

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

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

CCP No. 44 of 2020

1. P.Samuel Ravichandran
2. S.Prem Chander
3. P.Duranta Ravichandran

..... Complainants

Vs.

M/s. Ozone Projects Pvt Ltd.,
Rep by its Managing Director,
Vasudevan Sathyamoorthy.
(TN/29/Building/0036/2018)
(TN/29/Building/0095/2019-Revised)

..... Respondent

Complainants : Rep by Mr.J.Lenin, Advocate.

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

Heard on : 24.09.2021

Delivered on : 21.10.2021

ORDER

The above complainants filed the complaint claiming the refund of the amounts paid to the respondent towards the purchase and construction of a 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 30.05.2016, the complainants booked a flat with the respondent in their project, namely, "The Metrozone", AF1001, 10th Floor at Koyambedu Village, Chennai. On 30.06.2016, the complainants entered into

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agreements for sale and construction with the respondent and paid advance and further amounts.

(b) The respondent undertook to complete construction and hand over the flat on or before March 2019, with a grace period of six months. The complainants paid installments as per schedule. However, the respondent failed to commence the construction. Since there was no progress, the complainants sought for refund of the amounts paid to the respondent.

(c) So far, the complainants paid Rs.9,00,000/- to the respondent. On 26.11.2018, the complainants submitted a form for cancellation of the unit booked and the respondent accepted the notice and assured refund of the amounts paid. On 16.09.2019, in Ex.A6, a legal notice was sent to the respondent. The complainants are entitled for the refund of the amount paid to the respondent with interest, compensation and cost.

3. In spite of sufficient time being given, the respondent has not filed any reply or counter to the complaint.

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

5. On the side of the complainants, evidence on affidavit with documents filed.

6. On the basis of the contentions of the complainants, the following points arise for determination.

- i. Whether the complainants are entitled to get back the amounts paid to the respondent with interest and compensation on the ground of failure on the part of the respondent to commence construction in accordance with the date and terms of agreement for sale and construction?

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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 are the flat purchasers in the project of the respondent and paid part of the sale consideration and entered into an agreement for sale and also construction agreement for the purchase of the apartment and the respondent undertook to complete construction and handover the flat on or before March 2019, with a grace period of six months and there was no progress in construction and due to the delay the complainants sought for cancellation of the unit and return all the amounts and the respondent failed to return the amounts till date and the complainants are entitled for refund of the amounts with interest and compensation.

(b) 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 agreement entered with the complainants, the respondent undertook to complete the construction and handover the flat on or before March 2019, with a grace period of six months. Admittedly, till date the respondent has neither completed the construction nor handed over the flat to the complainants as there is no progress of construction.

(c) In the above circumstances, it is held that the complainants are entitled for refund of the amounts paid by them with interest and compensation. Thus, the point is answered accordingly.

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

(a) The complainants claim return of Rs.9,00,000/- from the respondent as the amount paid by them. As per Ex.A3, series of payment receipts, the complainants paid Rs.9,00,000/- to the respondent. Hence, the complainants are entitled for return of Rs.9,00,000/- from the respondent.

(b) 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 paid from the date of respective payments till repayment by the respondent.

(c) Considering the facts and circumstances of the case, a sum of Rs.50,000/- is fixed towards mental agony and hardship and a sum of Rs.25,000/- is fixed towards litigation expenses.

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

- (1) The respondents shall pay the complainants the amounts at the interest rate, compensation and cost, as per the findings in the answer for Point No.(ii), Para 8 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 flat booked by the complainants till their repayment.

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(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.**

LIST OF WITNESS

CW-1--- P.Samuel Ravichandran

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	30.06.2016	Construction agreement
Ex.A2	30.06.2016	Agreement for sale
Ex.A3	---	Payment receipts (series)
Ex.A4	26.11.2018	Cancellation request form
Ex.A5	05.06.2019	Demand notice
Ex.A6	16.09.2019	Legal notice to the respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

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Sd/- 21.10.2021
G. SARAVANAN,
ADJUDICATING OFFICER,
TNRERA, CHENNAI.


LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY