

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No.181 of 2021**

1. Pushpalata Dinesh
2. Dinesh Kumar

... **Complainants**

Vs

M/s.Ozone Projects Private Ltd
Rep. by its Authorised Signatory
(Regn No.TN/29/Building/0095/2019)

... **Respondent**

Complainants : Rep. by M/s.Fox Mandal & Associates, Advocates.
Respondent : Rep. by Mr.A.R.Vishwaram, Advocate.

Heard on : 08.06.2022
Delivered on : 29.06.2022

ORDER

The above complaint by the complainants claiming compensation for the delay in handing over possession of the constructed flat by the respondent and other reliefs 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 complainants, in brief, as follows:**

(a) During 2010, the complainants booked an apartment with the respondent in their project, namely, "**The Metrozone**" at Pillayar Koil Street, Anna Nagar, Chennai. On 31.01.2011, the complainants and the respondent entered into a construction agreement for construction and purchase of the flat. The total sale consideration of the flat is Rs.1,69,58,179/-.

(b) Under the agreement, the respondent promised to handover the flat by November 2013, with an additional grace period of 3 months. The complainants paid Rs.1,56,28,256/- by 2017, which is more than 90% of the total sale

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consideration agreed by them. There was delay in construction and handing over possession of the apartment.

(c) The possession of the flat was handed over to the complainants by the respondent on 07.02.2019, after a delay of more than 6 years. As per clause 7(b) of the construction agreement, in case of delay, the respondent is liable to pay interest at the rate of 10% per annum, on the amount received by the respondent, till the date of final handing over of the apartment. Therefore, the complainants are entitled for compensation towards delayed possession of the apartment and also for rental loss and mental agony and costs.

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

(a) Except admitted, the respondent denied all the allegations and averments in the complaint. The complaint is not maintainable in law or on facts. The complainants and the respondent entered into an agreement of sale and a construction agreement on 31.01.2011 with respect to the residential unit No.C-1301 in the project. The complainants agreed to make milestone payment as per the payment schedule. Subject to payment of the milestone payment and force majeure exceptions, the indicative date of handing over the apartment was November 2013, with a grace period of 3 months.

(b) The complainants breached the milestone payment schedule which had a huge impact on the cash flows and adversely affected the implementation of the project. In spite of possible efforts, however, due to reasons beyond the control of the respondent, there was delay in execution of the project. The complainants are entitled for compensation only if they had paid all the milestone payments as per the mutually agreed payment schedule. The complainants are not entitled for

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any compensation on account of their failure to make payments as per the terms of the construction agreement.

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

5. Both the parties have filed their respective evidence on affidavit with documents.

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

i. Whether the complainants are entitled for compensation for delay and for mental agony and other reliefs 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 complainants are entitled to?

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

(a) The learned counsel for the complainants submitted that the complainants booked a flat with the respondent in their project, namely, "The Metrozone" and made payments and also entered into a construction agreement on 31.01.2011 and the respondent undertook to handover the constructed flat by November 2013, with additional grace period of 3 months and the total sale consideration is Rs.1,69,58,179/- and the complainants paid the amounts in accordance with the demand notices raised by the respondent from time to time and remitted almost 88% of the sale consideration by January 2015 and there was delay in the progress of construction of the project for several years due to various reasons not attributable to any lapses on the part of the complainants and the stage-wise progress of construction was not as per the time schedule to be adhered by the respondent and after a delay of 6 years the apartment was handed over to the

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complainants and the claim of the respondent that a sum of Rs.21,01,393/- as outstanding from the complainants is not correct and the subsequent payments made by the complainants were not taken into consideration and the payments were made as per Ex.A8, the final invoice dated 07.02.2019 and the complainants are entitled for all the reliefs.

(b) The learned counsel for the respondent contended that the claims made by the complainants are liable to be dismissed and they seek benefit of most of the clauses under the agreement, but where it is inconvenient to them, they chose to ignore and it is not a case where the agreement has been held void by any Forum and this Forum has no jurisdiction to do so and the complainants cannot pick and choose the clauses in the agreement and the date for handing over as per the TNRERA registration is December 2022 and hence there was no delay at all and due to reasons beyond the control of the respondent such as, natural calamities, shortage of construction materials and skilled labourers, labour restrictions by state government, delays in approval and renewal of approvals and the delayed payments by the customers contributed to the delay in execution of the project and the complainants had breached the milestone payment schedule and many such customers delayed in making payments which had impact on the cash flows of the respondent and affected the implementation of the project and the complainants paid the partial amount for the sale consideration against the unit and the payment milestone was not properly done by the complainants and there was delay in payment and out of the total sale consideration, the complainants is still due of payment of Rs.21,01,393/- and therefore the complaint is liable to be dismissed with exemplary cost.

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(c) It is not in dispute that as per Ex.A2, the construction agreement dated 31.01.2011, entered between the complainants and the respondent, the respondent undertook to complete the construction and handover possession of the flat by November 2013, with a grace period of 3 months and the respondent was able to handover the constructed flat to the complainants only on 07.02.2019.

(d) The respondent contended that as per TNRERA registration of the project, the handing over date is only December 2022 and there was no delay at all. *In Neelkamal Realtors Suburban Pvt. Ltd and others Vs Union of India and others reported in MANU/MH/3135/2017*, the Hon'ble Bombay High Court made it clear that the provisions of RERA do not rewrite the clause of completion or handing over possession in agreement for sale and section 4(2)(I)(C) enables the promoter to give fresh timeline independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA and in other words, by giving opportunity to the promoter to prescribe fresh time line under section 4(2)(I)(C), he is not absolved of the liability under the agreement for sale. Therefore, the respondent cannot rely on the registration with the TNRERA to contend as there was no delay at all.

(e) The learned counsel for the respondent produced several documents and news paper articles on shortages of raw materials, labour and raw materials, shortage of lorries due to strike, sand and labour in construction industry in the years 2009 to 2013. No particulars of specific period for which the work suffered due to particular ground are given. The respondent makes attempt to take advantage of all the general problems in the construction field over a period. It is relevant to

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note that the complainants booked the apartment in 2010 and the flat was not complete in construction and was handed over only on 07.02.2019. Relying on those vague documents for such long delay is not acceptable.

(f) So far as the payment schedule is concerned, it is seen that Ex.A2, the construction agreement, contains payment schedule on completion of different stages of construction without any specific time line to commensurate with the date of delivery intimated by the respondent. Further, the respondent produced Ex.B11, the demand mails dated 05.01.2018 and 07.02.2019 issued to the complainants for failure or delay of payment on the part of the complainants. Perusal of the mails reveals that requests for payments were made on completion of particular stage work. Therefore, the respondent cannot rely on the payment schedule in the construction agreement to blame the complainants for delay in any payment.

(g) The counsel for respondent also pointed out that out of the total sale consideration of Rs.1,68,55,084/-, the complainants paid only Rs.1,47,53,691/- and the balance amount of Rs.21,01,393/- is still due. As pointed out by the complainants, the respondent has not taken into consideration the payment made subsequent to 31.12.2017. Ex.A7, is the final invoice of the respondent issued to the complainants at the time of handing over of the apartment and it reveals that the total amount received till the date of the document is Rs.1,56,28,256/- and the balance amount payable was only Rs.13,29,923/- and the reduction in price due to the delay delivery is shown as Rs.5,81,484/- and the final amount payable is only Rs.7,48,439/-. The receipt dated 07.02.2019 in Ex.A4 (series), reveals that the respondent received Rs.7,40,955/- from the complainants by way of cheque

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dated 07.02.2019. Therefore, the contention of the respondent on balance amount is not correct and sustainable.

(h) Considering all the above circumstances, it is held that the complainants are entitled for compensation for the delay, mental agony and other reliefs. Thus, the point is answered accordingly.

8. Answer for Point No. (ii)

(a) In view of the answer for point no.(i), the complainants are entitled for compensation for the delay in construction and delivery of the flat. The complainants claimed compensation at the contractual rate of interest at 10% p.a. for the amount paid from the date of their payment and also additional compensation by way of interest under provisions of RERA Act read with the TNRERA Rules. The complainants are not entitled to claim both the contractual rate of interest, as well as, the rate of interest provided under the Act and Rules.

(b) As per the proviso to 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 of the flat. As per Rule 18 of the TNRERA Rules, the rate of interest 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 @ 7.30%, which was the highest marginal cost of lending rate of S.B.I. at the time of filing the complaint, plus 2% per annum i.e.,9.30% p.a. for the amounts paid from respective dates of payment till delivery of possession of the constructed flat by the respondent on 07.02.2019.

(c) The complainants claimed compensation towards rental loss for every month due to the delay. Since the compensation for delay is ordered as per the provisions of the RERA Act and TNRERA Rules, the complainants are not entitled

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to claim compensation under the head of rental loss. Hence the claim of compensation under the head of rental loss is rejected.

(d) Apart from the above, towards compensation for mental agony and inconvenience caused to the complainants, a sum of Rs.1,00,000/- is fixed. Towards litigation expenses, a sum of Rs.25,000/- is fixed. The complainants are entitled for the relief as detailed above. Thus the point is answered accordingly.

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

The respondent shall pay the compensation and 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/- 29.06.2022
G. SARAVANAN
ADJUDICATING OFFICER

List of witnesses

CW-1 --- Pushpalata Ramesh
RW-1 --- M.Premnath

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	...	Brochure of Project
Ex.A2	31.01.2011	Construction agreement
Ex.A3	08.07.2016	Sale deed
Ex.A4(series)	...	Payment receipts
Ex.A5	...	Statement of accounts
Ex.A6(series)	...	E-mail communications
Ex.A7	07.02.2019	Final invoice
Ex.A8	07.02.2019	Possession letter
Ex.A9	23.03.2019	E-mail communication
Ex.A10	...	Photographs of the apartment
Ex.A11	...	Compensation statement

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Ex.A12	...	RERA registration
Ex.A13	...	Quarterly progress report

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.Nos	Date	Documents Name
Ex.B1	13.04.2009	Planning permit
Ex.B2	13.12.2013	Building permission
Ex.B3(series)	...	Letter correspondence
Ex.B4(series)	...	Newspaper articles
Ex.B5	09.11.2011	Receipt issued by CMDA
Ex.B6	03.09.2012	Order copy in W.P.No.588/2011
Ex.B7(series)	...	Compliance certificate
Ex.B8(series)	...	No objection letters
Ex.B9(series)	...	Consent letters from TNPCB
Ex.B10(series)	...	Partial completion certificate
Ex.B11(series)	...	Demand mails to complainants
Ex.B12	...	Dates of construction completion
Ex.B13	07.02.2019	Possession taken over proof
Ex.B14	25.03.2019	Board Resolution copy
Ex.B15	...	Map

Sd/- 29.06.2022
G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

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29.6.2022
LAW OFFICER
T. REAL ESTATE REGULATORY AUTHORITY