

**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. 122 of 2021

Aley Cherian Complainant

Vs.

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

Complainant : Rep. by Mr. K. Gaurav Kumar & Mr. Alpha Jain, PCS

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

Heard on : 05.05.2022

Delivered on : 30.05.2022

ORDER

The above complaint filed 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 had purchased a 3BHK apartment in the AB Tower, Residential Complex, "Metrozone", for which the construction agreement was executed on 30.11.2011. The sale deed was executed on the same date for a total consideration of Rs.22,56,000/-. The proposed date for handing over of the apartment as per the construction agreement was June 2014 with a grace period of 3 months. The total cost of the apartment was Rs.1,92,57,729/- of which the complainant has paid a sum of Rs.1,70,10,924/- as per the payment schedule.

(b) The remaining amount was to be paid at the time of handing over of the possession. In the event of delay the developer had agreed to pay a

TRUE COPY

30/5/22

sum of Rs.15/- per sq.ft per month till resolution unit was handed over. The construction agreement also stipulates that if the delay exceeds more than 6 months the developer shall pay the interest at the rate of 10% per annum for further periods of such delays. Though, it was signed it was not registered as the construction agreement stipulates the execution of the sale deed only on the completion of the 80% of the construction since, the completion has not happen the sale deed remains to be registered.

(c) The complainant further sought refund of the principle amount with interest besides seeking compensation.

3. The respondent was given opportunity to file counter on 22.07.2021, 30.09.2021, 19.11.2021 and since no counter was filed. The proof affidavit of the complainant was allowed to be filed. On 10.02.2022 the respondent did not file the proof affidavit and wanted to proceed with arguments. On 13.04.2022 Mr. A.R. Vishwaram undertake to file change of vakalat and no written arguments submitted on 13.04.2022. On 29.04.2022 the change of vakalat was finally filed and the case is argued orally. However, on the request of the respondent one more opportunity was given on 05.05.2022 for filing written arguments on which date it was finally filed. The respondent moved S.R. No. 195 of 2022 for filing counter which was not allowed as the stage was closed for it after giving adequate opportunity.

4. In evidence to prove her claim, the complainant filed proof affidavit with documents.

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

(i) Whether the complainant is entitled for refund of amount paid to the respondent?

(ii) What are the reliefs made out?

TRUE COPY

30/5/22

6. **Answer for Point No (i):-**

(a) The complainant had purchased an apartment in the AB Tower, Residential Complex, "Metrozone", constructed by M/s. Ozone Projects Pvt Ltd. The construction agreement was signed on 30.11.2011 (Ex.A1). The agreement for sale was also signed on the same date (Ex.A6). However, as stipulated in the construction agreement since the project did not reach 80% of the construction stage the sale deed was not registered.

(b) The construction agreement stipulates the construction to be completed by June 2014 with a grace period of 3 months (Ex.A1) in Para 7(a). The respondent vide their written arguments agreed to the payment of Rs.1,70,10,924/- paid by the complainant. However, the respondent pleads time to refund the said amount after reconciliation of amount in their office by the respondent. Thus, as claimed by the complainant and also admitted by the respondent, the complainant is entitled for refund of the amount paid to the respondent.

(c) The respondent by his own admission in the written arguments submitted by him avers that as mutually agreed the complainants is entitled to seek refund and management is ready to pay the same. However, due to tally process on the management side just seeks time to tally and pay the complainant. Thus, the point is answered accordingly.

7. **Answer for Point No (ii):**

(a) Having thus arrived at the conclusion where the respondent has to refund the amount paid by the complainant to the tune of Rs.1,70,10,924/-.

(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

TRUE COPY

TRUE COPY

30/5/22

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 interest rate and cost as per the findings in answer for Point No. (ii) in Para No. 7 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.

Sd/- 30.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

LIST OF WITNESS

CW-1 --- Aley Cherian

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	30.11.2011	Construction agreement
Ex.A2	24.11.2011	Payment schedule

TRUE COPY

30/5/22

Ex.A3	---	Working of payments by complainant
Ex.A4	---	List of payment by complainant
Ex.A5	28.12.2020	Customer statement with e-mail
Ex.A6	30.11.2011	Agreement for sale
Ex.A7	01.04.2013 to 31.03.2014	Bank statement of complainant

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 30.05.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

