

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**  
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,**  
**CCP Nos. 15 and 16 of 2020**

1. Sushil Agarwal ... (CCP No.15 of 2020)  
2. Anjana Gupta and Anil Kumar Gupta ....( CCP No.16 of2020)  
.... **Complainants**

Vs.

M/s. Ozone Projects Pvt Ltd.,  
Rep. by its MD, S. Vasudevan.  
(TN/29/Building/0095/2019) .... **Respondent**

Complainants : Rep. by Mr. Ajay Kumar Gupta, Advocate.  
Respondent : Rep. by M/s. BFS Legal, Advocates.

**Heard on** : 16.07.2021  
**Delivered on** : 10.08.2021

**ORDER**

Both the complaints claiming refund of the amounts paid by the above complainants to the respondent 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).

2. Since both the complaints are relating to same project of the respondent 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 respondent in their project, namely, "**Metrozone**", at Pillaiyar Koil Street, Anna Nagar, Chennai and paid advance and further amounts as agreed by them.

16/8/2021  
**TRUE COPY**

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

Complainants Name	CCP Nos.	Allotted Flat Nos.	Price Agreed Rs.	Amount Paid Rs.	Due Date for delivery of the Flat
(1)	(2)	(3)	(4)	(5)	(6)
Sushil Agarwal	15/2020	E1101	2,19,57,520/-	2,13,07,520/-	March 2017
1. Anjana Gupta 2. Anil Kumar Gupta	16/2020	E1001	2,18,67,663/-	1,99,76,282/-	March 2017

(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 respondent till the delivery of the property. Separate tripartite agreements were entered between the parties and the bank.

(d) The respondent has delayed more than 3 years to complete the construction and handover the flat. The complainants were now compelled to service the debt with the principle amount. The respondent was irregular in payment of monthly interest on the loan. The complainants are put to hardship and mental agony.

(e) Under the provisions of the RERA Act, the complainants are entitled for return the amount with interest, compensation and also cost from the respondent. Hence, the complainants filed the complaints withdrawing

10/18/2021  
TRUE COPY



from the project and seeking full refund of the entire amounts with interest, compensation and other reliefs.

**4. Common Counter averments of the respondent, in both the cases, in brief, as follows:**

(a) In both the above cases, the respondent allotted flats to the complainants under subvention scheme wherein the respondent had taken liability to pay the pre-EMI to the bank till intimation to the complainants that the unit is ready for occupation. In CCP No. 15 of 2020, the respondent paid pre-EMI interest from February 2015 to July 2019 amounting to a sum of Rs.67,80,402/-. In CCP No.16 of 2020, the respondent paid pre-EMI interest from February 2015 to July 2019 amounting to a sum of Rs.67,17,169/-. Thereafter because of statutory restrictions, the respondent could not pay the pre-EMI directly to the bank and requested the complainants to pay the same and assured to adjust the said payments against the outstanding dues payable by the complainants.

(b) In CCP No. 15 of 2020, the respondent had communicated the complainants that the unit is ready for handing over during August 2019 and hence the liability of the respondent in the case ceases from August 2019. In CCP No. 16 of 2020, the respondent had communicated the complainants that the unit is ready for handing over during July 2019 and hence the liability of the respondent in the case ceases from July 2019. In spite of intimation and request to take possession of the flat, the complainants did not come forward to take possession and make balance payment. Since the allotments were made under subvention scheme, the construction agreements does not provide for any delay compensation as

the entire interest for the loan was borne by the respondent till the intimation of completion of the units.

(c) The construction agreements provide for extension of time to the respondent due to various reasons. During the contractual period, the respondent suffered two natural calamities, i.e., 2015, flood and 2016, storm. The respondent could not complete the project within the agreed time frame. If the complainants are particular about cancellation and refund, the same can be considered only as per the mutually agreed terms and conditions. The complainants have to forfeit 15% of the amount paid and balance amount will be refunded without any interest only after entering into an agreement with fresh customer. If the complainants are willing to take over the residential units, the respondent is ready to waive the balance sale consideration payable by the complainants. Hence, the respondent prays for the dismissal of the complaints with cost.

5. An attempt to settle the matter amicably has failed.
6. Both the parties have filed their respective evidence on affidavit with documents.
7. 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 apartment booked by them in accordance with the date and terms of agreements for sale and construction?

*leg 10/18/2024*  
TRUE COPY



- ii. What are the reliefs, the complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that the complainants in both the cases are flat purchasers 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 flats by 31.12.2016 with a grace period of 3 months but the respondent did not honor the commitment and the complainants cannot wait anymore as the delay in handing over has defeated the very purpose for which the flats were booked and therefore, the complainants withdraw from the project and seeks refund of the amount with interest and compensation.

(b) The learned counsel for the respondent contended that the complainants entered into agreements of sale and also for construction with the respondent and the flats were booked with the respondent under the subvention scheme and the interest for the loan amount was serviced by the respondent 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 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 in

10/11/2021  
TRUE COPY

CCP.Nos.15 and 16 of 2020, the flats were ready in August 2019 and July 2019 respectively and the same was intimated to the complainants and the complainants have taken benefits under subvention scheme and are estopped from seeking cancellation and refund of money and the complaints are liable to be dismissed.

(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. In both the cases, under the construction agreement entered with the complainants, the respondent undertook to complete the construction and to deliver the flats by 31.12.2016 with a grace period of 3 months. Admittedly, even as per the respondent, they were able to complete the flats in July and August 2019 .

(d) In this regard, it is relevant to note that Hon'ble Supreme court in Pioneer Urban Land & Infrastructure Ltd., Vs. Govindan Raghavan and Ors., reported in Manu/SC/0463/2019 held that the builder could not seek to bind the buyer with one sided contractual terms and once the builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the respondent-purchaser within the time stipulated in the agreement, or within a reasonable time thereafter, the respondent flat purchaser could not be compelled to take possession of the flat even though it was offered almost two years after the grace period under the agreement expired.

(e) 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.

12/11/2021  
TRUE COPY



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 respondent.

(b) On perusal of the tripartite agreements entered between the complainants, the respondent 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 the actual amount paid by the complainants, the amounts disbursed under the loan are repayable by the respondent only to the bank which disbursed the loan for purchase of the flats. In the circumstance, it is held that the complainants are entitled for return of the actual amounts paid by them to the respondent.

(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.15 of 2020 :-**

(i) The complainant claimed return of Rs.2,13,07,520/- in total. The loan amount disbursed by the bank is a sum of Rs.1,47,00,000/- which is repayable by the respondent to the bank along with interest. The complainant is not entitled to claim the loan amount disbursed by the bank with interest. Therefore, the complainant is entitled for return of Rs.66,07,520/- only from the respondent.

leg 10/8/2021  
TRUE COPY

(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 complainant is entitled for the interest at the rate of 8.20% 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., 10.20% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondent.

(iii) Considering the facts and circumstances of the case, a sum of Rs.2,00,000/- is fixed towards mental agony and a sum of Rs.25,000 is fixed towards litigation expenses.

**(II) CCP No. 16 of 2020 :**

(i) The complainants claimed return of Rs.1,99,76,282/- in total. The loan amount disbursed by the bank is a sum of Rs.1,56,81,875/- which is repayable by the respondent 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.42,94,407/- only from the respondent.

(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 8.20% 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., 10.20% per annum for the amounts payable under the order from the date of the respective payments till repayment by the respondent.

leg 10/8/2021

WUG COPY



(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 respondent is directed as follows;-**

- (1) The respondent shall pay the amounts at the interest rate, compensation and cost to the complainants and the loan amounts with interest to the bank 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.
- (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 respondent cost.

**G. SARAVANAN,  
ADJUDICATING OFFICER.**

**C.C.P.No. 15/2020**

**List of witnessess**

CW-1 --- Sushil Agarwal

RW-1 --- K. Krishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	23.01.2015	application for allotment of flat
Ex.A2	30.01.2015	Agreement for sale

10/1/2021  
**TRUE COPY**

Ex.A3	30.01.2015	construction agreement
Ex.A4	30.01.2015	Tripartite agreement
Ex.A5	---	Payment receipts
Ex.A6	21.12.2018	Copy of the TDS
Ex.A7	---	E-mail communications
Ex.A8	10.12.2019	HDFC bank loan account

**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.B1	07.09.2010	Board resolution extract
Ex.B2	07.11.2016	News paper article
Ex.B3	31.08.2015	Compliance certificate
Ex.B4	04.12.2015	News paper article
Ex.B5	28.01.2016	Partial completion certificate
Ex.B6	31.08.2017 to 16.05.2017	Delay statement filed by respondent
Ex.B7	09.05.2019	Possession ready intimation letter
Ex.B8	19.07.2019	RBI circular
Ex.B9	13.08.2020	4 <sup>th</sup> Partial completion certificate
Ex.B10	---	Statement of account

**C.C.P.No.16/2020**

**List of witnesses**

CW-1 --- Anjana Gupta

RW-1 --- K. Krishnan

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.A1	23.01.2015	Allotment letter
Ex.A2	30.01.2015	Agreement for sale
Ex.A3	30.01.2015	Construction agreement
Ex.A4	---	Payment receipts
Ex.A5	10.12.2019	TDS statement
Ex.A6	---	E-mail communications
Ex.A7	13.09.2019	HDFC bank loan account

10/10/2021  
TRUE COPY



**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

<b>Ex.Nos</b>	<b>Date</b>	<b>Documents Name</b>
Ex.B1	07.09.2010	Board resolution extract
Ex.B2	07.11.2016	News paper article
Ex.B3	31.08.2015	Compliance certificate
Ex.B4	04.12.2015	News paper article
Ex.B5	28.01.2016	Partial completion certificate
Ex.B6	31.08.2017 to 16.05.2017	Delay statement filed by respondent
Ex.B7	22.07.2019	Possession ready intimation letter
Ex.B8	19.07.2019	RBI circular
Ex.B9	13.08.2020	4 <sup>th</sup> Partial completion certificate
Ex.B10	---	Statement of account

CERTIFIED TO BE TRUE COPY

  
10.8.2021  
**LAW OFFICER**  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY

Sd/- 10.08.2021  
G. SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI