

**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. 176 of 2020**

(i) P. Venkatesh Pillai

(ii) V. Kanakavani Pillai

Both Rep. by their Power of Attorney,
Pichiah K. Pillai

..... **Complainants**

Vs.

1. M/s. Ozone Projects Pvt Ltd.,

Rep. by its Managing Director, Vasudevan

2. M/s. Housing Development Finance Corporation Ltd.,

Rep. by its Authorized Representative

..... **Respondents**

Complainants : Rep by M/s. R. Prabhakaran, Advocates.

1st Respondent : Rep by M/s. A.R. Vishwaram, Advocates.

2nd Respondent : Remained absent

Heard on : 13.09.2022

Delivered on : 30.01.2023

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondents towards purchase of the 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 complainants, in brief, as follows:

(a) The complainants were allotted an Apartment No. AF-1107 in the "**Metrozone Tower – AF**", of the Respondent's project situated at Koyambedu Village, Egmore – Nungambakkam Taluk, Chennai. The construction agreement was entered on 16.07.2015 for a sum of Rs. 1,09,31,365/- for construction and Rs. 39,96,000/- for the sale consideration for undivided share (UDS) of the land. The Respondent had agreed for delivery of the apartment in May, 2018. The complainants have

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paid a total sum of Rs.58,37,904/- till 26.11.2015. However the complainant avers that the Respondent did not start work on the project till date.

(b) The complainant submits that they have paid 40% of the total amount by the end of November, 2015. Even though the agreed date of handing over possession was by May 2018, the Respondent had not even commenced the work. The 1st Respondent has not executed the sale deed which ought to have been done by March 2018 itself.

(c) Aggrieved the complainant sought to cancel the booking in September, 2018 and also seeks refund of the entire amount. The complainant further avers that the Respondents have cheated other buyers in a similar way. The complainant seeks refund with interest, compensation and cost of legal.

3. No counter filed by the 1st respondent. The 2nd respondent remained absent all through the proceedings.

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

5. To prove their claims, the complainants 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) Is the complainants are entitled to claim refund due to delay in delivery?

(ii) What are the reliefs made out?

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7. Answer for Point No (i):-

(a) The complainants were allotted an Apartment No. AF-1107 in the "**Metrozone Tower – AF**". The construction agreement was entered on 16.07.2015 (Ex.A2 and Ex.A3) for a total consideration of Rs.1,49,27,365/-. The complainants have paid a total sum of Rs.58,37,904/-. The agreed date of handing over of the apartment as per the Clause 7 (a) of the construction agreement was May 2018. The complainants submit that still the construction work is not commenced and the sale deed also has not yet been registered despite having paid Rs.58,37,904/- to the respondents.

(b) The complainants feel aggrieved and have moved for the cancellation of the booking in September 2018 and for seeking refund of the entire amount paid by them with interest. It is therefore clear that there is delay in delivery made out where the respondents have failed to handover the apartment by the committed date of May 2018. This entitles the complainants for refund of amount under Section 18 (1) (b) of the RERA Act and thus the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.58,37,904/- from the respondents.

(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 complainants are 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 from the date of respective payment till repayment by the respondents.

(c) Considering the facts and circumstances of the case, a sum of Rs.25,000/- towards litigation expenses is fixed. The complainants are

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entitled for the reliefs as detailed above. Thus, the point is answered accordingly.

In the result, the respondents are directed as follows:-

- (i) The respondents shall pay jointly / severally the amount 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 complainants are at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainants.
- (iii) The charge of the aforesaid amount as encumbrance, if any, 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 complainants shall execute the cancellation of the construction agreement and sale deed, as the case may be, at the expense of the respondents.

Sd/- 30.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

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LIST OF WITNESSES
CW-1 --- Pichiah K. Pillai

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

Ex.Nos	Date	Documents Name
Ex.A1	2015	Price chart and payment schedule
Ex.A2	16.07.2015	Construction agreement
Ex.A3	16.07.2015	Sale agreement
Ex.A4	31.09.2015	Tripartite agreement
Ex.A5	---	Payment receipts
Ex.A6	26.11.2015	Disbursement details
Ex.A7	---	E-mail communications
Ex.A8	22.01.2020	Power of attorney in favour of Pichiah K. Pillai

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL

Sd/- 30.01.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

