

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 305 and 306 of 2019**

1. Yogi Saraf

2. Rinku Saraf

.....Complainants

Vs

Ozone Projects Private Ltd

Rep. by its managing director, S. Vasudevan

(Regn No. TN/29/Building/0036/2018)

..... Respondent

Complainants : Rep. by Mr. Ajay kumar Gupta, Advocate.

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

Heard on : 23.10.2020

Delivered on : 20.11.2020

ORDER

Both the above complaints by the same 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 both 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) The complainants booked two flats with the respondent in their project, namely, "**The Metrozone**" at Pillayar Koil Street, Anna Nagar, Chennai and entered into two separate sets of agreements for sale and construction with the respondent on 20.09.2019.

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

CCP No	Allotted Flat No	Price Agreed	Amount Paid	Due Date for delivery
(1)	(2)	(3)	(4)	(5)
305/2019	AF1503	Rs.1,82,01,935	Rs.70,60,954.68	March-2019
306/2019	AF1504	Rs.1,82,01,935	Rs.70,60,954.68	March-2019

(c) The complainants availed bank loan for payment of the amounts due to the respondent under Subvention Scheme. A tripartite loan agreement was entered between the complainants, the respondent and the bank. Accordingly, the respondent was to bear the interest charges on the EMI as per the subvention scheme.

(d) Subsequently, on the visit to the proposed project site, the complainants witnessed no development in the project site. Since, the EMI to the bank was to start from March 2019, the bank also was making demands for payments of EMI from the complainants. Several requests were made to the respondent for completion of the project. The respondent failed to discharge their obligation. As per the provisions of the RERA Act, the complainants are entitled for refund of the amounts paid to the respondent with interest and compensation. Hence the complaints.

4. On the side of the respondent, in spite of sufficient time being given, no counter was filed and no evidence was let in.

5. The complainants filed proof affidavit with documents on their side in both the cases.

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

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- i. Whether the complainants are entitled to refund of the amounts paid to the respondent with interest and compensation on the ground of failure on the part of the respondent to complete the construction and to give possession of the flats booked by them in accordance with the terms and conditions of the agreement?
- ii. What are the reliefs, the complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that the complainants booked two flats in the project of the respondent and agreements for sale and construction were entered on 20.09.2019 between the complainants and respondent and subsequently the complainants also entered into a tripartite loan agreement with the respondent and the Axis Bank under the Subvention Scheme under which the respondent agreed to pay interest on behalf of the complainants for a period till the date of handing over of the flats and the respondent failed to complete the construction and was unable to hand over the constructed flats within the time limit prescribed under the agreements and therefore the complainants are entitled for the reliefs sought by them.

(b) It is not in dispute that as per clause 7(a) of the Ex.A3, construction agreement in both the cases, the respondent undertook to complete the construction and to handover possession of the apartments by March 2019, with a grace period 6 months. Admittedly, the time limit expired by September 2019 and till date the apartments booked by the complainants were not completed construction.

(c) In their proof affidavits, the complainants stated that by Ex.A11 e-mails, the respondent was making promises to return money and they

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have not returned the amount admitted in their account statements which are marked as Ex.A13 in both the cases and the respondent never showed any seriousness to return the amounts. Through evidence, the complainants proved their case.

(d) In the said circumstances, it is held that the complainants are entitled for refund of the amounts paid to the respondent with interest, compensation on the ground of failure on the part of respondent to complete construction and hand over possession flats to the complainants. 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 of the amounts paid to the respondent with interest and compensation in the following manner.

b) **CCP No. 305 of 2019**

The complainant has paid Rs.70,60,955.00/- in total to the respondent towards purchase of the flat. The complainant has produced documents for payment of Rs.70,60,955.00/- to the respondent. Therefore, the complainant is entitled for refund of the amount of Rs.70,60,955.00/- 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 complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% 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.2,00,000/- and a sum of Rs.25,000/- towards litigation expenses.

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c) **CCP No. 306 of 2019**

The complainant has paid Rs.70,60,955.00/- in total to the respondent towards purchase of the flat. The complainant has produced documents for payment of Rs.70,60,955.00/- to the respondent. Therefore, the complainant is entitled for refund of the amount of Rs.70,60,955.00/- 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 complainant is entitled for the interest at the rate of 8.05% per annum which is currently the highest marginal cost of lending rate of interest of SBI plus 2% per annum i.e., 10.05% 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.2,00,000/- 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 30 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 and sale deed of the UDS land, as the case may be, on satisfaction of their claims as per the order at the respondent's expense.

G. SARAVANAN
ADJUDICATING OFFICER

CP.NO. 305 of 2019

List of witnesses

CW-1 --- Yogi saraf and Rinku Saraf

List of documents filed by the complainants

Ex.No	Date	Documents Name
Ex.A1	----	Application for allotment
Ex.A2	20.10.2016	Agreement for sale
Ex.A3	20.10.2016	Construction agreement
Ex.A4	----	Tripartite agreement
Ex.A5	20.10.2016	Supplemental agreement
Ex.A6	30.08.2016	Payment receipt
Ex.A7	15.09.2016	Payment receipt
Ex.A8	27.10.2016	Payment receipt
Ex.A9	01.08.2017	Payment receipt
Ex.A10	----	Tax payers counter foil
Ex.A11	---	E-mail communication
Ex.A12	01.03.2020	Bank statement
Ex.A13	----	Account statement

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Nil

CCP.NO. 306 of 2019

List of witnesses

CW-1 --- Yogi saraf and Rinku Saraf

List of documents filed by the complainants

Ex.No	Date	Documents Name
Ex.A1	----	Application for allotment
Ex.A2	20.10.2016	Agreement for sale

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Ex.A3	20.10.2016	Construction agreement
Ex.A4	----	Tripartite agreement
Ex.A5	20.10.2016	Supplemental agreement
Ex.A6	30.08.2016	Payment receipt
Ex.A7	15.09.2016	Payment receipt
Ex.A8	27.10.2016	Payment receipt
Ex.A9	01.08.2017	Payment receipt
Ex.A10	----	Tax payers counter foil
Ex.A11	---	E-mail communication
Ex.A12	01.03.2020	Bank statement
Ex.A13	----	Account statement

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Nil

G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

CERTIFIED TO BE TRUE COPY
20.11.2020
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY