

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,  
CCP No. 12 of 2022**

1. R. Naresh
2. R. Manoj
3. R. Gouri

... **COMPLAINANTS**

**Vs.**

M/s. Ozone Projects Pvt. Ltd.  
Rep. by its Managing Director  
(Project not registered)

... **RESPONDENT**

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

Heard on : 08.02.2023  
Delivered on : 01.03.2023

**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 31 read with 71 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred as RERA Act).

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

(a). In the year 2010, the complainants booked an apartment with the respondent in their project, namely, "The Metrozone" at Pillayar Koil Street, Anna Nagar, Chennai. On 30.04.2010, the complainants 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.93,08,806/-. The respondent undertook to complete the construction and to handover the

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apartment by June 2012 with a grace period of 3 months. By 15.04.2015, the complainants paid Rs.90,23,321/-. The balance sale consideration was only Rs.2,85,485/-. The respondent has not delivered the property till date. Hence the complainants are entitled for compensation for the delay in delivery of possession of the apartment and other reliefs.

**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 complainants entered with the respondent into agreements for sale and construction on 30.04.2010. The respondent allotted the Flat No.N-703 in the 7<sup>th</sup> floor of the project for a sale consideration of Rs.93,08,806/-. The said property was to be delivered in June 2012 as per the terms of the construction agreement.

(b). The complainants paid some amount towards the sale consideration by way of part payments and the balance sale consideration of Rs.5,19,411/- was to be paid by the complainants. The respondent issued a notice on 30.10.2021 to the complainants for the balance amount and also the penalty incurred for the delay.

(c). The complainants did not come forward to take possession of the unit for past 8 years. The notice was issued on 30.10.2021 to the complainants to pay the balance amount and to take possession of the property. The complainants gave a reply notice on 23.01.2021 with false allegations. The flat was ready for taking possession in January 2012. The complainants delayed to take over the possession. The apartment of the complainants was ready with completion certificate issued by CMDA on 28.01.2016. After issue of termination notice to the complainants, the respondent entered into agreements for sale and construction with a 3<sup>rd</sup> party for the apartment allotted to the complainants.

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Subsequently, the respondent handed over the vacant physical possession of the unit to the 3<sup>rd</sup> party because they were not ready to pay the remaining amount. The respondent is willing to refund the amount paid by the complainants with applicable interest as per the terms and conditions indicated in the agreement. Hence the respondent prays for the dismissal of the complaint 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.

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 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 filed written arguments and submitted that the complainants 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 30.04.2010 and the respondent undertook to handover the constructed flat by June 2012 with additional grace period of 3 months and out of the total sale consideration is Rs.93,08,806/-, the complainants have paid Rs.90,23,321/- and only a sum of Rs.2,85,485/- was due to the respondent and the respondent has not come forward to register the sale deed for UDS land in favor of the complainants and the complainants made visits to the property several times and found several defects in the apartment and

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reported to the respondent for repair/rectification and handing over of the property in a habitable condition and the same was not rectified and delivered till date and the complainants are entitled for compensation and other reliefs.

(b). The learned counsel for the respondent also filed a written notes of arguments and contented that the complainants seek 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 complainants have breached the milestone payment schedule and for the delay in paying the balance amount , a termination notice was sent by the respondent to the complainants to pay the balance amount within a period of 7 days and since the complainants have not paid, the respondent and the 3<sup>rd</sup> party had entered into a construction agreement for the said suit property and handed over the vacant physical possession of the unit to the 3<sup>rd</sup> party, since the complainants were not ready to pay the remaining amount and have not come forward to take possession of the unit which was ready within the mentioned date and the respondent is willing to refund the amount paid by the complainants along with applicable interest as per the terms and conditions indicated in the agreement.

(c). It is not in dispute that as per Ex.A2, the construction agreement dated 30.04.2010 entered between the complainants and the respondent, the respondent undertook to complete the construction and to handover the flat by June 2012 with a grace period of 3 months. It is also not in dispute that the complainants paid Rs.90,23,321/- to the respondent under the agreements. Even though, the respondent filed a completion certificate issued by CMDA dated 28.01.2016 as the Ex.B5, the respondent has not filed any document or

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notice to prove that the flat was offered possession to the complainants in a habitable and fit for occupancy condition.

(d). On perusal of records it is also seen that the Authority has passed an order in the complaint in C.No.20/2022 between the complainant and the respondent directing the respondent to execute sale deed in favor of the complainants before 31.03.2023 and also directed the respondent to handover physical possession of the apartment completed in all respects strictly as per the construction agreement before 21.03.2023. However, the respondent has specifically stated that they have entered a construction agreement for the property with a 3<sup>rd</sup> party and handed over the vacant physical possession of the unit to the 3<sup>rd</sup> party and they are ready to refund the amount with applicable interest. In this complaint, the complainants sought for compensation and cost.

(e). Considering all the above circumstances, it is held that the complainants are 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 complainants are entitled for compensation for the delay in construction and delivery of the flat. The complainants claimed compensation at the rate of interest at 18% p.a. for the amount paid by the respondent i.e. Rs.90,23,321/- for non delivery of the property as per the terms of construction agreement.

(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

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the time of filing the complaint, plus 2% per annum i.e.,9.30% p.a. for the amounts paid from respective dates of payments till date of payment of the entire compensation as per the order.

(c). 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/- 01.03.2023  
G. SARAVANAN  
ADJUDICATING OFFICER

**CCP.NO. 12 of 2022**

**LIST OF WITNESSES**

CW-1 --- R. Naresh  
RW-1 --- N. Premnath

**LIST OF DOCUMENTS FILED BY THE COMPLAINANT**

Ex.No	Date	Documents Name
Ex.A1	30.04.2010	Sale Agreement
Ex.A2	30.04.2010	Construction Agreement
Ex.A3(Series)	....	Payment Receipts
Ex.A4(Series)	....	Communication between Appellant and Respondent
Ex.A5	30.10.2021	Notice by Respondent
Ex.A6	23.01.2022	Reply Notice by Appellant

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**LIST OF DOCUMENTS FILED BY THE RESPONDENT**

Ex.No	Date	Documents Name
Ex.B1	03.11.2014	Possession Letter in N-1001
Ex.B2	30.11.2014	Possession Letter in N-1301
Ex.B3	29.11.2014	Possession Letter in N-803
Ex.B4	07.12.2014	Possession Letter in N-1404
Ex.B5	28.01.2016	Completion Certificate by CMDA
Ex.B6	....	Statement of Account
Ex.B7	02.12.2021	Copy of the Order in W.P.No.25621/2021

Sd/- 01.03.2023  
G.SARAVANAN  
ADJUDICATING OFFICER  
TNRERA, CHENNAI.

