

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

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
CCP No. 173 of 2020**

S. Deepak Bharadwaj

..... Complainant

Vs.

M/s. Ozone Projects Pvt Ltd.,
Rep by its Director,
Mr. Vasudevan Sathyamoorthy

.... Respondent

Complainant : Rep by M/s. P.J. Rishikesh, Advocates.

Respondent : Rep by M/s. BFS Legal, Advocates.

Heard on : 01.03.2022

Delivered on : 11.05.2022

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent towards purchase of an apartment with interest, and costs is filed under section 31 of the *Real Estate (Regulation and Development) Act, 2016* (hereinafter referred to as RERA Act).

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

(a) The complainant entered into a sale and construction agreement for purchase of an apartment in the project of the respondent, namely, "Pinnacle", bearing Unit No. AG-1422. Both the Sale and the Construction agreements were entered on 30.09.2016. The complainant has paid a sum of Rs.3,74,852/- as a part of the sale agreement of the total sale amount of Rs.20,04,000/-. The sale agreement contemplates the payment of Rs.15,28,947/- within 30 days of booking and the balance amount of Rs.1,00,200/- at the time of registration of sale deed towards UDS which was scheduled to be executed between December 2018 to March 2019.

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(b) Similarly, the construction agreement stipulates the cost of construction to be Rs.57,12,094/- and the schedule of payment was Rs.10,95,020/- within 30 days of booking and the balance payment were payable stage wise on completion of basement, 2nd Floor etc.,

(c) The complainant has paid a sum of Rs.26,23,967/-. The total payment is Rs.30,02,595/-. As per the construction agreement, the possession of the building has to be handed over in March, 2019. Despite this commitment the complainant states that the construction activity has not even commenced till date and the schedule date of handing over in March, 2019 has lapsed long ago. For this reason, the complainant seeks refund of total amount.

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

(a) The respondent denies all the allegations and averments made by the complainant except those that are specifically admitted him. The respondent claims himself to be a leading property and infrastructure development company. The respondent submits that they are developing an integrated township, "The Metrozone", of 30 residential towers and retail mall which was to be constructed in a phased manner. The constructed area of basement is around 15 Lakhs sq.ft and thus all the other apartments in different phase are interlinked. The apartment booked by the complainant falls in phase V of the development and states that due to delay in implementation the phase V got affected as it is linked to the overall project and admits that the commitment as per the agreement could not be met and blamed it on natural calamities, short supply of construction materials, shortage of skilled laborers, etc.,

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(b) He also admits that the complainant has paid a sum of Rs.30,02,595/- as advance sale consideration towards the said unit and admits that since there has been a delay he is liable to refund the amount.

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

5. In evidence to prove her claim, the complainant filed proof affidavit with documents. No evidence and no documents filed by the respondent.

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

- i. Whether the complainant is entitled for refund of the amount paid to the respondent with interest on the ground of failure on the part of the respondent to complete the construction and handover possession as per the terms and conditions of the agreement?
- ii. Whether the complainant is entitled for the reliefs as prayed for?

7. Answer for Point No (i):-

The complainant has entered into a sale and construction agreement on 30.09.2016 (Ex.A3 and Ex.A4). The date of delivery is March, 2019. The complainant has paid a sum of Rs.30,02,595.78/- as evidenced (Ex.A12). The stipulated date of handing over was mentioned as December 2018 to March 2019. By his own admission, the respondent has conceded that there is a delay in handing over of the apartment much beyond the agreed date. 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 refund of amount paid to the respondent of Rs.30,02,596/-.

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(b) As per Rule 18 of the TNRERA Rules, the rate of interest payable shall be the current highest marginal cost of lending rate of interest of State Bank of India (SBI) plus 2% per annum. Hence, the complainant is entitled for the interest at the rate of 7.30% per annum which was the marginal cost of lending rate of interest of SBI at the time of filing the complaint plus 2% per annum, i.e., 9.30% p.a for the entire amount paid and refunded from the date of respective payment till repayment by the respondent.

c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainant is entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

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

- (i) The respondent shall pay the amounts at the interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 8 of this order within 30 days of issue of this order.
- (ii) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.
- (iii) The charge of the aforesaid amount as encumbrance shall be on the flat booked by the complainant till repayment of the claim as per this order. The office of this Forum is directed to intimate the encumbrance created by charge in the order to the Sub-Registrar concerned.
- (iv) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondent.

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Sd/- 11.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

CCP.No. 173/2020
LIST OF WITNESSES
 CW-1--- Deepak Bharadwaj

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	PAN card of the complainant
Ex.A2	---	Aadhar card of the complainant
Ex.A3	30.09.2016	Agreement for sale
Ex.A4	30.09.2016	Construction agreement
Ex.A5	30.09.2016	Tripartite agreement
Ex.A6	28.09.2016	Letter of comfort
Ex.A7	03.10.2016	Home loan agreement
Ex.A8	02.03.2020	Statement of account
Ex.A9	03.03.2019	Cancellation notice
Ex.A10	29.10.2019	Legal notice
Ex.A11	30.01.2017	Insurance policy for home loan
Ex.A12	---	Statement of account by respondent
Ex.A13	15.05.2018	Letter from HDFC Bank
Ex.A14	---	E-mail communications
Ex.A15	23.09.2020	CIBIL score and report of complainant

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 11.05.2022
 Mr. SUNIL KUMAR, I.P.S (Retd)
 SINGLE MEMBER BENCH
 TNRERA, CHENNAI