

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 130 and 131 of 2020**

CCP No. 130 of 2020:

1. Manoj Parekh
2. Sheetal M Parekh

.... Complainants.

Vs.

1. M/s. Ozone Projects Private Limited
Rep by its Director.
2. Managing Director,
M/s. Ozone Projects Private Limited.

.... Respondents.

CCP No. 131 of 2020:

1. Sheetal M Parekh
2. Manoj Parekh

.... Complainants.

Vs.

1. M/s. Ozone Projects Private Limited
Rep by its Director.
2. Managing Director,
M/s. Ozone Projects Private Limited.

.... Respondents.

Complainants : Rep. by. Mr. S. Shujath, Advocate.

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

Heard on : 15.07.2021

Delivered on : 30.07.2021

ORDER

Both the complaints claiming refund of the amounts paid by the above complainants to the respondents towards purchase and construction of the respective booked flats, compensation and costs are filed *under section 31 read with Section 71 of the Real Estate (Regulation and Development) Act, 2016* (hereinafter referred to as RERA Act).

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2. Since both the complaints are relating to same project of the respondents and same points arise for determination, the complaints are heard together and disposed of by a common order.

3. Averments of the complainants, in brief, as follows:-

(a) The complainants booked flats with the respondents in their project, namely, "**Metrozone**", at Koyambedu, Chennai and paid advance and further amounts as agreed by them.

(b) The details of the flats allotted to the complainants, the agreed price and the amount paid by them to the respondents and the due dates for delivery of flats are as follows:-

Complainants Name	CCP No.	Allotted Flat and Block	Price Agreed Rs.	Amount Paid Rs.	Date for delivery
(1)	(2)	(3)	(4)	(5)	(6)
1. Manoj Parekh 2. Sheetal M Parekh	130/2020	AF1405, 14 th Floor, " AF Tower"	1,78,86,636/-	62,44,229/-	May 2018
1. Sheetal M Parekh 2. Manoj Parekh	131/2020	AF1406, 14 th Floor, " AF Tower"	1,76,02,105/-	61,45,737/-	March 2019

(c) The dates of delivery of the flats were fixed as above, with a grace period of three months. In addition to their own funds, the complainants availed bank loan for payment of sale price. Under the subvention scheme, the loan was availed and the banker consented to accept only interest on the loan amount from the first respondent till the delivery of the property. Separate tripartite agreements were entered between the parties and the bank.

(d) But till date, the respondents have not even started construction work at the site. The banker withdrew from the scheme by invoking clause 3 of the tripartite agreement. The complainants were now compelled to service

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the debt with the principle amount. The respondents were irregular in payment of monthly interest on the loan. Therefore, the complainants are put to hardship.

(e) Under the provisions of the RERA Act, the complainants are entitled for return the amount with interest, compensation and also cost from the respondents. Hence, the complainants filed the complaints withdrawing from the project and seeking full refund of the entire amounts with interest, compensation and other reliefs.

4. In spite of sufficient time being given, the respondents have not filed their counter to the complaints.

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

6. On the side of the complainants, they filed their respective evidence by proof affidavit with documents. On the side of the respondents, no documents were produced.

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

- i. Whether the complainants are entitled to get back the amounts paid to the respondents with interest and compensation on the ground of failure on the part of the respondents to give possession of the apartment booked by them in accordance with the date and terms of agreements for sale and construction?
- ii. Whether the complainants are entitled for all the reliefs as prayed for?

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

(a) The learned counsel for the complainants submitted that the complainants in both the cases are the flat purchasers in the project of the respondents 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 respondents paid interest for the loan amount for some time and the respondents undertook to complete the construction and to deliver the flats by May, 2018 in CCP No.130 of 2020 and March, 2019 in CCP No.131 of 2020, but the respondents have 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 respondents contended that the complainants entered into agreements of sale and also for construction with the respondents and the flats were booked with the respondents under the subvention scheme and the interest for the loan amount was serviced by the respondents and the complainants paid part of the amount from their own source and availed housing loan under the above said scheme and considerable loan interest was paid by the respondents and the delay is neither willful nor wanton but due to reasons beyond the control of the respondents such as short supply of construction materials, natural calamities, shortage of skilled labors, etc., and also the pandemic and the respondents are liable to refund the amount and close the existing loan availed by the complainants and the respondents seeks this Hon'ble Court to grant time till December 2021 to close the housing loan availed by the complainants.

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(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 respondents undertook to complete the construction and handover the flats in May, 2018 and March, 2019 with a grace period of 3 months. Admittedly, till date the respondents have not completed the construction and not handed over the flats 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.

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

(a) In both the complaints, the complainants sought for return of the amounts paid by them and also the amounts disbursed under the bank loan on their account under the subvention scheme and also the arrears of interest on bank loan component excluding the interest amounts paid by the respondents. Under Section 18 of the RERA Act, if the promoter fails to complete or is unable to give possession of an apartment, every allottee is entitled to claim the refund of the amount paid along with interest prescribed and compensation in the manner provided under the Act.

(b) On perusal of the tripartite agreements entered between the complainants, the respondents and the bank, it is seen that the loan was sanctioned by the bank on the security of the residential apartment for which the loan amount was granted to the complainants. Therefore, except

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the actual amount paid by the complainants, the amounts disbursed under the loan are repayable only to the bank which disbursed the loan for purchase of the flats. So also the claim of interest on the loan amount disbursed by the bank is also not maintainable. In the circumstance, it is held that the complainants are entitled for return of the actual amounts paid by them to the respondents.

(c) In view of the discussion above, the complainants are entitled for the refund of the amounts paid and other reliefs in the following manner:-

(I) CCP No.130 of 2020 :-

(i) The complainants claimed return of Rs.26,30,651/- from the respondents as the amounts collected from her. The loan amount disbursed by the bank is Rs.36,13,578/- which is repayable by the respondents to the bank along with interest. The complainants are not entitled to claim the loan amount disbursed by the bank with interest. Therefore, the complainants are entitled for return of Rs.26,30,651/- only from the respondents.

(ii) 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 complainants are entitled for the interest at the rate of 7.30% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 9.30% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondents.

(iii) Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed towards mental agony and a sum of Rs.25,000 is fixed towards litigation expenses.

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(II) CCP No.131 of 2020 :

(i) The complainants claimed return of Rs.25,61,902/- from the respondents as the amounts collected from her. The loan amount disbursed by the bank is Rs.35,83,835/- which is repayable by the respondents to the bank along with interest. The complainants are not entitled to claim the loan amount disbursed by the bank with interest. Therefore, the complainants are entitled for return of Rs.25,61,902/- only from the respondents.

(ii) 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 complainants are entitled for the interest at the rate of 7.30% per annum which was the highest marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2%, i.e., 9.30% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondents.

(iii) Considering the facts and circumstances of the case, a sum of Rs.1,00,000/- is fixed towards mental agony and a sum of Rs.25,000 is fixed towards litigation expenses.

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

In the result, in both the Complaints, the respondents are directed as follows;-

- (1) The respondents shall pay the complainants the amounts at the interest rate, compensation and other charges and also the bank the loan amounts with interest as per the findings in the answer for Point No.(ii), Para 9 of this order within 60 days from the date of issue of this order.

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- (2) The charge of the aforesaid amount shall be on the flats booked by the complainants till their repayment.
- (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 respondents cost.

**G. SARAVANAN,
ADJUDICATING OFFICER.**

CCP.NO. 130 of 2020

List of Witness

CW-1 --- Manoj Parekh

List of documents by the complainants

Ex.No	Date	Documents Name
Ex.A1	12.01.2016	Payment receipt
Ex.A2	29.01.2016	Sale agreement
Ex.A3	29.01.2016	Construction agreement
Ex.A4	10.02.2016	Letter
Ex.A5	10.02.2016	HDFC loan offer
Ex.A6	10.02.2016	HDFC acceptance copy
Ex.A7	03.03.2016	HDFC home loan agreement
Ex.A8	07.03.2016	Payment receipt
Ex.A9	09.09.2019	Statement of payment
Ex.A10	10.03.2020	Statement of loan account
Ex.A11	21.05.2020	Legal notice
Ex.A12	26.05.2020	Proof of delivery of legal notice

CCP.NO. 131 of 2020

List of Witness

CW-1 --- Manoj parekh

List of documents by the complainants

Ex.No	Date	Documents Name
Ex.A1	09.07.2016	Payment receipt
Ex.A2	29.07.2016	Sale agreement
Ex.A3	29.07.2016	Construction agreement

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Ex.A4	29.07.2016	Tripartite agreement
Ex.A5	29.07.2016	Deed of guarantee
Ex.A6	29.07.2016	Letter
Ex.A7	30.07.2016	Undertaking and indemnity to create security
Ex.A8	31.07.2016	HDFC acceptance copy
Ex.A9	31.07.2016	Loan approval letter
Ex.A10	03.08.2016	HDFC home loan agreement
Ex.A11	05.08.2016	Payment receipt
Ex.A12	09.09.2019	Statement of account
Ex.A13	10.03.2020	Statement o loan account of HDFC
Ex.A14	21.05.2020	Legal notice
Ex.A15	26.05.2020	Proof of delivery of legal notice

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G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


20.7.2021
LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY