

**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. 133 of 2023**

Dilip Kumar Sharma **Complainant**

Vs.

M/s. Ozone Projects Private Limited **Respondent**

Complainant : Rep by M/s. S. Shujath, Advocates

Respondent : Ex-parte

Heard on : 19/12/2023

Delivered on : 02/01/2024

ORDER

The above complaint by the complainant 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 complainant, in brief, as follows:

(a) The learned counsel for the complainant avers that the complainant had been allotted a 2 BHK Flat No. AF1608 in the AF Tower of the respondent's project located near Koyambedu, Chennai. The agreed consideration for the allotted unit was Rs.1,66,12,715/-. The complainant entered into agreement for sale and construction with the respondent on 17/07/2016. The complainant also moved a financial institution for loan, and a Tripartite and Deed of guarantee agreement was also executed on the same day between the complainant, respondent and loaner bank. The complainant has paid a sum of Rs.16,44,652/- on his own and Rs.48,40,000/- was disbursed from the loan amount sanctioned to him from the Loaner Bank. A sum of Rs.16,44,652/- was paid by the complainant in 2 installments as Rs.5,00,000/- on 17/07/2016 and

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Rs.11,44,652/- on 09/08/2016. The construction agreement dated 17/07/2016 had assured of delivery of the said flat by March 2019. However, the complainant avers that the construction work has still not started and the respondent has even refrained from replying to the complainant's repeated pleas for enquiry of the same. Subsequently, only after continued persuasion a sum of Rs.9,00,000/- + Rs.7,61,265/- + Rs.1,70,100/- = Rs.18,31,365/- has been refunded of which Rs.1,70,100/- has being returned as interest on the money personally raised and paid by the complainant from his own sources.

(b) The complainant avers that this would account for interest on the complainant's own contribution amounting to Rs.1,70,100/- as interest on the money paid by him. The complainant avers thereafter when the respondent failed to keep up his commitment of handing over his unit as agreed and to safeguard his credit rating he closed the loan disbursed by the loaner bank from his own money of which a sum of Rs.10,00,000/- had been paid by the respondent to the loaner bank. The complainant avers that he had borrowed a sum of Rs.48,40,000/- from the loaner bank, which was closed by him by repaying a sum of Rs.51,65,846/- thereby an excess of Rs.3,25,846/- was paid by him to the bank for the default committed by the respondent in payment of Pre-EMIs. The complainant avers that since his flat was not handed over to him by the agreed date in March 2019, he was forced to withdraw from the project. The complainant avers that the respondent had not refunded a sum of Rs.41,65,846/- being a part loan amount disbursed by the loaner bank to the respondent. Aggrieved, the complainant prays for refund of Rs.41,65,846/- with interest and litigation expenses.

3. In spite of service of notice, the respondent remained absent and hence he was treated as ex-parte.

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4. In evidence to prove his claim, the complainant filed proof affidavit with documents.

5. On the basis of the contentions of the complainant, the following points arise for determination.

(i) Is the complainant eligible to the refund sought by him with interest due to non – delivery of the flat booked by the complainant as per the agreement?

(ii) What are the reliefs made out?

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

(a) The complainant entered into the respondent's project and was allotted Flat No. AF1608 for which the Price chart and Payment schedule was shared by the respondent with him, projecting a total consideration to be Rs.1,66,12,715/- (EX-A1). The complainant entered into a sale agreement with the respondent on 17/07/2016 (EX-A2) for a consideration of Rs.39,96,000/- as the cost of UDS as enumerated in Clause 1 of the sale agreement. The construction agreement was also entered on 17/07/2016 between the complainant and the respondent wherein the agreed consideration was Rs.1,26,16,715/-(EX-A3) for the construction.

(b) The complainant entered into a Tripartite agreement with the respondent and the loaner bank wherein a loan amount of Rs.48,40,000/- was disbursed by the loaner bank. The deed of guarantee was also executed on 17/07/2016 (EX-A5). Both the Tripartite agreement (EX-A4) and Deed of guarantee (EX-A5) have been submitted wherein the relevant columns which would give details of the loan availed, rate of interest and such other relevant details have been left blank. The office of this authority would call for details for the same separately and put up on file for further follow up action of the same on the concerned financial institution. The construction agreement

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stipulated the delivery by March 2019 as enumerated in Annexure-3 of the construction agreement.

(c) The complainant avers that since he had not been handed over his unit by the stipulated date he had cancelled the booking and sought refund of the money paid by him which would be clear from the E-mail communications between the complainant and the respondent (EX-A12). The respondent had refunded Rs.18,31,365/- of which the complainant had received a sum of Rs.1,70,100/- as the interest on the amount paid by him from his own sources. The complainant has not sought any refund of the money paid by him from his own sources and hence the issue of any refund arising out of the same is not considered.

(d) The complainant further avers that he has closed the loan amount by paying a sum of Rs.51,65,846/- of which he had received Rs.10,00,000/- from the respondent leaving a balance of Rs.41,65,846/- to be paid to the complainant herein with. It is thus established that the complainant had not got possession of his unit as per the agreement and due to the delay in handing over he had cancelled the booking and sought refund and is thus entitled to refund of Rs.41,65,846/- with interest and thus the first point is answered accordingly.

7. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.41,65,846/- from the respondent 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 8.75% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per

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annum i.e 10.75% per annum for the entire amount paid 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 second point is answered accordingly.

In the result, the respondent is directed as follows:-

- (i) The respondent shall pay the 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 Sale agreement, Construction agreement, deed of guarantee and tripartite agreement at the expense of the respondent, if any.

Sd/- 02.01.2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI

LIST OF WITNESSES

CW-1 --- Dilip Kumar Sharma

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Price Chart and Payment Schedule
Ex.A2	17/07/2016	Agreement for Sale
Ex.A3	17/07/2016	Construction Agreement

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Ex.A4	17/07/2016	Tripartite Agreement
Ex.A5	17/07/2016	Deed of Guarantee
Ex.A6	09/08/2016	Receipt dated 09/08/2016
Ex.A7	03/10/2016	Home Equity Loan agreement
Ex.A8	04/10/2016	HDFC Bank Disbursement Advice
Ex.A9	---	Bank Statement Extract
Ex.A10	05/10/2016	Receipt of Bank advances
Ex.A11	01/10/2020	HDFC Bank Loan Closure Letter
Ex.A12	---	E-mails
Ex.A13	19/12/2022	Passport copy

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL



Sd/- 02.01.2024
SUNIL KUMAR, I.P.S (Retd)
SINGLE MEMBER
TNRERA, CHENNAI