

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**

**CCP No. 307 of 2019**

Akmin Technologies Pvt Ltd.,  
Rep. by its MD, S.Prasanth

.... COMPLAINANT

**Vs.**

Ozone Projects Private Ltd.,  
Rep. by its MD, Vasudevan Sathyamurthy  
**(TN/29/Building/0036/2018)**

.... RESPONDENT

Complainant : Rep. by Mr. R. Swarnavel, Advocate.  
Respondent : Rep. by M/s. BFS Legal, Advocates.

Heard on : 09.04.2021  
Delivered on : 07.05.2021

**ORDER**

The complaint by the above complainant seeking refund of amount paid to the respondent towards purchase of an apartment with interest, compensation and costs 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 complainant, in brief, as follows:**

(a) On 11.01.2013, the complainant, a registered company, booked a flat in the project of the respondent, namely, "Metro Zone", and on 31.01.2013 entered into agreements for sale and construction with the respondent. The total cost of the flat is Rs.2,56,55,997/- .

(b) The respondent undertook to complete construction and hand over the apartment by December 2014 with a grace period of 3 months. The complainant paid installments as per schedule. However, the respondent revised the date of delivery of the apartment many times. Till date, the

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respondent has not completed the construction and delivered the apartment to the complainant.

(c) So far, the complainant paid Rs.2,30,79,779/- to the respondent. The respondent is not inclined to deliver the possession in the near future. Hence, the complainant is entitled for the refund of the amount paid to the respondent with interest as per the terms of the agreement, compensation and cost.

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

(a). It is admitted that the complainant and the respondent entered into two separate agreements for sale and construction of the residential apartment on 31.01.2013 and the construction agreement provides the date for delivery of the apartment and also for compensation in case the delay is attributable to the respondent. The agreement also provides for extension of time under the circumstances mentioned therein.

(b) The respondent made all the possible efforts to complete the construction. But, due to various reasons such as short supply of materials and labors, natural calamity, statutory delay in approvals, had to approach CMDA for renewal and also for revised plan, the respondent could not complete the project within the mutually agreed time frame. The delay is neither willful nor wanton but only due to bona fide reasons. Therefore, the respondent is not liable to pay any compensation to the complainant. The respondent will be put to irreparable loss and hardship, if the refund of the amount with interest and compensation is ordered by this Forum.

(c) The provisions of the RERA Act and TNRERA Rules provides for extension of time under force majeure circumstances. The construction agreement provides for compensation and sale agreement does not

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provide for any compensation. The complainant has already received a compensation of 29.45 lakhs by way of reduction in cost. The respondent is willing to waive the balance sale consideration towards compensation payable and to hand over the residential unit to the complainant. Therefore, the respondent prays for the dismissal of the complaint.

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 complainant is entitled for refund of the amounts paid to the respondent together with interest and compensation on the ground of failure to deliver the apartment as per the terms of the agreements?
- ii. What are the reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that the complainant entered into an agreement of sale and also a construction agreement on 31.01.2013 with the respondent for purchase of an apartment and paid a sum of Rs.2,30,79,779/- out of the total sale consideration of Rs.2,56,55,997/- and the respondent undertook to complete the construction and deliver the apartment by December 2014 with a grace period of 3 months and the construction was not completed till the date of filing of the complaint and the complainant is entitled for the return of the amount and other reliefs.

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(b) However, the learned counsel for the respondent contended that the respondent could not complete the construction and deliver the apartment within the time limit as per the terms of the agreement due to various reasons and the construction agreement provides for extension of time on force majeure conditions and if the complainant is allowed to withdraw from the project, the respondent will be put to loss and hardship and the respondent already reduced the cost of the apartment as compensation for the delay and is also willing to waive the balance sale consideration and the complaint is liable to be dismissed.

(c) Section 18 of RERA Act gives a right to allottees to withdraw from the project and demand the amounts paid by them with interest including compensation, if a promoter fails or is unable to give possession of the flat on the date specified in the agreement. It is not disputed that as per Ex.A6, the construction agreement dated 31.01.2013, the respondent undertook to complete the construction and hand over possession of the apartment by December 2014 with a grace period of 3 months from the date of the agreement. The due date for delivery was over by March 2015. Admittedly, till the date of filing of the complaint, the respondent has not completed and handed over possession of the apartment.

(d) Even though, the respondent claims force majeure circumstances and various other conditions such as short supply of skilled labourers, natural calamity, had to approach CMDA for renewal and later on based on CMDA's advice had to obtain a revised plan etc., the counter lacks particulars of delay with specific period for such delay. Therefore, the reasons are vague and not acceptable.

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(e) The learned counsel for the respondent pointed out that only the construction agreement provides for compensation and the sale agreement does not provide for any compensation. Sale agreement was entered in order to facilitate construction of apartment under the construction agreement. Therefore, the contentions of the learned counsel for the respondent are not sustainable. In the above facts and circumstances, it is held that the complainant is entitled for the refund of the amount with compensation and cost. Thus, the point is answered accordingly.

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

(a) In view of the answer for the point No (i), the complainant is entitled for refund of the amount. The complainant has paid in total a sum of Rs.2,30,79,779/- to the respondent. Therefore, the complainant is entitled for refund of the said amount from the respondent.

(b). The complainant claimed interest at 10% per annum on the amount paid to the respondent and also compensation of Rs.51,27,726/- on the ground that as per clause 7(b) of the construction agreement, the respondent agreed to pay interest at 10% for the amounts paid and to pay compensation of Rs.51,27,726/- through their e-mail dated 15.05.2017. In the e-mail dated 15.05.2017, the respondent made it clear that the compensation is payable only if all the payments are made as per the mutually agreed payment schedule intending handing over of the apartment on completion with the calculated compensation. Therefore, the complainant cannot invoke the above said clause in the agreement and the e-mail of the respondent for the claim of interest and compensation.

(c) 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

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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 date of filing of the complaint plus 2%, i.e., 10.25 % per annum for the amounts paid from the date of respective payments till repayment by the respondent.

(c). Considering the facts and circumstances of the case, it is held that the complainant is entitled for a sum of Rs.5,00,000/- towards compensation for mental agony and inconvenience and Rs.25,000/- towards legal expenses. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

**In the result, the respondent is directed as follows:-**

1. The respondent shall pay the amounts at the interest rate, compensation and 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.
2. The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
3. On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

**G. SARAVANAN  
ADJUDICATING OFFICER**

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**LIST OF WITNESSES**

CW-1--- J. Ramachandran (A.S)

RW-1--- K. Krishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	15.04.1999	Certificate of incorporation
Ex.A2	28.10.2019	Board resolution
Ex.A3	24.01.2018	TNRERA registration details of project
Ex.A4	11.01.2013	Booking advance
Ex.A5	31.01.2013	Agreement of sale
Ex.A6	31.01.2013	Construction agreement
Ex.A7	11.01.2013	Cost and payment schedule
Ex.A8	-----	Payment receipts
Ex.A9	19.04.2016	Revision of delivery by respondent
Ex.A10	15.05.2017	Confirmation of compensation
Ex.A11	---	Photographs

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2010	Board resolution extract
Ex.B2	10.01.2013	Letter from TN Fire Service Dept
Ex.B3	20.02.2013	Letter of consent from TNPCB
Ex.B4	25.03.2013	Compliance certificate from TN fire service
Ex.B5	03.05.2013	News article on increase of labor cost
Ex.B6	31.05.2013	Letter
Ex.B7	10.07.2013	No objection letter from CMRL
Ex.B8	31.07.2013	No objection letter from Police Dept
Ex.B9	22.08.2013	Planning permission issued by CMDA
Ex.B10	22.08.2013	Building permission
Ex.B11	13.07.2016	News article on price hike of sand
Ex.B12	03.01.2014	News article on shortage of sand

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Ex.B13	27.02.2014	Letter of clearance from EIAA
Ex.B14	25.04.2014	Order issued by TNPCB
Ex.B15	25.04.2014	Order for sewage discharge by TBPCB
Ex.B16	22.05.2014	Partial completion certificate
Ex.B17	17.08.2015	News article for shortage of labour
Ex.B18	31.08.2015	Compliance certificate
Ex.B19	28.01.2016	Partial completion certificate from CMDA
Ex.B20	----	Plan approval by CMDA-2013

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G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

  
7.5.2021  
LAW OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY