

**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. 133 of 2021

Sandhya Vedullapalli

..... Complainant

Vs.

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

..... Respondent

Complainant : Party-In-Person

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

Heard on : 04.03.2022

Delivered on : 19.04.2022

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 was allotted a single bed room apartment of Unit No. AG 1428, in the project, namely, "The Metrozone", at Anna Nagar, Chennai. The agreement for sale and construction agreement were executed on 29.12.2015. The sale consideration was Rs.54,42,809/- and Rs.2,18,310/-. The respondent had promised to handover the apartment by the month of May 2018 as per the agreement. The complainant states that no construction work has been started on the said building despite various reminders on phone and e-mail by the complainant.

(b) The complainant thereafter cancelled the unit on 04.03.2019. The complainant seeks refund of Rs.29,79,490/- amount paid by her so far. The amount has been paid as follows:-

- Booking amount of Rs.5,00,000/- dated 30.11.2015.

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- A first installment amount of Rs.2,44,681/- dated 22.12.2015.
- Rs.22,34,809/- loan disbursement by HDFC Ltd., dated 30.01.2016.
- The complainant has also paid a processing fees of Rs.26,100/-
- Loan due of Rs.97,114/- on 31.10.2020

The complainant seeks refund of the amount paid along with interest.

3. No counter filed by the respondent and he also did not wish to file written arguments or oral arguments.

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 there was delay in handing over the project?

(ii) What are the reliefs made out?

6. Answer for Point No (i):

The construction agreement at Ex.A2 indicates the allotment of Unit No. AG 1428 in the project, "The Metrozone", dated 24.12.2015. The agreement exhibited the delivery of the unit in May 2018. The complainant has made a total payment of Rs. 29,79,490/-. It is clear from the claims of the complainant as also that no contrary averments were made by the respondent that the respondent had failed to deliver the apartment on the agreed date in the construction agreement. Thus, the point is answered accordingly as the delay in handing over is made out.

7. Answer for Point No. (ii)

(a) Since the complainant has moved for cancellation and sought refund of the amount paid by her vide dated 04.03.2019 (Ex.A7), as the respondent failed to deliver the apartment on the date committed.

(b) Therefore, the complainant is entitled for refund amount of Rs.29,79,490/-.

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(c) 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.

(d) 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. 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/- 19.04.2022

Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH

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LIST OF WITNESSES
CW-1--- Sandhya Vedullapalli

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	24.12.2015	Agreement for sale
Ex.A2	24.12.2015	Construction agreement
Ex.A3	29.12.2015	Deed of guarantee
Ex.A4	30.11.2015	Payment receipt for Rs.5,00,000/-
Ex.A5	---	Payment receipts for Rs.2,44,681/- & Rs.18,27,392/-
Ex.A6	30.01.2016	HDFC loan disbursement advice
Ex.A7	04.03.2019	Cancellation request by complainant
Ex.A8	---	E-mail from respondent regarding acknowledgment of cancellation request
Ex.A9	28.08.2019	E-mail from respondent regarding refund
Ex.A10	20.09.2019	Legal notice by complainant

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

Sd/- 19.04.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI

