

**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. 55 of 2021**

(i) Madhavan. K
(ii) Poornima. M

..... **Complainants**

Vs.

M/s. Ozone Projects Pvt Ltd.,
Rep. by its Managing Director,
S. Vasudevan

..... **Respondent**

Complainants : Party – In - Person

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

Heard on : 14.02.2023

Delivered on : 14.02.2023

ORDER

The above complaint by the complainants seeking refund of amount paid to the respondent towards purchase of a flat 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 have booked and were allotted a Flat No. AG 729, 7th Floor, Tower AG in the respondent's project, namely, "**The Metrozone**", situated at Pillayar Koil Street, Chennai. The sale and the construction agreement were signed on 21.09.2015 indicating the agreed consideration of the flat to be Rs.75,87,567/- (cost of construction of Rs.46,34,515/-, Rs.20,04,000/- for UDS, other cost of Rs.9,49,052/-):

(b) The complainants have paid a sum of Rs.30,58,457/- till date with the promise that the completed unit would be made available in May 2018. The complainants aver that till date no construction work has been started. Aggrieved, the complainants submitted the cancellation request through e-

TRUE COPY
14/2/23

mail dated May 2020 has not been favored with the refund so far. The complainants pray for refund of amount paid by them with interest, compensation and litigation costs.

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

(a) The respondent avers that it is true that he developed the project in which the complainants had a flat. In the construction of the project, he had planned to combine the basement for all the 26 residential towers. The respondent further avers that the validity of the plan was 3 years from April 2009 and it was not practically possible for him to complete the construction in the said period. Due to administrative delays, the respondent was able to get the revised plan approval only by August 2013 by which time he had developed first set of towers and obtained the completion certificate for Phase – I towers during May 2014.

(b) Since, the entire development construction had a common basement where the respondent could take up the construction in a phased manner only. The respondent avers that he had put all possible efforts to expedite the progress of construction, however, due to natural calamities such as November / December 2015 floods, vardha storm in 2016, short supply of construction materials etc which all resulted in delay in completion of the project. Shortage of sand also contributed to the delay as also the demonetization, GST were also responsible for the delay.

(c) The respondent also avers that the customer also delayed in making payment missing the milestone on the cash flow and which adversely affected the project. The respondent finally submits that the complainants residential unit is completed and he is handing over Phase I to III comprising of 19 residential towers with 1228 units. The respondent submits that the claim of interest from the date of deposit of each payment till the date of hand over of the project should not be resorted to as mutually agreed

TRUE COPY
14/2/23

terms and conditions were binding on the two parties which existed in the form of agreements. Conceding to the prayer of the complainants to refund the sale consideration of Rs.30,58,457/- the respondent claims a time of 8 months to complete the repayments.

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

5. To prove the claims, the complainants have filed the respective evidence on affidavit with documents.

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

(i) Is the complainant entitled to relief due to delay in delivery?

(ii) What are the reliefs made out?

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

(a) The complainants entered into a sale agreement on 21.09.2015 (Ex.A1). The construction agreement was also entered on the same day (Ex.A2). The construction agreement stipulates the cost of construction as Rs,55,83,567/- (Page 30 of the complainant's typed set) Clause 7 (a) the completion was scheduled in May 2018 with a grace period of 6 months shifting the final delivery to November 2018. The payment receipt from the respondent (Ex.A8) confirms the payment of Rs.30,58,457/- by the complainants as per the account of the respondent.

(b) The respondent has tried to argue and put forth several contention relating to plan approval as also the revised plan approval and finally submits that he had received the revised plan approval only by August 2013. However, the agreement between the two parties in this CCP was made only on 21.09.2015 much after the revised plan had already been approved and obtained by the respondent. The respondent has tried to take the shelter of force majeure condition due to natural calamities such

TRUE COPY

14/2/23

as November / December 2015 floods, vardha storm in 2016, short supply of construction materials, demonetization, GST etc., however none of these would qualify to fall in the definition of force majeure. Hence, the respondent cannot be given any relief whatsoever on these counts.

(c) With regard to the payment, the respondent agrees to a payment of Rs.30,58,457/-. The respondent submits that the milestone payment were not made by the allottees. However, the respondent has not submitted any evidence to substantiate this claim. It would thus be clear that there was no situation that existed which would qualify to be a force majeure condition or a condition warranting relief to the respondent for not having kept up his commitment to handover the flat on time.

(d) As it is clear from the above, the delivery date promised is November 2018 (including the grace period of 6 months) and the unit has still not been delivered to the complainants who seeks refund vide his request at Ex.A10. The complainants are therefore within their rights to seek refund under Section 18 of the RERA Act which is allowed and thus the point is answered accordingly.

8. Answer for Point No (ii):-

(a) Therefore, the complainants are entitled for refund amount of Rs.30,58,457/- from the respondent.

(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 respondent.

TRUE COPY
1/1/20

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

Sd/- 14.02.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER

TRUE COPY
14/2/23

LIST OF WITNESSES

CW-1 --- Madhavan. K

LIST OF DOCUMENTS FILED BY THE COMPLAINANTS

| Ex.Nos | Date | Documents Name |
|--------|-------------------|--------------------------------------|
| Ex.A1 | 21.09.2015 | Agreement for sale |
| Ex.A2 | 21.09.2015 | Construction agreement |
| Ex.A3 | September 2015 | Tripartite agreement |
| Ex.A4 | --- | Payment schedule |
| Ex.A5 | 18.08.2015 | Receipt |
| Ex.A6 | 30.09.2015 | Receipt |
| Ex.A7 | 29.08.2015 | Payment receipt |
| Ex.A8 | --- | Statement of account from respondent |
| Ex.A9 | --- | Bank account statement |
| Ex.A10 | --- | Cancellation request form |
| Ex.A11 | --- | E-mails |

LIST OF DOCUMENTS FILED BY THE RESPONDENT**NIL**

Sd/- 14.02.2023
 SUNIL KUMAR, I.P.S (Retd)
 SINGLE MEMBER
 TNRERA, CHENNAI

