

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

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

**CCP No. 343 of 2019**

Sivakumar Kunapuli

.... COMPLAINANT

**Vs.**

M/s. Ozone Project Private Limited  
Rep. by its MD. Vasudevan Sathyamurthy  
**Reg. No. TN/29/Building/0036/2018**

.... RESPONDENT

Complainant : Rep. by Mr. N. Balaji, Advocate.

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

Heard on : 30.03.2021

Delivered on : 22.04.2021

**ORDER**

The complaint by the above complainant claiming compensation for the delay in handing over possession of apartment by the respondent is filed under section 71 read with 31 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred as RERA Act).

**2. Averments of the complainant, in brief, as follows:**

(a) On 26.01.2011, the complainant booked an apartment with the respondent in their project, namely, "The Metrozone", bearing Unit No.G-003, Tower 'G', Ground Floor at Jawaharlal Nehru Road, Anna Nagar, Chennai and paid amounts.

(b) On the same day, the complainant entered into a sale agreement and also a construction agreement with the respondent towards the purchase of the flat. As per the agreements, the respondent undertook to handover the flat by November 2012 with grace period of 3 months. The total sale

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consideration of the flat is Rs.1,99,36,107/-. The complainant paid Rs.2,00,20,757/-,which includes service tax to the respondent. In spite of payment of the total sale consideration, there was delay in the construction of flat in the project.

(c) The respondent handed over the flat only on 30.11.2018. The respondent is liable to compensate the complainant in terms of Section 18 of the RERA Act. Hence, the complainant is entitled for the reliefs.

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

(a) Except admitted, the respondent denies all the allegations and averments. The complaint is not maintainable in law or on facts. The respondent obtained completion certificate for the tower in which the complainant had booked the unit on 28.01.2016. The unit was handed over to the complainant. The complaint is filed several years after taking the possession.

(b) since, the project is completed one with valid completion certificate even prior to RERA came into force and excluded from the purview and scope of RERA Act, the present complaint deserves to be dismissed. The agreement between the parties provide for settlement of dispute through arbitration. Therefore, the present complaint is not maintainable.

(c) The respondent is not traversing into the merits of the case as their preliminary objection is on jurisdiction of this Forum to take up the matter. Hence, the respondent prays for the dismissal of the complaint with cost.

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4. An attempt to settle the matter amicably has failed.
5. On both sides, 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 compensation on the ground of delay in handing over possession of the flat as per the terms of the agreements?

ii) What are the reliefs, the complainant is entitled to?

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

(a) There is no dispute that as per Ex.A2, the construction agreement dated 11.02.2011, the respondent undertook to complete the construction of the flat for delivery in November 2012 with a grace period of 3 months and the constructed flat was handed over to the complainant only on 30.11.2018. However, the learned counsel for the respondent contended that the complaint is not maintainable and this Forum has no jurisdiction and the respondent obtained completion certificate for the tower in which the complainant booked the flat as early as 28.01.2016 i.e., prior to the commencement of the RERA Act and therefore, the complaint falls outside the scope and ambit of this Forum and further, the agreement for construction provides for settlement of dispute through arbitration by appointment of sole arbitrator to adjudicate and determine the dispute between the parties and on this ground also, the present complaint is not sustainable.

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(b) The learned counsel for the complainant submitted that the objections raised by the respondent are not sustainable and the respondent obtained only a partial completion certificate on 28.01.2016 which is not a complete or a final completion certificate and the completed flat was handed over only on 30.11.2018 i.e., almost two years after the RERA Act came into force and as on the date of commencement of the Act, the project was an ongoing project required to be registered under the Act with the TNRERA and this Forum and the Hon'ble Appellate Tribunal, in various decisions, already held that such completion certificate without actually completing the construction of the flat is not acceptable to question the jurisdiction of the Forum and further contended that in view of Section 88 of the RERA Act and the decision of the Hon'ble Supreme Court in Emaar MGF Land Limited Vs Aftab Singh, the complainant has liberty to approach this Forum under the RERA Act.

(c) Ex.A10, the possession letter reveals that the constructed flat was delivered to the complainant only on 30.11.2018. In Ex.A9, the e-mail communication from the respondent dated 18.06.2015, the respondent has given update of the progress of construction and assured the complainant that the tower G will be ready for handing over by the month of November 2015. Subsequently, in E-mail communication dated 20.02.2016, the respondent gives the revised and final handing over schedule of the same tower stating that the club house works are progressing and the flat would be handed over as they are proceeding with getting electricity

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connection for all the units. By the statement of account in Ex.A11, the respondent offered reduction in price due to delay in handing over the unit to the complainant. By the own admission of the respondent, the project was not completed, but it was an ongoing project as on the date of the commencement of the Act and also as on the date when Section 3 and 19 came into force. If the construction was completed as early as 28.01.2016 when the completion certificate was issued, there was no explanation as to why the flat was handed over only on 30.11.2018. Therefore, no reliance can be placed on Ex.B2, the completion certificate to come to the conclusion that the project was completed as early as on 28.01.2016.

(d) The next contention of the respondent is with regard to arbitration clause in the agreement for construction. Section 18 of the RERA Act specifies that the remedy under the Section is without prejudice to any other remedy available to allottee. Section 88 of the RERA Act makes it clear that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for time being in force. In M/s. Emaar MGF Land Limited Vs. Aftab Singh reported in (2019) 12 SCC 751, the Hon'ble Supreme Court upheld order passed by the National Consumer Disputes Redressal Commission holding consumer disputes to be non-arbitrable. Therefore, the jurisdiction of this Forum cannot be fettered by existence of an arbitration clause in the agreement between the parties. Therefore, the contention raised by the learned counsel for the respondent is not

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sustainable. Considering the facts and circumstances of the case, it is held that the complainant is entitled for compensation for the delay in handing over possession of the constructed flat and other reliefs. Thus, the point is answered accordingly.

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

(a) The learned counsel for the complainant submitted that the complainant is entitled to be compensated with interest for the delay on the entire amount paid by him to the respondent towards purchase and construction of the apartment in terms of proviso to Section 18 and also Section 18(3) of the RERA Act.

(b) As per the clause 7(b) of Ex.A2, the construction agreement, in the event of delay in handing over possession of the residential unit beyond the time period in the agreement, the developer shall pay to the allottee Rs.15/- per sq.ft per month till the time of delivery and possession of the flat and if the delay exceeds 6 months, the builder is liable to pay interest at the rate of 10% per annum on all the amounts received by the developer. As per rule 4, Explanation-I of the TNRERA Rules, any agreement entered before the commencement of the rules shall not be affected. The complainant has claimed compensation as per the terms of the Ex.A2, the construction agreement.

(c) Considering all the above facts and circumstances, it is held that the complainant is entitled for compensation at the rate of Rs.15/- per Sq.ft from 01.03.2013 for a period of 6 months till 31.08.2013 and for subsequent period from 01.09.2013 to

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30.11.2018, the date of handing over possession of the flat at 10% per annum on the amounts paid to the respondent. From 01.12.2018 till the payment of the compensation, the complainant is entitled for interest on the amount of compensation due at the rate of 7.30% which is the highest marginal rate of SBI plus 2%, i.e., 9.30% per annum till the date of payment of the compensation by the respondent.

(d) Apart from the above, towards the compensation for mental agony and inconvenience caused to the complainant, a sum of Rs.1,00,000/- is fixed. Towards litigation expenses, a sum of Rs.25,000/- is fixed. The complainant is entitled for the relief as detailed above. Thus, the point is answered accordingly.

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

The respondent shall pay the compensation and cost as per the findings in the answer for Point No.(ii), Para 8 of this order within 30 days from the date of issue of this order.

G. SARAVANAN  
ADJUDICATING OFFICER

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**LIST OF WITNESSES**

CW-1--- Sivakumar Kunapuli

RW-1--- K. Krishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.Nos	Date	Documents Name
Ex.A1	11.02.2011	Agreement of sale
Ex.A2	11.02.2011	Construction agreement
Ex.A3	22.10.2012	Letter from respondent
Ex.A4	30.10.2012	Minutes of meeting
Ex.A5	----	Payment receipts
Ex.A6	07.05.2014	E-mail communication
Ex.A7	13.05.2014	Letter from respondent
Ex.A8	15.06.2015	Letter from respondent for new project
Ex.A9	18.06.2015	E-mail communication
Ex.A10	30.11.2018	Possession letter
Ex.A11	16.11.2018	Compensation letter

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.Nos	Date	Documents Name
Ex.B1	07.09.2010	Board resolution copy
Ex.B2	28.01.2016	Completion certificate

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N. Prasad  
22/4/18  
Administrative Officer

G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.