

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

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

CCP No. 07 of 2020

Anand Premkumar

.... COMPLAINANT

Vs.

M/s. Ozone Project Private Limited

Rep. by its CEO, Jaiganesh

Reg. No. TN/29/Building/0036/2018

.... RESPONDENT

Complainant : Rep. by Mrs. Roja Ramkumar, Advocate.

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

**Heard on : 20.07.2021
Delivered on : 31.08.2021**

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 04.02.2011, the complainant booked an apartment with the respondent in their project, namely, "The Metrozone", at Anna Nagar, Chennai. The total sale consideration of the flat is Rs.83,90,136/-. The complainant paid Rs.80,37,320/-.

(b) On 16.05.2012 the complainant and the respondent entered into a sale agreement and also a construction agreement. The respondent undertook to complete the construction and handover delivery of possession of the flat by November 2013, with grace period of 3 months. The payments were released by the complainant as per the payment schedule. However, the respondent delayed delivery of possession of the apartment for 70 months.

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(c) The flat was given for fit out only on 27.01.2018. The completion certificate was issued by CMDA on August 2020. The respondent is not willing to pay any compensation for the delay in delivery of the apartment. The complainant was put to mental stress and hardship due to the delay. Hence the complainant is entitled for the reliefs.

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

(a) The complainant filed the claim suppressing the full and final settlement arrived between the parties. The respondent awarded a compensation of Rs.7,40,698/- and accommodated the request of the complainant to shift the unit. On 27.01.2018 both the parties entered into a full and final settlement. Hence the present claim is liable to be dismissed in limine.

(b) The respondent made all the possible efforts to expedite progress of construction, but due to natural calamities, short supply of construction materials and laborers and restrictions imposed by the State Government, the respondent was not able to complete the project within the agreed time frame. In spite of the same, the respondent offered compensation by way of reduction of cost and the same was accepted by the complainant. The matter had attained finality.

(c) The delay was due to force majeure conditions. Hence the respondent is not liable to pay any compensation to the complainant. The delay was neither willful nor wanton, but only due to bonafide reasons. Due to Covid-19 pandemic, the real estate sector in particular had a great impact. The RERA Act and TNRERA Rules provide extension of time for developers under force majeure circumstances. Hence the complaint is liable to be dismissed.

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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 for the delay on the grounds of failure to complete the construction and in handing over delivery of possession of the apartment as per the date and terms of the agreement?
 - ii) What are the reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that the construction agreement and the agreement for sale were executed between the complainant and the respondent on 16.05.2012 and the total sale consideration of the flat is Rs.83,90,136/- and as per the agreement the possession was to be handed over to the complainant on November 2013 with a grace period of 3 months and the complainant had paid Rs.80,37,320/- and the flat was handed over for fit out only on 27.1.2018 and the completion certificate was issued by CMDA on August 2020 and the delay was about 70 months and as on date the respondent has not provided possession certificate on lame excuses and the delay caused unexplainable mental stress to the complainant and therefore the complainant is entitled for compensation for the delay and mental agony as prayed by him.

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(b) The learned counsel for the respondent contended that the complainant originally booked Unit No. C-1004 and later shifted to Unit No.F-903 and possession of the unit was handed over and out of the total cost of Rs.87,78,018/-, the complainant paid only Rs.80,37,320/- and towards full and final settlement of compensation, Rs.7,40,000/- by way of reduction of cost of the flat was offered and accepted by the complainant and the remaining amount of Rs.90,573/- was paid by him on 23.01.2018 and the complainant has suppressed the full and final settlement of compensation and is estopped from making the present claim before this Forum and the complaint is liable to be dismissed.

(c) The learned counsel for the respondent further contended that the complainant cannot take a contrary stand after full and final settlement of possession and he cannot both approbate and reprobate and also relied on the following circumstances in support of his contentions:

- i. State of Punjab and Others Vs. Dhanjit Singh Sandhu reported in AIR 2014 SC 3004.
- ii. Rajamani, Wife and Nominee of S.Rajagopalan (since deceased) and Others and Deputy Commissioner of Labour and Appellate Authority under payment of Gratuity Act, Tiruchirapalli, and Others reported in 1997 (1) LLN 356.

(d) It is relevant to note that in Union of India Vs. Amrit Manchanda 2004(3) SCC 75 and other cases in 2004(4) SCC 205, 2002(3) SCC 496 and 533, the Hon'ble Supreme Court clearly laid down that precedents and observations made therein are to be read in the context in which they appear and

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circumstantial flexibility, one additional or different fact may make a world of difference. It is often reiterated that judgements cannot be read as Euclid's theorem. The words of Lord Denning in the matter of applying precedents which had been oft quoted with approval in more than one judgement of the Supreme Court is that while applying precedents "each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect". Therefore, the present case is to be decided on the facts and circumstances of the case.

(e) The learned counsel for respondent heavily relied on Ex.B3 document as it is full and final settlement signed by the complainant. Ex.B3 is a document under the letterhead of the respondent company dated 27.01.2018. Ex.B4 is the letter dated 25.10.2019 evidencing the handing over possession , in which the complainant signed above the endorsement as 'received keys and vacant physical possession of the unit'. Even after the execution of Ex.B3 document, there was delay of more than one year in handing over possession of the unit of the complainant. However, the learned counsel for the respondent claims Ex.B3 as a document of full and final settlement of possession. Further perusal of the Ex.B3 reveals that under caption "delay compensation, if any", a sum of Rs.7,40,698/- is mentioned and below the document, the signature of the complainant is found above customer signature and date. Nowhere in the document, it is mentioned as it is a full and final settlement on compensation against any claim of the complainant. Therefore, Ex.B3 document cannot be accepted as a document of full and final settlement of compensation payable to the complainant.

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(f) In the above circumstance, it is held that the complainant is entitled for compensation for the delay, however, subject to consideration of the amount of rebate given to the complainant towards payment of balance sale consideration. Thus the point is answered accordingly.

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

(a) As per the proviso of section 18 of the RERA Act, the complainants are entitled for compensation by way of interest for every month of delay, till the handing over possession at such rate as may be prescribed. As per Ex.B3, the total sale price of the unit is Rs.87,78,018/-. Admittedly the complainant has paid Rs.80,37,320/- plus Rs.90,573/- i.e. Rs.81,27,893/-. As per Ex.A1, construction agreement, the due date for delivery of the constructed flat was November 2013. Therefore, the complainants are entitled for compensation by way of interest for every month from December 2013, till the date of handing over of possession of the flat, i.e., 25.10.2019.

(b) As per Rule 18 of the TNRERA Rules, the rate payable by the promoter to the allottee shall be the highest marginal cost of lending rate of SBI plus 2% . Therefore, the complainants are entitled for interest @ 8.20%, which was the highest marginal cost of lending rate of S.B.I. plus 2% per annum i.e., 10.20% p.a. for the above said amount of Rs.81.27.893/- from December 2013 till 25.10.2019.

(c) Apart from the above, towards the compensation for mental agony and inconvenience caused to the complainant, a sum of Rs.2,00,000/- is fixed. Towards litigation expenses, a sum of Rs.25,000/- is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

The respondent shall pay the compensation by way of interest subject to deduction of Rs.7,40,698/-, the compensation for mental agony and litigation 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.

Sd/- 31.08.2021
G. SARAVANAN
ADJUDICATING OFFICER

LIST OF WITNESSES

CW-1--- Anand Premkumar
RW-1--- K. Krishnan

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	16.05.2012	Construction agreement
Ex.A2	16.05.2012	Agreement for sale
Ex.A3	---	Statement of account

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	---	Board resolution
Ex.B2	---	Delay statement from 30.04.2012 to 27.01.2018
Ex.B3	27.01.2018	Full and final settlement signed by the complainant

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Ex.B4	25.10.2019	Possession handover letter
Ex.B5	13.08.2020	4 th partial completion certificate

Sd/- 31.08.2021
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI.

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31.8.2021
LAW OFFICER
TNRERA, CHENNAI