

**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. 33 of 2022**

Shradha Paresh

..... Complainant

Vs.

1. M/s. Ozone Projects Private Ltd.
Represented by its Managing Director,
2. Managing Director
M/s. Ozone Projects Private Ltd.

..... Respondents

Complainant : Rep. by Mr. Shujath, Advocate.

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

Heard on : 06/04/2023

Delivered on : 30/05/2023

ORDER

The above complaint by the complainant seeking refund of amount paid to the respondent 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 complainants, in brief, as follows:

(a) The complainant entered into the respondents project and was allotted flat no. AF1005 on the 10th Floor of AF Tower. The sale and the construction agreements were entered on 30/09/2015. The total consideration for the flat was agreed at Rs.1,74,53,058/-. The complainant has paid a sum of Rs.25,65,810/- in 3 installments whereas the sum of Rs.42,76,350/- has been transferred to the respondent on a loan taken by the complainant from the banker and thus a sum of Rs.68,42,160/- has been paid out of the total consideration of Rs.1,74,53,058/-. The agreed date of handing over the flat to the complainant was in May 2018. The complainant avers that the respondent

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has not even started construction work at the project site for his unit. The complainant had made a request for cancellation of the booking vide letter dated 27/05/2019 to the respondent who has failed to deliver in accordance with the agreement. The respondent has refunded a sum of Rs.6,00,000/- after about 2 years of cancellation. The respondent has been promising to return the money with interest in a couple of months, but the respondent has not even kept up his promise.

(b) The complainant further avers that as per the agreement, the 1st respondent was required to make pre EMI payments for 33 months from the date of the 1st disbursement. The complainant avers that neither the property has been delivered nor has the money been refunded. The respondent has even defaulted in making the pre EMI interest payments to the financier bank. The non-payment of pre EMI by the respondent has adversely affected the Civil rating for the complainant. Aggrieved, the complainant prays for refund of the money paid by her with interest and litigation expenses.

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

(a) The respondent denies all allegations made by the complainant. The respondent avers that they had submitted an application to the CMDA Civil Planning Permission during November, 2006. The respondent avers that after 2 ½ years only, he was able to get the planning permission in April, 2009. The respondent therefore submits that he had lost 2 years even before he could start the project which has led to surmounting debts on the loan taken by them for their investments in lands and for the approval. The respondent avers that the mandatory land gifted to the government, as per the laid guidelines itself values at 210 Crores besides an additional Rs.70 Crores paid as fees. The respondent avers that the project had been conceived consisting of 26 Residential Towers combined basement for all.

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The respondent avers that the validity of the plan approved was only 3 years from April, 2009 in which time the respondent was not able to complete the project and sought renewal of the plan during October, 2011 which was received finally by the respondent during August, 2013.

(b) The respondent avers that since the project had common basement. The construction work could take up only in a phased manner. The respondent kept obtaining part completion certificate and handed over in parts thereafter. The respondent avers that due to natural calamities such as November/December 2015 floods, Vardah storm in 2016, short supply of construction materials and shortage of sand supply, the respondent could not complete the project within the mutually agreed time frame. The respondent also avers that he had suffered several 3rd party claims which consumed considerable time and money effecting the completion of the project. Due to this constrains the respondent dropped the project AG-AF tower construction. The respondent blames the buyers for non-payment of timely payment leaving a cascading effect on the cash flow and the implementation of the project timely. The respondent submits that he would comply with the terms and conditions as captured in the respective agreements entered. The respondent avers that the same is also in compliance with the conditions laid down in the RERA and the Tamil Nadu Real Estate Regulatory Authority Rules. The respondent finally prays for a time of 8 months to refund the sale consideration amount.

4. An attempt to settle the matter amicably as filed.

5. To prove their claim, both the parties have filed their respective evidence on affidavit with documents.

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

- (i) Is the complainant entitled to refund of the consideration paid by him to the tune of Rs.68,42,160/- with interest due to delay in delivery of the completed flat?
- (ii) What is the relief made out?

7. Answer for Point No (i):

(a) The complainant entered into the respondents project and was allotted flat no.AF1005 in the Tower AF 10th floor (Annexure-1 of the construction agreement). The sale agreement was entered on 30/09/2015 (EX-A1). The construction agreement was also entered on 30/09/2015 (EX-A2). The total consideration for the flat was Rs.1,74,53,058/- which included Rs.47,16,000/- for the UDS. The complainant has paid a sum of Rs.68,42,160/- on 08/09/2015 (EX-A5) on 24/09/2015 (EX-A6) on 25/09/2015 (EX-A7) on 07/10/2015 (EX-A8) and the remaining from the loan amount (EX-A9). As per the Clause 7 as laid down in Annexure-3 of the construction agreement, the flat was to be handed over in May, 2018 with a grace period of 3 months projecting the final date of delivery to August, 2018. The respondent has admitted that the project was on-going project when the RERA Act came into force and thus the Tamil Nadu Real Estate Regulatory Authority Act, 2016 is applicable to the project promoting by the respondent.

(b) While the agreed date of delivery would fall on August 2018. It has been admitted by the respondent that the project got delayed. The respondent has cited several reasons including natural calamities, shortage of sand, labour, GST, Demonetization etc. besides delay in getting approval as reasons for delay. However, all the reasons cited neither fall in the

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category of Force Majeure nor could be cast on anybody other than the respondent himself. The respondent has even admitted and pleaded for a time of 8 months for affecting the refund. This amounts to acceptance of the prayer made by the complainant and also acceptance of providing the relief prayed for by the complainant.

(c) Therefore, by his own admittance there is a delay in delivery and the complainant is therefore entitled to the provisions of section 18 as follows:

Sec 18:-

(1) "If the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project

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is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act."

As laid down section 18(1) the option to continue under the project or otherwise falls in the complainant himself. In this case, the complainant has sought refund with interest as provided under section 18(1), the respondent has no option but to refund the money in compliance to section 18(1) however, the complainant has admitted to have received Rs.6,00,000/- from the respondent. Therefore, from the total amount admissible as refund to the complainant, the amount of Rs.6,00,000/- would be deducted and the remaining to be paid by the respondent to the complainant with interest and the first point is answered accordingly.

8. Answer for the point no. (ii):

(a) Therefore, the complainant is entitled for refund amount of Rs. 68,42,160/- from the respondent's with interest.

(b) The rate of interest payable shall be current highest marginal cost lending rate of interest of State Bank of India (SBI) +2% per annum. Hence the complainant is entitled for interest at the rate of 7.30% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 9.30% per annum for the entire amount paid from the date of respective payment till repayment by the respondent.

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(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, respondent are directed as follows:-

- (a) The respondent shall pay the entire amount at the interest rate and cost as per the findings in answer for point (ii) in para 8 of this order within 30 days and issue for this order.
- (b) 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 expenses of the respondent.
- (c) The complainant is at liberty to move the Adjudicating Officer for claiming the compensation portion of the complainant.

Sd/- 30/05/2023
SUNIL KUMAR, I.P.S (Retd.)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- Shradha Paresh
RW-1 --- Premnath

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	30/09/2015	Agreement for Sale
Ex.A2	30/09/2015	Construction Agreement
Ex.A3	22/09/2015	Tripartite Agreement
Ex.A4	22/09/2015	Deed of Guarantee
Ex.A5	08/09/2015	Receipt
Ex.A6	24/09/2015	Receipt
Ex.A7	25/09/2015	Receipt

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Ex.A8	07/10/2015	Receipt
Ex.A9	---	Receipt
Ex.A10	---	Mails

LIST OF DOCUMENTS FILED BY THE RESPONDENTS-NIL

Sd/- 30/05/2023
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

