



**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.No.110/2022

13th day of September, 2023

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

Thiru Praveen Kumar Jain ... Complainant

Versus

M/s. Ozone Projects Pvt. Ltd.]
Represented by its Managing Director] Respondent
Thiru Vasudevan Sathiamoorthy]

.....
The above Complaint came up for final hearing before this Authority in the presence of M/s. Raghul Selvanathan - Counsel for Complainant and of M/s. A.R. Vishwaram - Counsel for Respondent. The Authority passes the following order:

FINAL ORDER

The Complainant has submitted in the complaint that he had booked a Flat (Pent House) on 13.10.2009 bearing No.NB-1603 in Tower N on the 16th floor admeasuring to an extent of 2847 sq.ft. plus 206 sq.ft. of terrace area in the apartment complex named "The Metrozone" at Koyambedu developed by the Respondent Company herein, for a total cost of Rs.2,09,23,091/-

2. The Complainant has further submitted that the agreement between the Complainant and the Respondent was that the Respondent Company would deliver vacant possession of a fully functional and a ready to move in flat latest by June, 2012. However, the Respondent has failed to offer vacant possession of the completed flat till date of this Complaint.

3. It is further stated by the Complainant that as per the Respondent's own customer account statement dated 26.07.2021, the Complainant has already paid Rs.2,05,15,383/- Also it is submitted by the Complainant that the Respondent called upon the Complainant to enter into an agreement of sale on 31.08.2010 and the said agreement was duly entered into. By virtue of the said agreement, the Respondent sold an undivided share of 779 sq.ft. in the said flat.

4. Simultaneously, another agreement in the form of a Construction Agreement was entered into on 31.08.2010 for a sum of Rs.1,70,61,414/- bringing the total of sale consideration to Rs.2,01,77,144/-. It is also mentioned by the Complainant that the total sale consideration initially was only Rs.2,01,77,144/- Thereafter the sale consideration was unilaterally enhanced to Rs.2,09,23,091/-

5. The Complainant has also submitted that in 2016, the Respondent via e-mail informed the Complainant that the possession of the flat is ready and available. However, upon inspection of the allegedly completed flat, the flat was not completed at all. It was observed by the Complainant upon inspection of the flat that the flat did not have any flooring, the windows were not completed, the bathroom fittings were missing and in fact, even the door handles were not attached. The Complainant immediately brought this to the notice of the Respondent and the Respondent also accepted that the flat was not completed. It is also submitted by the Complainant that in the presence of the Respondent's

employees/representatives he took several videos and photos for his own record.

6. It is further mentioned by the Complainant that the Complainant has been sending e-mails asking the Respondent to complete the flat as per the specifications mentioned in the Construction Agreement dated 31.08.2010 and also asking the Respondent to inform the Complainant, the balance amount payable by the Complainant after deducting the compensation payable by the Respondent for delayed possession however, there was no substantial or effective communication to this effect from the Respondent.

7. The Complainant has prayed for the following reliefs in the Complaint.

- (i) Direct the Respondent to complete the construction of the Flat N-1603 booked by the Complainant in all aspects as agreed to in the Construction Agreement dated 31.08.2010 within a specified time frame and hand over possession of the said Flat to the Complainant forthwith
- (ii) Direct the Respondent to register a Sale Deed for Flat N-1603 in favour of the Complainant or his nominee(s) immediately
- (iii) And pass such further or other orders as this Authority may deem fit and proper in the interest of justice.

8. In the Counter Affidavit filed on behalf of the Respondent, it has been submitted by the Respondent that it is true that the Complainant and the Respondent had entered into an agreement for sale and Construction Agreement, both dated 31.08.2010 with respect to residential Unit N-1603. The Respondent has further submitted that the Complainant did

not come forward to take possession of the said unit N-1603, even after multiple requests from the Respondent through notice and e-mails.

9. It is further submitted by the Respondent that after termination of the agreement, the respondent had entered into an agreement with the 3rd party for sale of the said unit, because the complainant was not ready to pay the remaining amount and has not come forward to take possession of the unit which was ready within the mentioned date. Now the Complainant requested possession of the unit, but the Respondent and the 3rd party had entered into a construction agreement dated 16.12.2021 and the sale deed dated 15.03.2022 for the said scheduled property unit N-1603 and handed over the vacant physical possession of the unit to the 3rd party. The Respondent has submitted that the Respondent is willing to refund the amount paid by the Complainant as per the terms and conditions indicated in the agreements.

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

11. It is seen from the typed set of papers filed by the Complainant that the Agreement for sale was executed between the Complainant and the Respondent Promoter for flat No.N-1603 on 31.08.2010. The promised date for handing over was June, 2012 with grace period of 3 months which implies that it should have been handed over by September, 2012. However, the completion and hand over of the flat was badly delayed by the Respondent Promoter and indication that the flat was ready for occupation and possession was sent by the Respondent Promoter by an e-mail on 16.02.2016 (page No.51 of the typed set of papers filed by the Complainant), whereas the Complainant Allottee had indicated a number

of defects in ceiling, bath rooms and leakage issues to the Respondent Promoter by their e-mail dated 21.10.2016 (page No.62 of the typed set of papers filed by the Complainant).

12. It is also noted that the Complainant has already paid Rs.2,05,15,383/- as per the customer account statement dated 26.07.2021 issued by the Respondent Promoter. While the Respondent Promoter has been insisting on handing over possession of the flat to the Complainant Allottee, the Complainant Allottee was not willing to do so in view of the defects indicated by him with photographs and videos taken during the site visit on 21.07.2021 and informed to the Respondent Promoter. This is also referred in their letter dated 04.12.2021 (page No.86 – 89 of the typed set of papers filed by the Complainant).

13. In the written arguments, the Complainant has submitted that the flat No.N-1603 allotted to the Complainant Allottee has already been sold to the 3rd party. Therefore, the Complainant has prayed that the Respondent Promoter may be directed to deliver vacant possession of an alternative flat of having similar specification as that of flat No.N-1603 and sale deed executed.

14. The Respondent Promoter has also admitted to the sale of the Flat No.N-1603 to a 3rd party vide construction Agreement dated 20.12.2021 and sale deed dated 15.03.2022.

15. The Authority notes that the Respondent Promoter has not furnished any documents that it has issued a notice to the Complainant Allottee indicating its intention to cancel the agreement for sale as well as the construction agreement and to sell his allotted flat to a 3rd party.

16. This Authority finds the conduct of the Respondent Promoter very high handed and against the law.

17. Therefore, this Authority holds that the Respondent Promoter has contravened Section 17 of the Act and for this contravention, this Authority under Section 61 of the Act imposes a penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) which shall be paid before 30.11.2023.

18. This Authority also directs the Respondent Promoter to handover an alternative flat having similar specifications as that of Flat No.N-1603 completed in all respects to the Complainant Allottee and execute the sale deed after receiving the balance sale consideration, if any, strictly as per the construction agreement before 30.11.2023.

19. With the above findings and directions, this Complaint is disposed of.

Sd/-...13.09.2023

MEMBER (M), TNRERA

Sd/-...13.09.2023

MEMBER (J), TNRERA

Sd/-...13.09.2023

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER
13.9.23