



**BEFORE THE TAMIL NADU REAL ESTATE  
REGULATORY AUTHORITY (TNRERA)  
(Tamil Nadu, Andaman & Nicobar Islands)  
at Egmore, Chennai – 600 008**

**[Under the Real Estate (Regulation and Development) Act, 2016]**

**C.Nos.156/2021**

**31<sup>st</sup> day of January, 2022**

**Coram : Thiru K. Gnanadesikan, I.A.S. (Retired), Chairperson  
Er. S. Manohar, Member  
Adv. V. Jeyakumar, Member**

R. Jagdish and Lata J. Sajnani ..... Complainant

Versus

1) M/s. Ozone Projects Private Limited ]  
2) Thiru S. Vasudevan, Managing Director ] Respondents  
M/s. Ozone Projects Private Limited ]

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This Complaint came up for final hearing before this Authority in the presence of M/s. A.Suresh, M/s. A.Nirmala and A. Sushma Harini – Counsel for the Complainant and of M/s. BFS Legal – Counsel for the Respondent and upon hearing the arguments of both the parties, this Authority passes the following order:

## **FINAL ORDER**

The Complainants have stated that they have entered into an Agreement for Sale with Ozone Projects Private Limited, the Respondent Developer herein, on 29<sup>th</sup> September, 2012 for purchase of an undivided share of 426 square feet out of a total extent of 42 acres 53 cents comprised in number S.Nos.227/3, 229/1A, 229/2, 230/1, 230/2, 230/3, 230/4, 230/5, 230/7A, 230/8, 231/2 comprised in Block numbers 26 and 27 in Koyambedu village Egmore Nungambakkam Taluk, Chennai situated within the sub registration district of Anna Nagar registration District of Chennai north, for a total consideration of Rs.48,99,000/-

2. The Complainants have also submitted that the above agreement to sale was followed by Construction Agreement dated 29.09.2012 between the Complainants and the Respondent, for the construction of a 3 BHK apartment measuring an extent of 1555 sq.ft. along with a car park in the 11<sup>th</sup> floor of Tower "AD" bearing number AD-1103 in the development project named "METROZONE", for a total consideration of Rs.1,08,61,361/- The delivery of the said apartment was agreed to be done in December, 2014 with a grace period of three months as specified in Clause 7(a) of the Construction Agreement.

3. The Complainants have further submitted that the Respondent did not complete the construction of the flat within the time fixed in the Agreement and therefore the same was not delivered to the Complainants till date. Also there is no dispute that the Complainants have paid the dues

with no delay and the Respondents have not handed over the apartment to the Complainants despite a delay of more than six years.

4. In view of the facts and circumstances mentioned above, the Complainants prayed that this Authority to direct the Respondent to forthwith handover the possession of the completed Flat in 11<sup>th</sup> Floor bearing AD 1103 of the project "Metrozone" to the Complainants herein as per the construction agreement dated 29.09.2012 and thus render justice.

5. In the Counter Affidavit, the Respondent had put in its best possible efforts to expedite the progress of construction. However, due to natural calamity, November/December 2015 floods, Vardah storm, short supply of construction materials, shortage of skilled labourers, the Respondent could not complete the project within the mutually agreed time frame. The Respondent has also stated that it had suffered several third party frivolous claims touching upon the project lands and had to spend considerable time and money in order to protect the project.

6. The Respondent has further submitted that the Tower in which the Complainants booked the unit is in AD Tower which comes under phase IV of the Development. The Respondent has stated that it had completed and handed over phase I to III comprising of 19 Residential Towers with around 1200 Units and concentrating on phase IV internal finishing works. Now the structure of Tower AD is fully completed and that the Covid lock down restrictions are relaxed and migrant labourers have started coming back to Chennai, the Respondent is in the process of mobilizing men and material to complete the internal finishing works and mechanical, electrical

and plumbing (MEP) work in AD Tower. The Tower AD comprises of three level basement, ground floor and 16 floors with 64 Residential Units.

7. The Respondent has also submitted that the Complainant has to pay balance sale consideration of Rs.18,70,352/- and admittedly there were delays in remitting milestone payments by the Complainants. The claim of the Complainant that there were no delays in remitting milestone payment is specifically denied by the Respondent. The Respondent has also submitted that it had arranged for requisite funds and will ensure that the Residential Unit of the Complainant is ready and handed over in livable condition by March, 2022.

8. In the written submissions of arguments, the Complainants have also stated that the excuse for such vast delay does not hold water by any stretch of imagination. Further, the Respondents in their Counter falsely stated that the Complainants had not made milestone payments, causing the delay in construction. The Complainants have enclosed the receipts for payment in pages 39 to 50 of the typed set which clearly shows the promptness of the Complainants in making the payment dues. Moreover, a Tripartite loan agreement was made between the Complainants, Respondent and the bank for a huge portion of the consideration, based on which, the Respondents had regularly and promptly received milestones payments from the bank. The Complainants have in fact paid heavy interest of Rs.41,15,348/- to the banks in repayment of the housing loan.

9. The Complainants have further stated that there is no explanations as to how the Respondents arrive at the sum of Rs.18,70,352/-, whereas

all the payments excluding the dues at the time of registration/delivery of possession have been paid by the Complainants as early as 2015 itself. In fact, payments due after internal painting and flooring have already been paid by the Complainants despite the same works not having been completed. As per the Clause 7(b) of the Construction Agreement (page No.20 of Typed set) the Respondent and the Complainant agreed to pay in amount of Rs.15 per square feet per month till the date of handing over of the apartment in case of delay, along with an interest of 10% per annum if the delay exceeds six months.

10. In the written submission of arguments, the Respondents have reiterated the submissions made in the Counter Affidavit.

11. This Authority has examined the Complaint, the Counter Affidavit filed by the Respondent Promoter and the written submission of arguments submitted by both sides carefully.

12. It is seen that there has been inordinate delay in completion of this apartment booked by the Complainants while the delivery of the apartment was agreed to be done in December, 2014 with grace period of 3 months as per Clause-7A of the Construction Agreement. This apartment has not been completed till date and the Respondent Promoter has submitted that this apartment allotted to the Complainants will be handed over in livable condition by March, 2022. Therefore, there has been a delay of more than 6 to 7 years in completing this project.

13. The Respondent Promoter has submitted that there is a due of balance sale consideration of Rs.18,70,352/- by the Complainants.

14. The Complainants have denied this due stating that they have been prompt in payment of dues for which they have enclosed the receipts for payment in pages 39 to 50 of the typed set. They have also stated that there was a Tripartite loan agreement made between the Complainants, Respondent and the bank for a substantial portion of the sale consideration, based on which, the Respondents had promptly received the milestone payments from the bank.

15. It is also seen that the Respondent Promoter has not furnished any documentary evidence to show that there has been a delay in making milestone payments by the Complainant Allottees.

16. The construction of the apartment as per the schedule of completion and payment as per schedule of payment go hand in hand and are reciprocal in nature. Having delayed the construction and completion of the apartment by more than 6 years, the Respondent Promoter cannot demand interest on delayed payments without clear documentary proof of having made the demand in writing on achievement of specific physical milestones and the delay in receipt of payment.

17. Therefore, this Authority directs the Respondent Promoter to handover the apartment completed in all respects including all amenities strictly as per the Construction Agreement to the Complainant Allottees before 31.03.2022 without insisting on payment of interest on delayed payment, if any.

18. The Complainant Allottees as well as the Respondent Promoter are at liberty to make separate claims with documentary proof to the Single

Member Bench of this Authority presided by Thiru Sunil Kumar, I.P.S., (Retired) towards interest on delayed construction as well as interest on delayed payments, if any.

19. The Complainants are also at liberty to move the Adjudicating Officer of this Authority for compensation, if any.

20. With the above directions, this Complaint is disposed of.

Sd/-...31.01.2022  
MEMBER (M), TNRERA

Sd/-...31.01.2022  
MEMBER (J), TNREA

Sd/-...31.01.2022  
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

*N. Anand*  
31/1/22  
ADMINISTRATIVE OFFICER

*M.P.*  
31.1.2022