

**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. 93 of 2023**

M. Ganesh Babu

... Complainant

Vs.

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

..... 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 the 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 he had booked a flat in Unit No. AG1822 on the 18th Floor of AG Tower in the respondent's project, namely, "The Metrozone", situated at Koyambedu, Chennai. The complainant entered into an agreement for sale and construction with the respondent on 20.10.2015. The tripartite agreement between the complainant, respondent and the loaning bank was entered in the month of October 2015.

(b) The complainant avers that he had paid an amount of Rs.7,57,083/- from his own side while a sum of Rs.23,33,729/- was disbursed to the

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respondent from the loan amount sanctioned to the complainant making the total payment received by the respondent to Rs.30,90,812/- out of the total agreed consideration of Rs.77,88,401/-. The respondent had agreed to deliver the flat by May 2018. The complainant avers that no construction had been started at the project site as yet.

(c) The complainant avers that as per the tripartite agreement, the respondent had agreed to pay interest to the lender bank on behalf of the complainant till May 2018 under the Subvention scheme till the delivery was made, which had been promised within 31 months from the date of signing the construction agreement (viz. 20.10.2015) by the respondent. The complainant avers that the respondent has neither delivered the unit nor has he paid the interest as per the subvention scheme which was duly agreed as per the construction agreement.

(d) The complainant avers that he has paid a sum of Rs.14,31,543/- over a period of 43 months as EMI to the lending bank (viz. Rs.6,26,414/- as accumulated interest amount). The complainant avers that despite making several efforts, the complainant has not been favoured with any reply from the respondent and thus the complainant prays to withdraw from the project and seeks refund with interest of the amount of Rs.7,57,083/- paid by him directly along with the accumulated interest of Rs.7,57,083/- and Rs.23,33,729/- disbursed by the loaning bank along with the litigation charges.

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

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

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

- (i) Is the complainant eligible to the refund of money prayed by him with interest due to the 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 has booked a flat in the respondent's project and was allotted Unit No. AG1822 on the 18th Floor of AG Tower and the price chart enumerating the payment schedule for the same was shared by the respondent with the complainant (EX.A1). The agreement for sale was executed on 20.10.2015 (Ex.A4). The construction agreement was also executed on the same date viz. 20.10.2015 (Ex.A5). The agreed consideration for the construction of the unit as per the Annexure 1 of the construction agreement was Rs.57,84,401/- while the sale consideration was Rs.20,04,000/- making the total payable amount by the complainant to Rs.77,88,401/-.

(b) The payment schedule made by the complainant to the respondent was spelled out in Annexure 1A of the construction agreement. The Clause 7 of the construction agreement refers to Annexure 3 of the construction agreement where the delivery of the unit was promised to be done in May 2018. The complainant had entered into a tripartite agreement with the loaner bank being the second party and the respondent was the third party. The amount of loan sanctioned has been left blank in Clause (C) (1) of the tripartite agreement (Ex.A6). Other details with regard to the amount, rate

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of interest etc has also been left blank in the Ex.A6 which has been signed to parties.

(c) The Clause (C) (2) of the tripartite agreement refers to the loaner bank to pay the loan amount sanctioned to the complainant directly to the respondent. The Clause (C) (8) (vi) refers to the tripartite agreement where the disbursement was linked to the stage of construction but was to be disbursed on demand to that effect being made by the respondent. The same Clause also mentions that the loaner bank shall not be responsible to ensure or ascertain the stage of construction and that a mere demand for payment would be sufficient for the bank to effect disbursement as aforesaid. The Clause (C) (8) (vi) read as follows:-

“(vi) The builder shall raise the demand for payment linked to the stage of construction which is more particularly defined in the Annexure 1 attached to this agreement. However, it is agreed by the Borrower/s that the bank shall not be responsible or liable to ensure or ascertain the progress of construction and mere demand for payment would be sufficient for the bank to effect disbursement as aforesaid. Without prejudice to the above and notwithstanding anything to the contrary contained herein, the bank may in its sole discretion refuse to disburse the loan until bank has ascertained the stage of construction “

(d) The loan was sanctioned and condition including that for the subvention scheme for the same had been made out in the Clause (C) (8) (viii). The complainant has paid a sum of Rs.7,57,083/- in two installments as Rs.1,00,000/- on 24.09.2015 (Ex.A2) and Rs.6,57,083/- on 06.10.2015 (Ex.A3) and the remaining amount of Rs.23,33,729/- has been disbursed by the loaner bank. The date of delivery was agreed to be by May 2018. The

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respondent has still not handed over the complainant's unit even after the expiry of the agreed period for handing over by May 2018, thereby entitling him to the refund of the amount paid by him with interest along with litigation charges and thus the point is answered accordingly.

7. Answer for Point No (ii):-

(a) Therefore, the complainant is entitled for refund amount of Rs.7,57,083/- 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 8.70% per annum marginal cost of lending rate of interest of SBI at the time of filing the complainant +2% per annum i.e 10.70% 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 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.

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- (iii) On repayment of the claim as per the order, the complainant shall execute the cancellation of the sale agreement, at the expense of the respondent, if any.

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

LIST OF WITNESSES

CW-1 --- M. Ganesh Babu

LIST OF DOCUMENTS FILED BY THE COMPLAINANT

Ex.Nos	Date	Documents Name
Ex.A1	---	Price chart and payment schedule
Ex.A2	24.09.2015	Payment receipt for Rs.1,00,000/-
Ex.A3	06.10.2015	Payment receipt for Rs.6,57,083/-
Ex.A4	20.10.2015	Agreement for sale
Ex.A5	20.10.2015	Construction agreement
Ex.A6	October 2015	Tripartite agreement
Ex.A7	10.12.2018 to 10.05.2023	Axis bank statement
Ex.A8	---	E-mails
Ex.A9	---	Aadhaar card

LIST OF DOCUMENTS FILED BY THE RESPONDENT

NIL

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

