



**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.043/2020
3rd day of September, 2020**

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

Mr. Kishore Mohan & Mrs. Aishwarya ... Complainants

Versus

M/s. Ozone Projects Private Limited ... Respondent
Rep. by its CEO Mr.Jaiganesh

This Complaint came up for final arguments before this Authority in the presence of Mrs. Roja Ramkumar, R.R.Legal Firm – Counsel for Complainants and of M/s. BFS Legal Thiru P.V. Balasubramanian, Thiru D. Ferdinand, Thiru K.M. Aasim Shetizad, Thiru Akil R.Bhansali, Ms. M. Meera, Thiru R.Karthik Chandran Rathish, J. – Counsel for Respondent and upon hearing the arguments of both the parties this Authority passes the following order.

FINAL ORDER

The Complainants had booked the apartment at AD Tower 1301, 13th Floor at The Metrozone, No.44, Pillaiyar Koil Street, J.N. Road, near VR Mall, Annanagar, Chennai - 600040 on 26th December, 2014 from M/s. Ozone Project Pvt. Ltd.

2. The Complainants have stated that the construction Agreement and Agreement for sale was executed on 26th day of December, 2014 and the date of handover of the possession was committed by the Respondent on December, 2015 with a grace period of 3 months and the total consideration for the apartment is Rs.2,50,57,587/- as per the agreement. As on date, the Complainants had paid Rs.2,22,19,611/- The balance amount supposed to be paid by the Complainants to the Respondent is Rs.28,37,976/- at the time of handover.

3. The Complainants have also stated that they had sent multiple reminders to the Respondent to hand over the flat, but the Respondent neither handed over the apartment nor paid the compensation for the past 45 months.

4. The Complainants have sought the following reliefs:

"Possession not yet handed over by the Respondent for the past 45 months. To instruct the Respondent to handover the flat in livable condition immediately or to pay the rent till the possession is delivered"

5. In the Counter Affidavit, the Respondent has submitted that the Tower in which the Complainant has booked the unit is in AD Tower which comes under Phase-IV of the Development. The Respondent has

completed and handed over phase – I to III comprising of 19 residential towers with 977 units and is concentrating on Phase-IV internal finishing work. Now the structure of Tower AD is fully completed and the Respondent has mobilized men and materials to complete the internal finishing work 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. The Respondent has also stated that he has arranged for requisite funds and will ensure that the residential unit of the Complainant is ready and handed over in liveable condition by December, 2020.

6. The Respondent further submitted that they shall abide by the terms and conditions as captured in the registered Construction Agreement dated 26.12.2014 registered as Document No.407 of 2015 at SRO, Anna Nagar with respect to payment of delay compensation, though the delay is neither willful nor wanton but only due to the above sated bona fide reasons. The Respondent further submitted that The Real Estate (Regulation and Development) Act, 2016 and the TNRERA Rules, 2017 protects and preserves the rights and obligations of agreements entered between the parties prior to Act.

7. During the hearing on 06.03.2020, the Counsel for the Complainant brought to the notice of the Authority that the Managing Director of the Respondent Company while meeting the customers in the project site had indicated August, 2020 as probable date of completion of Block AD, whereas in the Counter Affidavit it has been stated that it will be completed by December, 2020 and much longer date of completion has been indicated in Form-C registered with this Authority. The Authority

directed the Respondent to mobilize adequate men and materials and crash the completion date and propose a realistic time frame by 24.03.2020 as to various milestones for completing various items of works and an Affidavit in this regard shall be filed by the Respondent.

8. In the Additional Counter Affidavit filed on 04.08.2020, the Respondent has submitted that originally as of 20.03.2020, the handover of the unit was schedule on or before 31.12.2020. However, on account COVID 19 pandemic and Government mandated lockdown since 25.03.2020, the entire construction activity of the Respondent in various projects came to a grinding halt resulting in meeting the 31.12.2020 deadline infeasible. The Respondent has further submitted that the handover date of 31.12.2020 plus the extended period of 6 months will be required to the Respondent to handover the fully completed unit to the Complainant.

9. The Respondent has further submitted that the present status of the Block AD Tower in which the Complainant had booked the residential unit as under:

Sl. No.	Activity	Percentage of Completion
1.	Structural work	100%
2.	Masonry & Plastering	95%
3.	Finishing (tiling/Painting/Window/Door, etc.	15%
4.	Services – Electrical/Plumbing/FIRE fighting	15%
5.	External work	25%
	Overall completion	68%

10. The Respondent has also submitted the following schedule for completion of AD Tower with various milestones leading to hand over of the unit.

Sl. No.	Activity	Balance work completion schedule
1.	Plumbing	31 st December, 2020
2.	Flooring / Tiling	31 st December, 2020
3.	Fire Fighting	31 st December, 2020
4.	Painting	31 st January, 2021
5.	Joineries – Windows	31 st January, 2021
6.	Electrical	31 st March 2021
7.	Joineries – doors	31 st March 2021
8.	Lift	31 st March 2021
9.	External works	31 st May 2021
10.	Handing over	31 st May 2021

11. The Respondent has further submitted that the work to be undertaken in AD Tower is a sequential work. As a first step concealed work in the residential units in AD Tower is to be completed. Post that, flooring / tiling and joineries work needs to be undertaken. He has further submitted that he is initiating steps to mobilize labour force to meet the above said milestones. Also in spite of adverse market conditions, the Respondent is putting its best possible efforts and will ensure to meet the above indicated timelines and hand over the unit to the Complainant on or before 31.05.2021. Also the Respondent has stated that the hand over

date indicated to TNRERA at the time of Registration of this project is December, 2022.

13. The Respondent further submitted that as confirmed in the Counter filed on 02.03.2020, he will honour the delay compensation as per the mutually agreed terms and conditions indicated in the Construction Agreement entered between the parties, though the delay is neither willful nor wanton on the part of the Respondent. For force majeure circumstances, the agreement entered between the parties provide for extension of time and the Respondent will be entitled for the same.

14. The Authority has examined the Complaint, Counter Affidavit and the Additional Counter Affidavit filed by the Respondent carefully.

15. In view of the COVID 19 Pandemic, the Authority has extended the date of completion of Registered Projects by 6 months as a force majeure. Therefore, recording the Additional Counter Affidavit of the Respondent, the Authority directs the Respondent to hand over the flat completed in all respects along with the amenities promised in the Construction Agreement before 31.05.2021. This direction is without prejudice to the rights of the Complainant to claim any delay compensation.

16. With these directions, this complaint is disposed of.

Sd/-...03.09.2020

MEMBER (M), TNRERA

Sd/-...03.09.2020

MEMBER (J), TNRERA

Sd/-...03.09.2020

CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER

ADMINISTRATIVE OFFICER (i/c)