(d) The respondent filed a complaint claiming the balance amount of Rs.19,43,438/- payable by the complainant. The respondent was not ready to pay the compensation for the undue delay of 56 months in handing over the possession of the flat. The respondent threatened by disconnecting water and electricity and also gave mental stress and torture for balance amount. On police complaint, electricity and water was restored by the respondent. The complainants admit that few milestone payments were delayed and they are ready to pay interest for the same. The complaint filed by the respondent is liable to be dismissed with cost.

**4. Counter averments of the respondent/promoter, in brief, as follows:**

(a) The respondent admits that the complainants booked an apartment in the project of the respondent and entered into an agreement of sale and construction on 30.06.2012. As per the terms of the agreement, the delivery date of the apartment is December 2014 with a grace period of 3 months. In compliance of the obligations under the agreements, the respondent handed over the apartment to the complainants. The complainants have

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not paid the total sale consideration and a sum of Rs.19,43,438 /- is still due and payable by the complainants.

(b) The respondent also executed sale deed conveying the UDS land on 21.05.2018. Under the construction agreement, complainants were to make milestone payment as agreed by them. The complainants have not made the milestone payment as agreed and it caused irreparable loss and hardship to the respondent.

(c) The respondent filed the separate complaint against the complainants for amounts due and payable by them. The respondent borrowed funds at the very huge cost when the payments were not made by the complainants as per the schedule. Out of the total unit cost of Rs. 1,55,81,890/- the complainant paid only Rs1,36,38,455/-and a sum of Rs.19,43,438 /- is due.

(d) As per rule 19(2) of the TNRERA rules, the complainants defaulted in making timely payment as per the agreement and they are not entitled to claim any interest or compensation from the respondent. Hence, the complainants are liable to pay the amounts due to the respondent with interest.

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

6. Both the parties have filed their respective evidence on affidavit with documents.

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

- i. Whether the complainants/allottee are entitled for compensation for delay and also for mental agony in handing over possession of the constructed flat by the respondent/promoter?
- ii. Whether the respondent/promoter is entitled for the payment due as per the agreement and for interest on the amount for delay in remitting the payment by the complainants/allottee?
- iii. What are the reliefs, the complainants and the respondent are entitled to?

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**8. Answer for Point Nos. (i) and (ii):**

(a) The learned counsel for the complainants/allottee filed written argument notes contending that agreements for sale and construction were entered between the complainants and the respondent on 30.06.2012 with the time fixing the date for handing over possession of the constructed flat in December 2014 with a grace period of 3 months and out of the total sale consideration of the apartment Rs. 1,54,60,281/-the complainants paid Rs.1,36,38,455 /- and the payments were made by the complainants as per the schedule with only a delay of 83 days and the flat was handed over for fit out only in May 2019 and interior was completed in August 2019 and balance amount of Rs.18,21,826 /- is due to respondent and Clause 7(b) and the construction agreement provides for compensation in the event of delay in handing over the flat and therefore the complainants are entitled to get the compensation for the delay in handing over possession of the flat as well as for mental agony caused to the complainants.

(b) The learned counsel for the respondent/promoter also filed written argument notes and submitted that the amount of compensation claimed by the complainants is payable only if they had fulfilled their obligations under the construction agreement and as per the agreement making milestone payment is the essence of contract and the complainants admitted the outstanding due payable to the respondent/promoter and the complainants will be eligible to get the contractual compensation only on payment the entire sale consideration and the claim of the complainants is to be rejected and as per clause 7(b) of the construction agreement and clause 19(6) of the RERA Act read with Rule 19(2) of TNRERA Rules, the complainants are not entitled for any compensation and the claim made by the respondent is to be allowed by this Forum.

(c) It is not in dispute that as per Ex.A2, construction agreement entered between the complainants and the respondent on 30.06.2012, the respondent/promoter undertook to deliver the constructed flat in December 2014, with a grace period of 3 months. Admittedly, the period for delivery of the flat expired in March 2015 and the constructed flat of the complainants was handed over in May 16.05.2019.

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(d) A perusal of the Ex.B30, the statement of accounts of the respondent shows that as on 15.11.2014, the total demand raised by the respondent is equal to the total amount paid by the complainants. Till then, except few occasions, all the amounts were paid without much delay. The payment schedule in the construction agreement was not linked with any time schedule as contemplated under section 11(3)(b) of the RERA Act to provide stage wise time schedule of the completion of the project.

(e) When the stage wise progress of construction was not as per any time schedule to be adhered by the respondent so as to provide the flat within the date fixed under agreement, the respondent cannot expect the complainants to make payment as per the demand notice. 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 completion of the project itself was delayed for several years due to various reasons and not for any lapses on the part of the complainants.

(f) Regarding the delay, the respondents stated in the counter that there were unforeseen circumstances, such as labour problems, short supply of construction materials, floods in 2015 and cyclone in 2016 which are beyond their control and they are entitled for extension of time and also produced news paper articles for such causes. The reasons for delay on such grounds are general and vague in nature. So far as the disputed project is concerned the delay is from December 2014 i.e., for more than four years. The complainants/home buyers cannot be made to wait indefinitely without any relief of compensation on the basis of terms in the agreement, which are one sided, unfair and only in favour of the respondents/builders. Hence, the contention of the respondents for such long period of delay is not acceptable.

(g) As per rule 4(1) of the Explanation of the TNRERA Rules, any agreement already executed between the promoter and allottee before the commencement of the rules shall not be affected. The agreement between the complainant and the respondent was entered duly prior to the commencement of the rules i.e., 26.06.2017. Therefore, as per the rule,

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the complainants are entitled for compensation only as per the terms agreed by them under the agreement.

(h) As per the agreement of sale, the sale consideration for the UDS land is Rs.48,99,000/-. Under the construction agreement, the sale consideration is Rs.102,54,842/-, in addition to an amount of Rs.3,06,439/- towards various charges. The total amount payable by the complainants to the respondent as per the agreements is Rs.1,54,60,281/- only. Therefore the total amount of sale consideration as claimed by the complainants is found correct.

(i) In the above circumstances, it is held that the complainants/allottee are entitled for compensation for delay in handing over possession of the constructed flat and also compensation for mental agony from the respondent/promoter and the respondent/promoter is also entitled for payment due as per the agreement and also for interest for delay remitting the payment due by the complainants/allottee. Thus, the points are answered accordingly.

9. **Answer for Point No. (iii):**

a) In view of the answer for Point No.(i) and (ii) and considering the facts and circumstances of the case, the complainants/allottee and the respondent/promoter are entitled for the reliefs in the following manner.

b) **CCP No. 303 of 2019**

(i) As per clause 7(b) of the construction agreement, the complainants/allottee are entitled for compensation at the rate of Rs.15/- per sq.ft per month from the due date for delivery of the apartment under the agreement till the handing over possession of the apartment. The total unit area as per the construction agreement is 1555sq.ft. Therefore,  $1555 \times 15 = \text{Rs.}23325/-$  is fixed as the delay compensation per month payable by the respondent/builder from April 2015 till the date of handing over of the apartment, i.e.,16.05.2019. Since the complainants are entitled for compensation for delay as on the date of delivery of the apartment, i.e.,16.05.2019, the amount of compensation for delay arrived at as above is payable by the respondent/promoter with interest at the rate of 9% p.a from 16.05.2019 to till the date of payment.

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(ii) Apart from the above, the complainants/allottee are also entitled for compensation for mental agony and the inconvenience at Rs.3,00,000/- and litigation expenses of a sum of Rs.25,000/-.

c) **CCP No. 302 of 2019**

(i) The respondent claims Rs.19,43,438/- as payment due together with interest at the rate of 18% p.a for 272 days from the complainant. The complainants admitted only a sum of Rs.18,21,826/- as due payable on final handing over as per the schedule.

(ii) As per Ex.B30, the statement of account, the total sale amount is mentioned as Rs.1,55,81,890/-.However, as already pointed out, the total sale consideration as claimed by the complainants at Rs.1,54,60,281/- is found correct. It is not in dispute that the total amount paid by the complainants is Rs.1,36,38,455/-. On deduction of the said amount from the total sale consideration of Rs.1,54,60,281/-, a sum of Rs.18,21,826/- is held as amount due payable by the complainants.

(iii) The respondent/promoter is entitled for the outstanding amount due of Rs.18,21,826/- from the complainants/allottee with interest at the rate of 9% p.a from the date of handing over of the apartment till the date of the payment.

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

**In the result, the complainants and the respondent are directed as follows:**

i) The respective parties shall pay the amounts due with interest, compensation and litigation cost as per the findings in answer for Point No (iii) Para No.9 of this order within 30 days of issue of this order.

(ii) The parties are at liberty to adjust the amounts due payable by them towards the amounts due from the other party. The balance amount is payable by the respective party to the other party.

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G. SARAVANAN  
ADJUDICATING OFFICER

**CCP.NO. 303 of 2019****List of witness and documents by the complainants**

CW-1 --- C. Balu and B.Indirani

Ex.No	Date	Documents Name
Ex.A1	13.06.2012	Annexure in construction agreement
Ex.A2	----	Clause in construction agreement
Ex.A3	31.03.2017	Statement of account
Ex.A4	25.08.2019	Petition receipt

**List of witness and documents by the Respondent**

RW-1 --- K.Krishnan

Ex.No	Date	Documents Name
Ex.B1	07.09.2010	Board resolution
Ex.B2	10.03.2012	News paper article
Ex.B3	09.04.2012	Letter of concurrence by CMWSSB
Ex.B4	07.08.2012	Milestone demand advice
Ex.B5	21.08.2012	Letter from CMDA
Ex.B6	03.09.2012	Order in Writ petition
Ex.B7	20.09.2012	Milestone demand advice
Ex.B8	10.01.2013	Letter
Ex.B9	20.02.2013	Letter
Ex.B10	25.03.2013	Compliance certificate
Ex.B11	03.05.2013	News paper article
Ex.B12	31.05.2013	Letter from HSUD dept
Ex.B13	10.07.2013	No objection letter
Ex.B14	31.07.2013	No objection certificate
Ex.B15	22.08.2013	Planning permission
Ex.B16	13.12.2013	Building permission
Ex.B17	20.11.2013	Newspaper article
Ex.B18	03.01.2014	Newspaper article
Ex.B19	27.02.2014	Letter of clearance
Ex.B20	25.04.2014	Consent order by TNPCB
Ex.B21	25.04.2014	Consent order by TNPCB
Ex.B22	22.05.2014	Partial Completion Certificate
Ex.B23	----	Newspaper article
Ex.B24	31.08.2015	Compliance Certificate
Ex.B25	28.01.2016	Partial Completion Certificate
Ex.B26	07.12.2018	Milestone demand advice
Ex.B27	15.05.2019	E-mail communication

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Ex.B28	16.05.2019	Possession letter
Ex.B29	26.06.2019	E-mail copy
Ex.B30	16.11.2019	Statement of account
Ex.B31	---	Site plan approved by CMDA

**CCP.NO. 302 of 2019**

**List of witness and documents by the complainant**

CW-1 --- M.Premnath

Ex.No	Date	Documents Name
Ex.A1	30.06.2012	Agreement of sale
Ex.A2	30.06.2012	Construction agreement
Ex.A3	07.08.2012	Milestone demand advice
Ex.A4	20.09.2012	Milestone demand advice
Ex.A5	21.05.2018	Sale deed
Ex.A6	07.12.2018	Milestone demand advice
Ex.A7	15.05.2019	Intimation mail
Ex.A8	16.05.2019	Possession letter
Ex.A9	26.06.2019	Final payment intimation mail
Ex.A10	25.03.2019	Board resolution
Ex.A11	16.11.2019	Statements of account
Ex.A12	-----	Photo

**List of witness and documents by the Respondents**

RW-1 --- C. Balu and B.Indirani

Ex.No	Date	Documents Name
Ex.B1	30.06.2012	Construction agreement
Ex.B2	----	Clause in construction agreement
Ex.B3	31.03.2017	Statement of account
Ex.B4	25.08.2019	Petition receipt

G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

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 TN REAL ESTATE REGULATORY AUTHORITY