

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 410 of 2021**

Ramanathan Nachiappan

.... **Complainant**

**Vs.**

M/s. Ozone Projects Pvt. Ltd.

Rep. by its Managing Director S. Vasudevan

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

.... **Respondent**

Complainant : Rep. by M/s. Fox Mandal & Associates, Advocates

Respondent : Rep. by Mr. A.R. Vishwaram, Advocate.

**Heard on** : 14.06.2023

**Delivered on** : 28.06.2023

**ORDER**

The above complaint by the complainant claiming compensation for the delay in handing over possession of the constructed flat by the respondent and other reliefs is filed under section 31 read with 71 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred as RERA Act).

**2. Averments of the complainant, in brief, as follows:**

(a). In the year 2013, the complainant booked an apartment with the respondent in their project, namely, "**The Metrozone**" at Anna Nagar, Chennai. On 23.05.2013, the complainant entered into agreements of sale and for construction with the respondent and paid the sale consideration. The total sale consideration of the apartment was Rs.1,69,36,893/-. The respondent undertook to handover the apartment by January 2016 with a grace period of 3 months. Till now, the complainant paid Rs.1,49,47,172/-, which is almost 88% of the total sale consideration payable as early as 2015. But there was no constructive progress. The respondent has not delivered the property till date. Hence the complainant is entitled for compensation for the delay in delivery of possession of the apartment and other reliefs.

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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 respondent promoted "The Metrozone" project. The complainant entered with the respondent into agreements for sale and construction on 23.05.2013. The respondent allotted an apartment to the complainant for a sale consideration of Rs.1,69,36,893/-. The complainant is liable to pay the balance sale consideration of Rs.20,97,375/-. As per the terms of the construction agreement, the respondent undertook to handover delivery of the apartment by January 2016 with an additional grace period of 3 months.

(b). The respondent took all the efforts to expedite the progress of construction. But due to natural calamities, floods and short supply of construction materials, the respondent could not complete the project within the mutually agreed time frame. Timely payment of sale consideration is a sine-qua-non for effective implementation of the project. The respondent has registered the project with TNRERA. The respondent engaged laborers and carrying on the construction works. The respondent also applied for completion certificate for some of the towers in the project. Both RERA Act and 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 complainant has admitted that they are liable to pay balance sale consideration. As per the mutually agreed terms and conditions, the complainant is entitled to seek compensation, only if they have remitted milestone payments without any delay. Hence the claim is liable to be dismissed with cost.

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

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

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6. 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 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 complainant is entitled to?

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

(a). The learned counsel for the complainant filed written arguments note and submitted that the complainant booked a flat with the respondent in their project, namely, "The Metrozone" and made payments and also entered into agreements for sale and construction on 23.05.2013 and the respondent undertook to handover the constructed apartment by January 2016 with additional grace period of 3 months and out of the total sale consideration of Rs.1,69,36,893/-, the complainant has paid Rs.1,49,47,172/- and only a sum of Rs.20,97,375/- is due to the respondent and the respondent has not completed the apartment and there is inordinate delay in completion and handing over of the apartment to the complainant and the complainant is entitled for compensation and other reliefs.

(b). The learned counsel for the respondent also filed a written note of arguments and contented that the complainant is seeking benefit of the clauses under the agreements and where it is inconvenient for them, they chose to ignore and the respondent tried their best to meet the handover date, but due to reasons beyond the control of the respondent, there was delay in completion of the construction of the apartment and the complainant have breached the milestone payment schedule and the complainant is liable to pay the balance sale consideration as per the terms of the agreement and is entitled for any relief, only if he has remitted milestone payments without any delay and therefore the complaint is liable to be dismissed with cost.

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(c). It is not in dispute that as per Ex.A2, the construction agreement dated 23.05.2013 entered between the complainant and the respondent, the respondent undertook to complete the construction and to handover the flat by January 2016 with a grace period of 3 months. It is also not in dispute that the complainant has paid Rs.1,49,47,172/-, out of the total sale consideration of Rs.1,69,36,893/- to the respondent under the agreement.

(d). The respondent stated that due to reasons beyond the control of the respondent such as, natural calamities, shortage of construction materials and skilled labourers, labour restriction imposed by State Government for deployment of labourers 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. It is relevant to note that Ex. A2 and A3 agreements were entered on 23.05.2013 and the promised date for delivery was January 2016. Till date, the respondent is not able to complete the construction of the apartment and deliver the same to the complainant. The reasons for the inordinate delay stated by the respondent are vague. No specific time period on which the works were suspended due to the reasons relied by them is given by the respondent. Considering all the above circumstances, it is held that on the ground of delay in delivery of the apartment, the complainant is entitled for compensation and costs. Thus, the point is answered accordingly.

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

(a). In view of the answer for point no.(i), the complainant is entitled for compensation for the delay in construction and delivery of the flat. The complainant claimed compensation amounting to Rs.53,74,695/- calculated till 30.04.2021 and also for additional interest till the date of actual handover on adjusting against the amount payable by them.

(b). As per the proviso to section 18 of the RERA Act, the complainant is 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 complainant is entitled for interest @ 7.30%, which was the highest marginal cost of lending rate of S.B.I.

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at the time of filing the complaint, plus 2% per annum i.e.,9.30% p.a. for the amounts paid till January,2016,the promised date for delivery from January,2016 till the delivery of the apartment and for the balance amounts from the respective dates of payments till the date of delivery of the apartment.

(c). Apart from the above, towards compensation for mental agony and inconvenience caused to the complainant, a sum of Rs.1,00,000/- 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:-**

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/- 28.06.2023  
G. SARAVANAN  
ADJUDICATING OFFICER

**CCP.NO. 410 of 2021**

**LIST OF WITNESSES**

CW-1 --- R. Nachiappan

RW-1 --- N. Premnath

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

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(Series)	....	Payment Receipts
Ex.A5	11.05.2017	Statement of Account
Ex.A6(Series)	....	Email Communications
Ex.A7	11.05.2017	RERA Registration of the Project
Ex.A8	....	Quarterly Progress Report of the Project

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.No	Date	Documents Name
Ex.B1(Series)	13.04.2009	Planning Permissions
Ex.B2(Series)	18.06.2009	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
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	Partial Completion Certificate
Ex.B11	25.03.2019	Board Resolution Extract
Ex.B12	....	Approved Project plan

Sd/- 28.06.2023  
G.SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.

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 Secretary (Finance & Admn.)  
 TNRERA, Chennai - 8.