

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP Nos. 396, 397, 398 and 399 of 2021**

1. Sambasivan Srinivasan and Lakshmi Harini ... (CCP No.396/2021)
 2. Rajasekaran Dhamodharan and
Vidya Blasubramanian ... (CCP No.397/2021)
 3. Preeth Kuppanandam ... (CCP No.398/2021)
 4. Subramonia Pillai ... (CCP No.399/2021)
- COMPLAINANTS

Vs.

M/s. Ozone Projects Pvt. Ltd.
Rep. by its Managing Director S. Vasudevan
(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 : 08.02.2023
Delivered on : 06.03.2023

ORDER

All the above complaints by the respective complainants claiming compensation for the delay in handing over possession of apartments by the respondent and other reliefs are filed under section 31 read with 71 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred to as RERA Act).

2. Since all 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.

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3. **Averments of the complainants in all the cases, in brief, as follows:**

(a). The complainants booked flats with the respondent in their project, namely, "**The Metrozone**", Pillaiyar Koil Street, Jawaharlal Nehru Road, Anna Nagar, Chennai-600 040 and paid amounts towards sale consideration as agreed by them.

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

Complainants' Name	CCP Nos.	Allotted Flat No.	Price Agreed Rs.	Amount Paid Rs.	Date for delivery
(1)	(2)	(3)	(4)	(5)	(6)
Sambasivan Srinivasan and Lakshmi Harini	396/2021	Z 403	1,63,96,770/-	1,50,58,724/-	Jan., 2016
Rajasekaran Dhamodharan and Vidya Blasubramanian	397/2021	AC 1403	1,34,87,365/-	1,05,06,137/-	Nov., 2013
Preeth Kuppanandam	398/2021	AB 802	1,92,62,416/-	1,69,53,595/-	June, 2014
Subramonia Pillai	399/2021	Z 1001	2,19,55,755/-	1,94,54,350/-	Jan., 2016

(c). As of September, 2021, it has been 7 years and above, since the complainants have booked the apartments, the respondent has not completed the construction and there is no visible development in the project. Some of the complainants have availed bank loan for payment of sale price of the flats. The delay is willful and wanton and the respondent launched the project with false assurances. Therefore the complainants are entitled for compensation and other reliefs.

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

(a). The respondent entered into separate agreements with the complainants over a period of time and each and every agreement provides for milestone payments as per the mutually agreed payment schedule and also the handing over date with grace period. Due to natural calamity, November/December 2015 floods, Vardah storm in 2016, short supply of construction materials and other reasons, the respondent could not complete the project within the agreed time.

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(b). Timely payments by the flat purchasers is a sine-qua-non for effective implementation of the project, the complainants and other purchasers did not make milestone payments which had a cascading effect on the cash flow and implementation of the project. The respondent had to borrow funds at a very huge cost and invest into the construction to achieve the milestone progress.

(c). The complainants are due of payments as detailed below:

CCP Nos.	Amounts due Rs.
396/2021	14,38,847/-
397/2021	30,59,678/-
398/2021	24,27,251/-
399/2021	25,77,525/-

The complainants are liable to pay the balance sale consideration as per the agreed terms and conditions and entitled to seek compensation only if they have remitted milestone payments without any delay. Both the RERA Act and the TNRERA Rules provide for extension of time for completion of the project, if the reasons for the delay are beyond the control of the developer. The claim to set off the balance amount payable against the alleged compensation cannot be accepted. In the above circumstances, the respondent prays for the dismissal of the complaints with exemplary costs.

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

6. On both sides, 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 compensation for the delay on the ground of failure to complete the construction and hand over delivery of possession of the apartments as per the date and terms of the agreements?

ii) What are the reliefs, the complainants are entitled to?

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8. Answer for Point No.(i)

(a). The learned counsel for the complainants submitted that the complainants booked apartments in the project of the respondent and entered into agreements for sale and construction with the respondent and the respondent undertook to complete the construction and handover the constructed apartments on the due dates fixed under the agreements, but delayed construction for several years and some of the complainants availed loans from financial institutions and are paying interest and put to great hardships and mental agony and are entitled for compensation and other reliefs.

(b). The learned counsel for the respondent also filed a written notes of arguments and contended that the respondent entered into agreements for sale and construction of the apartments with the complainants and undertook to handover constructed apartments on the due dates mentioned in the agreements, but due to reasons beyond the control of the respondent, such as, natural calamities, shortage of construction materials and skilled laborers, restriction imposed by State Government for deployment of laborers from other States, statutory delays in approval and renewal of approvals and delayed / deferred payments by the customers contributed to the delay in execution of the project and the complainants breached the milestone payment schedule and many such customers delayed in making the assured milestone payments as per the mutually agreed payment schedule in the agreements which had a huge impact on the cash flows of the respondent and adversely affected the implementation of the project and the complainants are entitled to seek compensation only if they made the payments as per the payment schedule and since they have failed to make payments as agreed in the agreements, they are not entitled for compensation and the complaints are liable to be dismissed with cost. The learned counsel further contented that in the 'Pioneer Homes' case, the Consumer Forum struck down the entire agreement entered with the consumer as voidable and the same was upheld by the Hon'ble Apex Court and in the present cases, the complainants seek benefit of most clauses under the agreement but where it is inconvenient for them, they chose to ignore and in the present cases, the agreements cannot be held void by any Forum and the complainants cannot pick and choose clauses they wish to follow and those they wish to refuse to abide by.

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(c). It is not in dispute that the respondent entered into agreements for sale and construction of apartments with the complainants in all the cases on various dates mentioned above and undertook to complete construction and deliver the constructed apartments on the dates fixed for delivery under the agreements and received the sale consideration, but the completion of construction was delayed and the constructed apartments are not yet handed over to the complainants/allottees.

(d). The respondent admitted the delay in construction and completion of apartments booked by the complainants, but stated that the respondent was not able to complete the construction due to reasons beyond the control of the respondent. The respondent produced and relied on various newspaper articles on problems in real estate sector. No particulars of the specific periods for which construction works suffered or suspended in the project are given. The reasons for the delay for several years are vague and unacceptable.

(e). It is the contention of the respondent that the complainants have breached the milestone payment schedule and they will be entitled to seek compensation only if they made payments as per the payment schedule under the agreements entered with the respondent. The payment schedule in the agreements provided many stages of construction for payments without any tentative or specific dates for completion the particular stage of construction. When the promises under the agreements are reciprocal, without performing their obligations under the agreement, the respondent cannot deny the claim of compensation for delay by the complainants. The RERA Act is a special enactment giving special rights to the flat purchasers treating them on par with the financial creditors. So, the decision in the 'Pioneer Homes' case by the Consumer Forum which was upheld by the Hon'ble Supreme Court cannot be made applicable.

(f). A perusal of the documents reveals that the complainants have paid nearly 85% and above of the total sale consideration to the respondent. The due dates for the delivery of the apartments was over in November, 2013 in CCP No.397 of 2021 and June, 2014 in CCP No.398 of 2021 and January, 2016 in CCP Nos.396 and 399 of 2021. The delay in delivery of constructed apartments by the respondent runs to several years from the promised dates for delivery to the complainants. It is seen that the complainants made payments as and when

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demanded by the respondent. All the contentions of the respondent are liable rejected. Therefore, the complainants are entitled to seek compensation and other reliefs. Thus the point is answered accordingly.

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

(a). In view of the answer for Point No.(i), the complainants in all the cases are entitled for compensation and other reliefs. The complainants have claimed compensation by way of interest for the amounts paid to the respondent due to the delay in delivery of the apartment. As per proviso to section 18 of the RERA Act, the complainants are entitled only to be paid interest for every month of delay by way of compensation from the promised date of delivery till the handing over possession of the apartment.

(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 @ 7.30%, which was the highest marginal cost of lending rate of S.B.I. plus 2% per annum i.e. 9.30% p.a. for the amounts paid by them from the respective promised due dates for delivery till the handing over possession of the constructed flats.

(c). Apart from the above, towards the compensation for mental agony and inconvenience caused to the complainants in each case, a sum of Rs.5,00,000/- and towards litigation expenses, a sum of Rs.25,000/- are fixed. The complainants in each case are entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondent is directed as follows:

The respondent shall pay the complainants the compensation for delay by way of interest on the amounts paid from the respective promised due dates for delivery till the handing over possession of the flats and compensation for mental agony and cost as per the findings in Answer for Point No.(ii), Para 9 of this order within 30 days from the date of issue of this order.

Sd/- 06.03.2023
G. SARAVANAN
ADJUDICATING OFFICER

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C.C.P.396/2021**LIST OF WITNESSES**

CW-1--- S. Sambasivan

RW-1--- M. Premnath

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.No	Date	Documents Name
Ex.A1	....	Brochure of the Project
Ex.A2	23.05.2013	Construction Agreement
Ex.A3	23.05.2013	Agreement for Sale
Ex.A4	....	Statement of Account through Email
Ex.A5(Series)	....	Email Communications
Ex.A6	....	TNRERA Registration of the Project
Ex.A7	....	Quarterly Progress Report of the Project

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1(Series)	13.04.2009 & 22.08.2013	Planning Permissions
Ex.B2(Series)	18.06.2009 & 13.12.2013	Building Permissions
Ex.B3(Series)	....	Letter Correspondence
Ex.B4(Series)	....	Newspaper Articles
Ex.B5	01.11.2011	Receipt issued by CMDA
Ex.B6	03.09.2012	Copy of the Order in W.P.588/2011
Ex.B7(Series)	25.03.2013 & 31.08.2015	Compliance Certificate from Fire & Rescue Service
Ex.B8(Series)	10.07.2013 & 31.07.2013	No Objection Letter from CMRL and Traffic Police
Ex.B9(Series)	25.04.2014	Consent Order from TNPCB
Ex.B10(Series)	22.05.2014 & 28.01.2016	Partial Completion Certificate
Ex.B11	25.03.2019	Board Resolution Extract
Ex.B12	Approved Project plan

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C.C.P.397/2021**LIST OF WITNESSES**

CW-1--- D. Rajasekaran

RW-1--- M. Premnath

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.No	Date	Documents Name
Ex.A1	....	Brochure of the Project
Ex.A2	31.10.2011	Construction Agreement
Ex.A3	31.10.2011	Agreement for Sale
Ex.A4(Series)	....	Payment Receipts
Ex.A5	....	Statement of Account
Ex.A6(Series)	....	Email Correspondence
Ex.A7	....	RERA Registration of the Project
Ex.A8	....	Quarterly Progress Report of the Project

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1(Series)	13.04.2009 & 22.08.2013	Planning Permissions
Ex.B2(Series)	18.06.2009 & 13.12.2013	Building Permissions
Ex.B3(Series)	Letter Correspondence
Ex.B4(Series)	Newspaper Articles
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Ex.B11	25.03.2019	Board Resolution Extract
Ex.B12	Approved Project plan

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C.C.P.398/2021**LIST OF WITNESSES**

CW-1--- Preeth Kuppanandam

RW-1--- M. Premnath

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.No	Date	Documents Name
Ex.A1	....	Brochure of the Project
Ex.A2	19.12.2011	Construction Agreement
Ex.A3	19.12.2011	Sale Agreement
Ex.A4	....	Statement of Accounts
Ex.A5(Series)	....	Minutes of Meeting and Mail Correspondence
Ex.A6	....	RERA Registration of the project
Ex.A7	....	Progress Report in RERA website

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1(Series)	13.04.2009 & 22.08.2013	Planning Permissions
Ex.B2(Series)	18.06.2009 & 13.12.2013	Building Permissions
Ex.B3(Series)	Letter Correspondence
Ex.B4(Series)	Newspaper Articles
Ex.B5	01.11.2011	Receipt issued by CMDA
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Ex.B10(Series)	22.05.2014 & 28.01.2016	Partial Completion Certificate
Ex.B11	25.03.2019	Board Resolution Extract
Ex.B12	Approved Project plan

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C.C.P.399/2021**LIST OF WITNESSES**

CW-1--- Subramonia Pillai

RW-1--- M. Premnath

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.No	Date	Documents Name
Ex.A1	....	Brochure of the Project
Ex.A2	26.08.2013	Construction Agreement
Ex.A3	26.08.2013	Agreement for Sale
Ex.A4(Series)	....	Payment Receipts
Ex.A5(Series)	....	Email Correspondence
Ex.A6	....	RERA Registration of the project
Ex.A7	....	Quarterly Progress Report of the project

LIST OF DOCUMENTS FILED BY THE RESPONDENT

Ex.No	Date	Documents Name
Ex.B1(Series)	13.04.2009 & 22.08.2013	Planning Permissions
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Ex.B12	Approved Project plan

Sd/- 06.03.2023

G.SARAVANAN

ADJUDICATING OFFICER

TNRERA, CHENNAI

