

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.143 of 2021**

Sridevi Gade

... Complainant

Vs

Ozone Projects Private Ltd

Rep. by its MD, S.Vasudevan

(Regn No.TN/29/Building/0036/2018

Revised Regn No.TN/29/Building/0095/2019)

... Respondent

Complainant : Rep. by Mr. Ajay Kumar Gupta, Advocate.

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

Heard on : 17.02.2022

Delivered on : 25.02.2022

ORDER

The above complaint by the complainant claiming compensation for the delay in handing over possession of residential unit 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 16.05.2012, the complainant booked a flat with the respondent in their project, namely, "**The Metrozone**" at Pillayar Koil Street, Anna Nagar, Chennai. On 30.05.2012, the complainant and the respondent entered into an agreement of sale and also a construction agreement for purchase of flat. The total sale consideration of the flat is Rs.1,57,51,405/-.

(b) As per the agreement, the respondent undertook to handover the flat by October 2013, with a grace period of 3 months. The complainant paid Rs.1,39,00,467/- to the respondent. In spite of payment of more than 80% of the total sale consideration, there was delay in handing over possession of the apartment.

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(c) The possession of the flat was finally handed over to the complainant by the respondent only on 13.03.2019, after a delay of 5 years. As per clause 7(b) of the construction agreement, the respondent is liable to pay compensation. But the respondent adjusted only part amount in the sale consideration and not settled the compensation in full. Hence, the complainant is entitled for all the reliefs.

3. On the side of the respondent, in spite of sufficient time being given, no counter was filed by the respondent.

4. The complainant filed proof affidavit and marked documents. No evidence was let in on behalf of the respondent.

5. On the basis of the contentions of the parties, the following points arise for determination:-

i. Whether the complainant is entitled for compensation for delay and for mental agony and litigation cost from the respondent on the ground of failure on the part of the respondent to complete construction and deliver the flat as per the terms of the agreement?

ii. What are the reliefs, the complainant is entitled to?

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

(a) The learned counsel for the complainant submitted that the complainant booked a flat in the project of the respondent and agreements for sale and construction were entered on 30.05.2012 between the complainant and respondent and the respondent failed to complete the construction and was unable to hand over the constructed flat within the time limit prescribed under the agreements and arrived at compensation and adjusted only part amount against the installments of sale amount payable by the complainant therefore the complainant is entitled for the reliefs sought by her.

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(b) It is not in dispute that under clause 7(a) of Ex.A3, the construction agreement, the respondent undertook to complete construction and handover possession of the apartment to the complainant by October 2013, with a grace period 3 months. Admittedly, the time limit expired by January 2014 and the possession of the apartment was finally handed over on 13.03.2019.

(c) As per the evidence of the complainant, the respondent made a wrong calculation of the delay compensation payable under clause 7(b) of the construction agreement and adjusted only part amount on the installments of sale price payable by the complainant and she is entitled for compensation for the delay as prayed for. Under the agreement for construction, the respondent undertook to pay compensation, in the event of delay in construction and delivery of possession of flat, at the rate of Rs.15/- per square feet per month till possession of flat is handed over to the complainant.

(d) In the said circumstances, it is held that the complainant is entitled for compensation on the ground of failure on the part of respondent to complete construction and hand over possession of the flat to the complainant as per the agreed terms. Thus, the point is answered accordingly.

7. Answer for Point No. (ii)

(a) As per clause 7(b) of the construction agreement, compensation for delay is fixed at Rs.15/- per sq.ft. per month, till the time of delivery and possession of the flat and if the delay exceeds 6 months the builder is liable to pay interest at the rate of 10% per annum for all the amounts received by the developer. The complainant cannot claim both the compensation.

(b) As per rule 4, Explanation-I of the TNRERA Rules, any agreement entered before the commencement of the rules shall not be affected. However, it is settled law that compensation is to be just in the facts and circumstances of the case. Considering all the above, it is held that the complainant is entitled for

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THE STATE BAR ASSOCIATION
TAMIL NADU

interest at the rate of 10% per annum for the amounts paid to the respondent from the due date for delivery including the grace period i.e., from February 2014 till date delivery of the flat to the complainant.

(c) Apart from the above, towards the compensation for mental agony and inconvenience caused to the complainant, a sum of Rs.5,00,000/- is fixed. Towards litigation expenses, a sum of Rs.25,000/- is fixed. The complainant is entitled for the relief 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 cost as per the findings in the answer for Point No.(ii), Para 7 of this order within 30 days from the date of issue of this order.

2) The respondent is entitled for adjustment of due amount payable by the complainant and the balance shall be payable within the time limits specified above.

Sd/- 25.02.2022
G. SARAVANAN
ADJUDICATING OFFICER

List of witness

CW-1 --- Sridevi Gade

List of documents filed by the complainant

Ex.No	Date	Documents Name
Ex.A1	16.05.2012	Application for allotment
Ex.A2	30.05.2012	Agreement for sale
Ex.A3	30.05.2012	Construction agreement
Ex.A4(series)	...	Payment receipt
Ex.A5	14.02.2019	Final settlement letter
Ex.A6	...	Calculation sheet of actual compensation

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Sd/- 25.02.2022
G. SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI


LAW OFFICER
TN REAL ESTATE REGULATORY AUTHORITY