

**BEFORE THE
TAMIL NADU REAL ESTATE REGULATORY AUTHORITY,
CHENNAI**
Quorum : Thiru. Sunil Kumar, I.P.S (Retd), M.A, LLB, Hon'ble Single Member
RCP No. 26 of 2022

Nithi Selvaraj Anand

..... Complainant

Vs

M/s. Ozone Projects Private Limited,
Represented by its Managing Director,
S. Vasudevan

..... Respondent

Complainant : M/s S. Ranjith Kumar, Advocates

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

Heard on : 03.03.2023

Delivered on : 07.03.2023

ORDER

The above complaint by the complainant seeking refund with interest from the respondent towards purchase of the apartments 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 booked two flats in the respondent's project was allotted Unit No.AG-509 and AG-510. Two sale agreements were entered for these two units on 13.07.2016, both for a sale consideration of Rs. 20,04,000/- each for the undivided share. Likewise, two construction

agreements were also entered on 13.07.2016 at a cost of Rs.72,32,762/- for unit no. AG-509 and Rs.68,47,762/- for unit no. AG-510.

(b) The complainant submits that he did not have a copy of the agreements, however the respondent had not denied of the facts stated in the complainant. The complainant has paid a sum of Rs. 6,37,810/- while Rs. 48,44,343/- have been released from the financing bank making the total amount paid to the respondent as Rs.55,36,153/-.

(c) The complainant submits that when he visited the site around March, 2019 the construction had not been started for the complainant's tower even after lapse of so much of time. Concerned with the delay, the complainant cancelled the booking vide his letter dated 12.08.2019.

(d) In contravention of the tripartite agreement between him, the respondent and HDFC bank the respondent had stopped paying interest, which he was committed to pay as per the agreement. The respondent had thereafter agreed to refund the amount paid by the complainant but has been postponing the same since March, 2020.

(e) In the failure of the respondent paying the EMI, which he has undertook to pay as Pre-EMI, the complainant has paid the same on notice from the financing bank. Aggrieved the complainant seeks refund of the amount paid by him with interest, compensation and legal expenses.

3. Counter averments of the respondent:

(a) The respondent agrees to the development of the referred project. However, he submits that it took him long to get the CMDA clearance leaving him little time to complete the project. The respondent also avers that the

project is big in size and is having a combined basement for all the 26 residential tower in the project of which the complainant tower is one of them. The respondent had approached the CMDA for renewal of the plan in October, 2011, which finally got approved only in August, 2013.

(b) The respondent further avers that he had put in his best efforts to complete the project but could not fructify due to natural calamity including the November/December, 2015 floods, Vardah storm in 2016, short supply of sand and other construction materials which all accommodate for the reason for delay.

(c) The respondent had also suffered several 3rd parties' frivolous claims making him spend time and money to protect the project. The delay further got enhanced due to demonetisation, chennai floods, water logging, pandemic and plan approval from the respective authority as also not making timely payments by the allottees, which also caused financial crunch on the respondent.

(d) The respondent further avers that claim of full refund with interest is not made out as per the Act in the existence of an agreement between two parties and seeks 8 months time to repay the sale consideration.

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

5. To prove their claims the complainant has filed their respective evidence on affidavit with documents.

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

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(i) Is the complainant entitled to refund of the money paid by him with interest due to delay in delivery?

(ii) What are the reliefs made out?

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

(a) The complainant was allotted two units No. AG 509 (Ex.A1) and AG 510 (Ex.A2). The complainant submits that he does not have a copy of the agreement signed by the rival party. However, the respondent has at no stage disputed the facts submitted by the complainant in his complaint. Accordingly, the sale agreement dates to 13.08.2016 separately for each of the two units allotted to the complainant. The consideration for the UDS was Rs.20,04,000/- for each undivided share.

(b) The sale agreement for the units also dates to 13.08.2016 for an amount of Rs.72,32,762/- for unit no. AG-509 and Rs.68,47,762/- for AG-510. The complainant has paid Rs.1,00,000/- (for Ex- A1) and Rs.1,00,000/- (for Ex-A2) and Rs.4,37,810/- (Ex-A3) for two units put together making the total to is Rs.6,37,810/-.

(c) The complainant had entered into a tripartite agreement along with the financing bank and the respondent (Ex-A8), of which too the complainant is able to put only the unsigned copy by both the other parties. The unsigned agreement which has not been disputed by the respondent projects the delivery of the completed unit to March, 2019 (page no.45 and 68 of the complainant typeset) with a grace period of 6 months as mentioned in the construction agreement making the final delivery to be in September, 2019 including the grace period. This has also not been disputed by the respondent at any stage.

(d) The respondent however has finally admitted to the delay in handing over and has cited several reasons for the same. The respondent had even admitted to the refund the sale consideration and sought a time of 8 months for the same. As a result, by own admittance, it clearly implies, that the units were not handed over to the complainant in time entitling him to refund with interest and thus the point is answered accordingly.

8. Answer for the Point No.(ii):-

(a) Therefore, the complainant is entitled for refund of an amount of Rs.6,37,810/- with interest and Rs.48,44,343/- to the financing bank with interest 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.

(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.

9. 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. 8 of this order within 2 months time of issue of this order.

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- (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, if any shall be on the flat booked by the complainant till the 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 respondents.

Sd-07.03.2023

SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER,
TNRERA, CHENNAI.

LIST OF WITNESSES

CW-1 --- Nithi Selvaraj Anand

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	13.07.2016	Booking Advance Receipt
Ex.A2	13.07.2016	Receipt
Ex.A3	27.07.2016	Receipt
Ex.A4	--	Agreement for sale
Ex.A5	--	Agreement for sale
Ex.A6	August, 2016	Construction Agreement
Ex.A7	August, 2016	Construction Agreement
Ex.A8	August, 2016	Tripartite Agreement

Ex.A9	04.12.2019	Pre-EMI Assurance letter
Ex.A10	12.08.2019	Cancellation Request Form
Ex.A11	17.08.2019	Legal Notice
Ex.A12	05.03.2020	E-mail
Ex.A13	14.06.2020	E-mail
Ex.A14	----	E-mail
Ex.A15	----	Power of Attorney
Ex.A16	09.01.2022	Statement of Account

LIST OF DOCUMENTS FILED BY THE RESPONDENTS

NIL



Sd-07.03.2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI