

**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. 135 of 2021**

Vijayan Chandran Complainant

Vs.

M/s. Ozone projects pvt Ltd.,
Rep by its Managing Director Respondent

Complainant : Rep by Mr. Ajay Kumar Gupta, Advocate.

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

Heard on : 01.04.2022

Delivered on : 11.04.2022

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 residential unit/Flat AF1101 in the project, namely, "The Metrozone", at Chennai. The sale agreement and the construction agreement were entered on 31.12.2015 for a total amount of Rs.1,74,99,924.00/- and Rs.3,84,340.00/- to be paid at the time of possession or registration of the UDS. The delivery of the flat was in May, 2018.

(b) The complainant contends that there has been no delivery of the apartment by the respondent much after the due date of delivery promised despite having received Rs.89,43,644.00/- from the complainant. The complainant prays for the refund of Rs.89,43,644.00/- paid by him with interest thereon.

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3. No counter or proof affidavit filed by the respondent and the submission made by him were done only at the time of oral arguments. The respondent concedes that the project has not been started and that he seeks time to refund the money to the complainant.

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

5. In evidence to prove his claim, the complainant filed proof affidavit with documents. 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 there is delay in promised date of delivery?
- ii. If so the reliefs there for?

7. Answer for Point No (i):-

(a) It is clear from the agreement for sale entered on 31.12.2015 that the complainant was allotted an apartment in the project (Ex.A2 & Ex.A3). The complainant has paid a sum of Rs.65,52,852.00/- on 27.01.2016, Rs.18,90,792.00/- on 10.01.2016 and Rs.5,00,000/- on 30.12.2015 totaling to a sum of Rs.89,43,644.00/-. The respondent in his oral arguments conceded that the said apartment had not started at all. Hence, there is a delay in promised date of delivery. Thus, the point is answered accordingly.

8. 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.89,43,644.00/-.

(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

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

CCP.No. 135/2021
LIST OF WITNESSES
CW-1--- Vijayan Chandran

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Application for allotment
Ex.A2	31.12.2015	Agreement for sale
Ex.A3	31.12.2015	Construction agreement
Ex.A4	31.12.2015	Tripartite agreement
Ex.A5	---	Payment proofs cheque and receipts

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 11.04.2022
Mr. SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER BENCH
TNRERA, CHENNAI