

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

**Quorum : Hon'ble Mr. G. Saravanan, M.A.,B.L., Adjudicating Officer,
CCP No. 34 of 2022**

1. K.K. Kulothungan (Deceased)
 2. Shymosree Kulothungan
 3. Tasha Kulothungan Kandappan (Minor)
 4. Sharvan Kulothungan Kandappan (Minor)
(Both 3 & 4 rep. by their mother, Shymorsree Kulothungan)
- COMPLAINANTS

Vs.

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

..... RESPONDENT

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

Heard on : 24.04.2023
Delivered on : 17.05.2023

ORDER

The complaint by the above complainants claiming compensation and other reliefs is filed under section 31 read with 71 of the Real Estate (Regulation and Development) Act 2016, (hereinafter referred to as RERA Act).

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

(a). The complainants 2 to 4 are the wife and children and the legal heirs of the deceased first complainant. M/s. Kemia Industries Ltd., a company was run by the deceased first complainant. In the year 2011, the first complainant in the name of the company booked a penthouse in the project of the respondent, namely, "**The Metrozone**" at Koyambedu, Chennai. On 30.12.2011, the company entered into agreements for sale and construction with the respondent for purchase of the penthouse for a total sale consideration of Rs.6,15,91,249/-.

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(b). Due to financial problems, the Board of Directors of the company came forward to transfer the booking in the project in the names of the first complainant and his wife, the second complainant. The respondent transferred the booking of the penthouse by an agreement for transfer in their names on 24.03.2017. The first and second complainants became the allottees.

(c). The respondent executed sale and construction agreements and also the sale deed in favor of the first and second complainants. From 15.12.2011 to 02.01.2014, they paid a sum of Rs.4,87,34,030/- and subsequently on 31.05.2017, Rs.1,28,00,000/- to the respondent and there was a balance of Rs.1,91,788/- only.

(d). Despite receipt of almost entire sale consideration, the respondent has not come forward to handover the property in a habitable condition. The complainant availed loan from the banks and servicing their debts. The due date for delivery was November 2012 in the first agreement and as per the second construction agreement, June 2017. The first complainant passed away on 08.06.2021 leaving behind the complainants 2 to 3 as the legal heirs. The complainants were put to hardship and heavy loss since the respondent failed to deliver the property in time. Hence, the complainants are entitled for compensation and other reliefs.

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

(a). Except admitted, the respondent denies all the allegations and averments in the complaint. The complaint is not maintainable in law or on facts and is liable to be dismissed. It is true that the complainants and the respondent entered into agreements for sale and construction on 30.12.2011 for purchase of a residential unit in the project. As per the terms of the agreements, the complainants agreed to make milestone payments as per the payment schedule. Subject to payment of milestone payments and force majeure exceptions, the indicative date of handover the apartment was November 2012 with additional time till June 2017. Due to Covid 19 pandemic, there was shortage of skilled laborers. The respondent was facing a big challenge in mobilizing laborers and executing the work. Subsequently, the things were returned to normal. However, due to natural calamities such as 2015 floods, Vardah Storm in 2016, short supply of construction materials, the respondent could not complete the project within the mutually agreed time frame. In addition, there was severe shortage of sand.

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Subsequently all the construction materials were procured for execution of the project.

(b). The complainants had pledged the property for the loans availed in the banks. Since they did not repay the loan amount, the bank issued notice under the SARFAESI Act to the complainants. The Axis Bank approached the respondent for possession for non-repayment of the loan by the complainants. The possession of the unit was taken over by the bank. The unit was seized and sealed by the Axis Bank on 11.03.2022. The complainants are responsible for the same. The possession has been handed over to the complainants. The complainants are entitled to seek compensation only if they have remitted milestone payment as per the terms of the agreements and without any delay. The claim of compensation is invalid. Due to the seizure of the property and seal made by the bank, the request of the complainant for completion of the internal works could not be made by the respondent and it was kept pending by them. 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 affidavits with documents.

6. 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 apartment as per the date and terms of the agreements?

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 notes of arguments submitting that the deceased first complainant entered into agreements of sale and construction with the respondent in the name of the company run by him, namely M/s. Kemia Industries Ltd., for the purchase of a penthouse in the project of the respondent namely "*The Metrozone*" for a total consideration of

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Rs.6,15,91,249/- only and the respondent undertook to deliver the constructed apartment to the Company by November 2012, but the respondent failed to deliver the property and on 24.03.2017, the company transferred the purchase of the apartment in the name of the deceased complainant due to financial difficulties and also executed transfer agreement dated 24.03.2017 and thereby the first and second complainants became allottees and paid the consideration and also entered into agreements for sale and construction on 24.03.2017 with the respondent and the respondent undertook to deliver the apartment by June 2017 and also executed registered sale deed for the UDS in their names and the complainants have made payment of Rs.4,87,34,030/- till 02.01.2014 and subsequently, Rs.1,28,00,000/- on 31.05.2017 and the respondent failed to deliver the apartment as on date and the complainants are entitled for compensation and litigation expenses.

(b). The learned counsel for the respondent also filed a written notes of arguments and contended that it is true that the complainants and respondent entered into agreements for sale and construction dated 30.12.2011 with respect to residential unit in the project of the respondent with indicative date of handing over as November 2012 and subsequently with additional time to deliver the property on June 2017 and the respondent could not complete the project within the time stipulated under the agreements due to natural calamity, 2015 floods, Vardah storm in 2016, short supply of construction materials, etc. and there was also severe shortage of sand and the complainants had pledged the property for the loan availed from the Axis Bank and the bank has also issued a notice under the SARFAESI Act to the complainants and the bank approached the respondent for possession of the unit for non-payment of the loan and the unit was seized and sealed by the bank on 11.03.2022 and the complainants failed to make milestone payments as per the payment schedule under the agreements and made the payments only with delay and the request of the complainants for completion of the internal customization work was pending by the respondent due to seizure of the property by the bank and the unit was ready and handed over to the complainants and therefore the complaint is liable to be dismissed with exemplary cost.

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(c). It is not in dispute that in pursuance of the agreements for sale and construction dated 30.12.2011 entered with M/s. Kemia Industries Ltd., represented by the deceased first complainant as the Managing Director, the respondent started receiving consideration and subsequently entered into agreements for sale and construction with the first and second complainants on 24.03.2017 and also received payments towards consideration for delivery of the constructed apartment to the complainants and the indicative date of handing over of the apartment was November 2012 as per the terms of the construction agreement dated 30.12.2011 and June 2017 as per the construction agreement dated 24.03.2017 entered with the first and second complainants and they could not complete the construction within the time undertaken by them to make delivery of the apartment as per the terms of the agreements.

(d). Even though, the respondent claims various reasons for the delay in delivery of the apartment, the respondent failed to provide specific period for which the work was stalled due to the reasons put forth by them. Further, the respondent also alleged that the possession of the apartment was taken over by the bank and the unit was sealed and seized by the Axis Bank on 11.03.2022. Though the proof affidavit of the respondent by RW1 was filed, no documents were filed by the respondent to prove their contention that the possession of the apartment has been taken over by the bank and the unit was sealed and seized by the bank on 11.03.2022. In their proof affidavit, the respondent admitted that the internal customization work was pending to be completed by them.

(e). Considering all the above facts and circumstances, it is held that the complainants are entitled for compensation for the delay in delivery of the unit. 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 of construction and delivery of the unit and other reliefs. The complainants claimed compensation at the rate of Rs.50/- per sq.ft. per month for the total extent of the property at Rs.3,04,13,600/- for non-delivery of the property as per the terms of the construction agreements.

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(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 payments till 11.03.2022, the date of seizure of the property by the bank.

(c). Apart from the above, towards compensation for mental agony and inconvenience caused to the complainants, a sum of Rs.5,00,000/- 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/- 17.05.2023

G. SARAVANAN
ADJUDICATING OFFICER

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C.C.P.No.34/2022**LIST OF WITNESSES**

CW-1 --- Shymosree

RW1 --- Premnath M.

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	17.12.2011	Price Chart and Payment Schedule
Ex.A2(Series)	30.12.2011	Construction Agreements
Ex.A3(Series)	30.12.2011	Agreements for Sale
Ex.A4	24.03.2017	Transfer Agreement
Ex.A5	31.05.2017	Sale Deed
Ex.A6	31.05.2017	Advice Letter from HDFC Bank
Ex.A7	02.01.2019	Axis Bank Loan Agreement
Ex.A8	20.04.2021	Repayment Schedule from Axis Bank
Ex.A9	18.06.2021	Death Certificate of first Complainant
Ex.A10	10.07.2021	L.R. Certificate of first Complainant
Ex.A11	--	Pictures of Unfinished Penthouse
Ex.A12	13.09.2015	Aadhar Card of Shymosree
Ex.A13	29.01.2021	Full & Final Settlement Receipt by Respondent

LIST OF DOCUMENTS FILED BY THE RESPONDENT

- Nil -

Sd/- 17.05.2023

G.SARAVANAN
ADJUDICATING OFFICER
TNRERA, CHENNAI

