



**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.289/2021

29th day of September, 2022

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

Tvl. Ashish Garg & Puja A. Garg ... Complainants

Versus

M/s. Ozone Projects Pvt. Ltd. ... Respondent
Represented by its Managing Director

The above Complaint came up for final hearing before this Authority in the presence of M/s. Ashwin Shanbhag & A. Sella Visalakshi - Counsel for Complainants and of M/s. A.S.Vishwaram – Counsel for the Respondent and upon hearing the arguments of both the parties, this Authority passes the following:

FINAL ORDER

The Complainants have submitted in the Complaint that they entered into an Agreement for Sale dated 31.01.2020 and a Construction Agreement dated 31.01.2020 with the Respondent for purchase of a flat 1502 A in the "Metrozone" Project to the tune of Rs.3,30,02656/- The Complainants further submitted that prior to entering into the said

agreements, they paid Rs.1,25,00,000/- and Rs.50,00,000/- on 03.12.2019 for booking the said flat through 5 cheques drawn on ICICI Bank, Mumbai.

2. The Complainants have also submitted that the apartment in question along with certain other apartments in the project were financed by a project finance lender. Therefore, a No Objection Certificate dated 06.02.2020 from IDBI Trusteeship on behalf of the lender was provided to the Respondent for sale of a number of apartments in the project including the Complainants; Flat No.1502 A. However, the said NOC was subject to the entire sale proceeds being deposited by the Respondent in the Escrow Account No.914020020188120 for Project "Metrozone" maintained with Axis Bank.

3. The Complainants have further submitted that upon signing the Agreement for Sale and Construction Agreement, the Complainants obtained a loan from HDFC Bank Ltd. to pay the balance sale consideration to the Respondent. Pursuant to the same, on 07.02.2020 Rs.1,15,00,000/- was disbursed to "Metrozone" Project's Axis Bank Escrow Account. The remaining sale consideration of Rs.17,30,000/- was to be paid to the Respondent upon handing over and possession of the property.

4. The Complainants have also submitted that in July, 2021 the Complainants decided to sell the property to a third party and the HDFC Bank loan availed by the Complainants was closed by prepayment on 01.07.2021 to facilitate the sale to the new buyer. It is also submitted by the Complainants that while the new buyer was undertaking the necessary due diligence, in or around July, 2021, the Complainants were shocked to learn that the Complainants' initial payment of Rs.1,75,00,000/- towards

the sale consideration was not deposited in the Metrozone Axis Bank Escrow Account and that there are two charges registered on the property. The Complainants were baffled to learn that there IDBI Trusteeship has the first charges as per EC 3209/2016 and Indiabulls has the second charge as per EC 1770/2017. Therefore, the title ought to have been discharged by both IDBI Trusteeship and Indiabulls by two separate unconditional NOCs and receipt deeds.

5. Also the Complainants have stated that Clause 3 of the Agreement for Sale reads as "the Promoter represents that there is an existing charge created over the Schedule B property for availing project finance. However, the Promoter shall release the Schedule C property from the charge created and obtain suitable Release & No Objection Certificate from the respective banks/financial Institution and hand over the same to the Allottee within 90 days from the date of execution of this Agreement".

6. Furthermore, Clause 4 of the Agreement for Sale reads as "the Promoter doth hereby covenant with the Allottee that the property agreed to be conveyed and transferred by the Promoter to the Allottee is free from all encumbrances and defects in title and that the Promoter have full and absolute power to convey Schedule-C property". Also the Complainants stated that a combined reading of the above extracted clauses makes it amply clear that the Respondent was to release the existing charges and obtain NOC from the respective financial institutions and handover the same to the Complainants within 90 days from the date of execution of the Agreement and provide an encumbrance free property to the Complainants, however, the Respondent herein has failed to do the same.

7. The Complainants have further submitted that upon realizing the same, the Complainants wrote several e-mails to the Respondent and also reached out of the Respondent's Legal officer, Ex CEO and the Director to obtain an unqualified NOC. Pursuant to the painstaking efforts undertaken by the Complainants, the Respondent agreed to the following:

- a) The Respondent to issue Credit Note for balance payment of Rs.17.3 lakhs and provide Possession letter and Keys to the Complainants. The same has been completed by the Respondent and the possession and keys have been handed over to the Complainants as per letter dated 19.07.2021.
- b) An e-mail/letter from the Chairman of the Respondent confirming that the NOC earlier provided would be replaced with a new NOC from IDBI Trustees with no conditions attached as there is no further dues.
- c) An amount of Rs.1,75,00,000/- paid towards sale consideration was not deposited in the Escrow account with Axis Bank and accordingly the same was to be paid to 1st Complainant by the Respondent and the proceeds to be deposited in the Axis Escrow account by the 1st Complainant to obtain clear NOC from IDBI Trusteeship. Therefore, a cheque dated 10.08.2021 was to be drawn in the name of the 1st Complainant and was to be issued by the Chairman of the Respondent. On satisfactory NOC being provided by the Respondent before 10.08.2021, the cheque was to be returned.

8. The Complainants have also submitted that though the Respondent's officials promised to promptly comply with the above set out conditions, the Respondent is yet to adhere to conditions (2) and (3) and

the Complainants' efforts to obtain an unqualified NOC in order to have an encumbrance free property have been in vain. The Complainants have further submitted that owing to the Respondent's inaction and false promises, the Complainants were constrained to send a legal notice dated 06.08.2021. Further, upon receiving the same, the Respondent through its Counsel vide notice dated 10.08.2021 stated that it will obtain the unconditional release letter and NOC from its lender within 60 days from 10.08.2021. However, it has been over 90 days since the Respondent assured the same and it is yet to procure the said NOC.

9. On grounds, the Complainants have submitted that the Respondent has acted in a fraudulent manner by failing to provide an unconditional NOC as contemplated in the Agreement for Sale. Although the Respondent has now handed over the possession of the property to the Complainants, owing to the defective title of the property the Complainants are unable to sell the property.

10. The Complainants have prayed for the following reliefs in the Complaint.

- (a) Direct the Respondent to obtain unconditional No Objection Certificate from IDBI Trusteeship and Indiabulls towards flat 1502A of the Metrozone Project and hand over the same to the Complainants within a prescribed time period.
- (b) Direct the Respondent to execute a Sale Deed between the Complainants and the Respondent for flat 1502 A and register flat 1502A of the Metrozone Project in the name of the Complainants and pass such or other further orders as

this Authority deems fit in the facts and circumstances of the case.

11. In the Counter Affidavit, the Respondent has submitted that as per Agreements executed between the parties, there is construction finance availed by the Respondent and lien release shall be obtained by the Respondent from its lenders. Also the Respondent has submitted that it is in the process of obtaining unconditional NOC from its lender and reconciliation of various payments made to its escrow account and the same got derailed because of the Covid 19 pandemic and the said delay in obtaining the same is neither willful nor wanton. The Respondent has also pointed out that there are numerous deposits made on a daily basis and it is a genuine mistake that had crept in and the Complainants attempted to give a criminal colour to the same vide their legal notice issued by them. The Respondent has also reiterated that it is making all efforts to address this issue and resolve it with their lender and the reconciliation is underway. Also the Complainant has already availed a huge discount of Rs.37,00,000/- The Respondent has submitted that with the above background the Respondent assured that the Complainant will obtain requisite unconditional release letter within 180 days.

12. The Authority on the request of the Counsel for the Respondent has granted time upto 29.04.2022 to the Respondent Promoter to file Additional Affidavit regarding early date by which the charge on the apartment of the Complainant Allottees will be released from the Financial Institution and the Sale Deed registered in favour of the Complainant Allottees with copy served on the Complainants and the Counsel for the Complainants vide its Day Order dated 08.04.2022.

13. In spite of specific direction to file Additional Affidavit, the Respondent Promoter has not filed any Affidavit as directed by this Authority so far. Therefore, this Authority proceeds with passing final orders in this Complaint.

14. This Authority has examined the Complaint and the Counter Affidavit filed by the Respondent Promoter carefully.

15. In spite of specific direction given by this Authority in its Day Order dated 08.04.2022 to the Respondent Promoter to file Additional Affidavit regarding the date by which the charge on the apartment of the Complainant Allottees will be released from the Financial Institution and execute the Sale Deed registered in favour of the Complainant Allottee has not been complied with by the Respondent Promoter so far.

16. In the Counter Affidavit, the Respondent Promoter has admitted to the fact of non deposit of the amounts paid by the Complainant Allottee to the escrow account of the Financial Institution of the Respondent Promoter as a genuine mistake.

17. In view of this clear admission by the Respondent Promoter and non compliance of the direction given by this Authority in its Day Order dated 08.04.2022, this Authority can only come to the conclusion that the Respondent Promoter is a willful defaulter in terms of obtaining unconditional NOC from the Financial Institution concerned towards Flat No.1502A of 'Metrozone' project and handover the same to the Complainant as well as execution of Sale Deed for the flat No.1502A.

18. Therefore, this Authority under Section 61 of the Act imposes penalty of Rupees Fifteen lakhs for contravening Section 17 of the Act as well as the direction of this Authority in its Day Order dated 08.04.2022. The Respondent Promoter shall pay this penalty before 31.12.2022.

19. This Authority also directs the Respondent Promoter to obtain the unconditional NOC from IDBI Trusteeship and Indiabulls towards flat 1502A of the Metrozone Project and handover the same to the Complainants before 31.12.2022 and execute the Sale Deed in favour of the Complainants for the undivided share of land for Flat No.1502A before 31.12.2022, failing which this Authority under Section 63 of the Act, imposes a penalty of Rupees Ten Thousands per day for every day during which such default continues beyond 31.12.2022. This cumulative penalty for the continuing default beyond 31.12.2022 will have a ceiling of Rupees Fifteen lakhs.

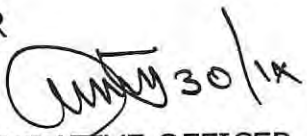
20. With the above findings and directions, this Complaint is disposed of.

Sd/-...29.09.2022
MEMBER (M), TNRERA

Sd/-...29.09.2022
MEMBER (J), TNRERA

Sd/-...29.09.2022
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER I. C.
in
29.9.22.