

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

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

**CCP No. 97 of 2019**

1. Ravi Saraf
2. Nisha Saraf

..... Complainants

**Vs.**

M/s. Ozone Projects Pvt Ltd.,  
Rep by its Managing Director,  
Vasudevan Sathyamoorthy.  
(TN/29/Building/0036/2018)

..... Respondent

Complainants : Rep by M/s. Chennai Law Associates, Advocates.

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

**Heard on** : 16.07.2021

**Delivered on** : 05.08.2021

**ORDER**

The above complainants filed the complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of the flat booked with the respondent together with interest, compensation and costs 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) On 31.07.2015, the complainants booked a flat with the respondent in their project, namely, "The Metrozone", at Pillaiyar Koil Street, Anna Nagar, and paid advance amounts and further amounts. The complainants availed bank loan for purchase of the flat.

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(b) On 31.08.2015, the complainants and the respondent entered into an agreement of sale and also a construction agreement for purchase of the flat. The respondent undertook to complete the construction and to handover the flat in May 2018 with a grace period of 3 months. On 15.09.2015, the complainants, respondent and the bank entered into a tripartite agreement for availing loan from the bank.

(c) But the respondent has not even started the construction work. The respondent has collected a sum of Rs.64,76,314/-. The complainants approached the respondent on progress of the project. The officials of the respondent try to convince the complainants to take some other alternate flats in other project. The complainants were put to hardship. Hence, the complainants are entitled for all the reliefs.

3. In spite of sufficient time being given, the respondent has not filed their counter to 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 complainants are entitled for refund of the amounts paid to the respondent with interest and compensation on the ground of failure on the part of the respondent to give possession of the apartments booked by them in accordance

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with the date and terms of agreements for sale and construction?

ii. What are the reliefs, the complainants are entitled for?

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

(a) The learned counsel for the complainants submitted that the complainants booked a flat in the project of the respondent and paid part of the sale consideration out of their own funds and availed bank loan for the balance sale consideration and the bank also released part of the amount under subvention scheme under which the respondent paid interest for the loan amount for some time and the respondent undertook to complete the construction and to deliver the flat by May 2018 with a grace period of 3 months which was over by August 2018, but the respondent has not started construction work at the site and therefore the complainants withdraw from the project and seek refund of the amount with interest and compensation.

(b) The learned counsel for the respondent contended that the flat was booked with the respondent under the subvention scheme and the interest for the loan amount was serviced by the respondent and and considerable loan interest was paid by the respondent and the delay is neither willful nor wanton but due to reasons beyond the control of the respondent such as short supply of construction materials, natural calamities, shortage of skilled labors, etc., and also the pandemic and while the matter was pending before this Forum, the respondent has refunded Rs.33,30,848/- to the complainants and the respondent craves leave of this Hon'ble Tribunal

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to grant time till December 2021 to close the housing loan of Rs.40,32,573/- availed by the complainants.

(c) Section 18 of RERA Act gives right to flat purchasers 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. As per the construction agreements entered with the complainants, the respondent undertook to complete the construction and handover the flat in May, 2018 with a grace period of 3 months. Admittedly, till date the respondent has not completed the construction and not handed over the flat to the complainants.

(d) In the above circumstances, it is held that the complainants are entitled for refund of the amounts paid by them and other the reliefs. Thus, the point is answered accordingly.

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

(a) The learned counsel for the complainants submitted that the respondent collected a sum of Rs.64,76,314/- for which the complainants have to pay interest to the bank and the respondent is not only liable to pay the amount of Rs.40,32,573/- but also have to pay the interest since the complainants have paid the interest upto July 2021 and other charges of Rs.5,193/- as mentioned in the table in the written arguments. However, the learned counsel for the respondent contended that the respondent has refunded to the complainants a sum of Rs.33,30,848/- consisting of Rs.24,19,544/- the own contribution paid by the complainants along with interest of Rs.9,30,848/- and sought

time till December 2021, to close the housing loan of Rs.40,32,573/- availed by the complainants from the bank .

(b) It is not in dispute that the respondent paid a sum of Rs.33,30,848/- which included refund of Rs.24,19,544/- and interest of Rs.9,30,848/- to the complainants, while the matter was pending before this Forum. As per the written arguments of the complainants, the amounts due to the bank is Rs.40,32,573/- with interest and other charges of Rs.5,193/- incurred by them is also due. Therefore, the respondent is liable to repay the bank loan amount with interest.

(c) So far as the refund claim of the complainant is concerned, the amount paid by the complainant is returned with interest by the respondent. In the absence of any supporting evidence, the claim of Rs.5,193/- by the complainants is rejected.

(d) However, considering the facts and circumstances of the case, a sum of Rs.1,00,000/- towards compensation for mental agony and inconvenience and a sum of Rs.25,000/- towards legal expenses is fixed. The complainants are entitled for 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 compensation and legal expenses to the complainants and also the loan amount due with interest to the bank as per the findings in the answer for Point No.(ii), Para No.8 of this order within 60 days of issue of this order.

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2. The charge of the aforesaid amount shall be on the flat booked by the complainants till the payment of amounts as per the order.

3. 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 at respondent cost.

**G. SARAVANAN,  
ADJUDICATING OFFICER.**

**LIST OF WITNESSES**

CW-1--- Ravi Saraf

RW-1--- K. Krishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	---	Brochure by respondent
Ex.A2	---	Payment receipts
Ex.A3	---	Letters
Ex.A4	31.08.2015	Agreement for sale
Ex.A5	31.08.2015	Construction agreement
Ex.A6	15.09.2015	Supplemental loan agreement
Ex.A7	15.09.2015	Tripartite agreement
Ex.A8	---	Statement of account
Ex.A9	---	E-mail communications
Ex.A10	15.06.2018	Legal notice to respondent

**LIST OF DOCUMENT FILED BY THE RESPONDENT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.B1	19.07.2019	Circular form- National Housing Bank

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Sd: 05.08.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI

  
5.08.2021  
LAW OFFICER  
TN REAL ESTATE REGULATORY AUTHORITY