

**BEFORE THE  
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,  
CHENNAI**

**Quorum : Mr. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member  
RCP No. 12 of 2022**

C.R.Umapathy

...Applicant

Vs.

M/s Ozone Projects Private Limited

...Respondent

Complainant : Rep by M/s. R. Sugumaran, Advocates

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

Heard on : 30/03/2023

Delivered on : 28/04/2023

**ORDER**

The above complaint by the complainant seeking refund of amount paid to the respondents towards purchase of a plot 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 avers that he booked a 4BHK apartment in the respondent project by name "THE METROZONE" and was allotted apartment bearing no.E003. The construction agreement was entered on 27/01/2020. The complainant has made payment as follows:

Date	Cheque no.	Bank	Amount
12/03/2020	452279	ICICI	2600000
20/01/2020	000276	ICICI	100000
		TOTAL	2700000

A.S.  
28/4/23

**TRUE COPY**

The complainant avers that the UDS was not conveyed to him even after payment of the consideration. The complainant further avers that after sometime he noticed that there was no progress as per the agreed schedule in the construction agreement and work was stopped without assigning any reason. The complainant avers that the respondent continued to collect the payment despite any progress in the construction. The complainant further avers that with the outbreak of the pandemic COVID-19, he was advised not to venture out due to his old age and hence further payments could not be made by him.

(b) The complainant, thereafter, suddenly received a correspondence from the respondent informing him about the cancellation of his allotted for flat no. E003. The complainant seeks refund of the Rs.27,00,000/- paid by him with interest, besides seeking damages.

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

(a) The Learned counsel for the respondent denies all the allegations and averments made by the complainant. The respondent concurs with the complainant regarding the allotment of apartment no. E003 and entering into a construction and sale agreement both on 27/01/2020. The respondent also accepts to have received a sum of Rs.27,00,000/- as the consideration. The respondent however, submits that the complainant failed to meet the milestone payments as per the agreed schedule along with other customers leaving a huge impact on the cash flows of the respondent and thereby adversely affecting the implementation of the project.

(b) The respondent further avers that the entire project had a common basement and thus construction could happen only in a phased manner. The respondent submits that he had handed over several units, after completing



them, to other buyers. The respondent further avers that the complainant is entitled to the relief and refund only if he had made milestone payment as per the mutually agreed payment schedule. Since, the complainant had not adhered to the payment schedule, he could not be entitled for the compensation as claimed by him as per section 19(6) of the RERA Act under Rule 19(2) of the Tamil Nadu Real Estate (Regulation and Development) Rules, 2017. The respondent was, however, willing to refund the sale consideration amount and prays for being given a time of 8 months to do so, as he was arranging funds from various financial institutions. The respondent once again reiterates and prays for being allowed a period of 8 months to refund the consideration amount that he had received from the complainant.

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

5. To prove their claim, both the parties have filed their 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 refund of the claim made by him with interest?

(ii) What are the reliefs made out?

**7. Answer for the Point No. (i)**

(a) The complainant had entered into a construction agreement with the respondent on 27/01/2020 (EX-A1) and sale agreement on the same date (EX-A2). The complainant has made a payment of Rs.27,00,000/- in two installments on 21/01/2020 and 12/03/2020 (EX-A5 Series). The construction agreement elaborates the allotment of apartment, and the consideration agreed amounting to Rs.2,04,45,980/-. The agreed date of delivery was scheduled within 3 months from the date of the agreement with a grace period

of 6 months putting the delivery date to 27/04/2020 and finally 24/10/2020 with a grace period of 6 months. There is no dispute, between the two parties till this point. It now needs to be determined whether the respondent had laid down the agreed milestone for the payments to be paid by the complainant and whether such payment was actually made accordingly.

(b) The respondent has held that the complainant failed to make the payment according to the agreed schedule. However, the respondent has not submitted any evidence to show that he had reached the required stages mentioned in schedule B of the construction agreement. The respondent has however submitted that he was developing the project which was very big in size where all the towers were connected at the basement. The respondent has also submitted that there was delay in completing the construction which had been scheduled to be completed by October, 2020. He has also pleaded to refund the money to the complainant as received from him and sought a time of 8 months to arrange finance and complete the refund.

(c) It will be clear therefore that the respondent has not completed the project in time. The respondent has also not been able to produce any evidence of demand of money as installment payment from the complainant and has cancelled the allotment without any chance or notice to the complainant. In such a situation, the complainant is justified in seeking refund which has also not been disputed by the respondent. Hence, the complainant is entitled to refund of the money paid by him with interest and thus the point is answered accordingly.

#### **7. Answer for the Point No.(ii):-**

(a) Therefore, the complainant is entitled for refund amount of Rs.27,00,000/- 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 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 from the date of respective payment till repayment by the respondents. Thus, the point is answered accordingly.

**8. In the result, the respondents are directed as follows:-**

- (i) The respondent shall pay the entire amount 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 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.
- (iii) On repayment of the claim as per the order, the complainant shall execute the cancellation of the construction agreement and sale agreement, as the case may be, at the expense of the respondents.

Sd/- 28/04/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

**LIST OF WITNESSES**

CW-1 --- Mr. C.R.Umapathy

RW-1 --- Mr. Premnath

**LIST OF DOCUMENTS FILED BY THE COMPLAINANTS**

Ex.Nos	Date	Documents Name
Ex.A1	----	Construction Agreement
Ex.A2	----	Sale Agreement
Ex.A3	18/05/2020	Letter of Termination
Ex.A4	----	Reply
Ex.A5	20/01/2020	(Series) Receipt
Ex.A6	----	Nomination Agreement

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

Sd/- 28/04/2023  
SUNIL KUMAR, I.P.S (Retd)  
SINGLE MEMBER  
TNRERA, CHENNAI

