



**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.152 of 2020

22nd day of September, 2021

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

Tmt. Priti Jaiswal

Complainant

Versus

M/s. Ozone Projects Pvt. Ltd.

Respondent

Represented by Thiru K.Daniel

This Complaint came up for final hearing before this Authority in the presence of Mr.Rahul J. Krishnan – 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 Complainant Tmt. Priti Jaiswal and her husband has submitted in the Complaint that they have paid an amount of Rs.65,00,000/- to the Respondent towards advance and obtained a receipt for her payment dated 03.01.2020 for the purchase of apartment which is more fully

described herein under "Unit No.F-601, Metrozone in Tower-F". The Complainant has further stated that a sale and construction agreements were entered into between the parties on 18.01.2020.

2. The Complainant has further stated that the Complainant and her husband had purchased the above mentioned property due to the request made by the Respondent and a promise made that the Respondent would adjust the incentive of Rs.65,40,240/- post TDS for the year 2018-2019 owed to the Complainant's husband towards the property. The Complainant has also submitted that they had mutually agreed to the same and a sum of Rs.47,00,000/- was to be paid by the Complainant and her husband at the time of delivery of possession and the same was approved and acknowledged by the Chairman & Managing Director of the Respondent Company, Dr.S.Vasudevan.

3. The Complainant has further submitted that the Respondent had given assurance to the Complainant and her husband that the possession of the apartments would be handed over within 6 months with an additional grace period of 6 months. The Complainant has further submitted that the construction of the unit has been completed and yet the Respondent is refusing to deliver and the remainder payment of Rs.47,26,192/- towards the aforementioned property. The Respondent had approached the Complainant's husband with a fresh proposal towards the property. The Complainant has stated that the Respondent had expressed to the Complainant's husband that they would refund Rs.65,00,000/- along with an interest rate of 10% per annum which would amount to Rs.70,96,000/- as of 31.10.2020. The Complainant has further stated that

the Respondent had stated that he would return the incentive of Rs.65,40,240/- and a total amount of Rs.1,36,36,000/- would be returned to the Complainant's husband on 31.10.2020. The Complainant and her husband have always expressed interest towards the purchase of the property, but the Respondent had insisted that he would return the above mentioned amount to the Complainant's husband and requested the Complainant's husband to cancel his booking.

4. The Complainant has also submitted that the Respondent has started delivering possession of apartments to other home buyers as stipulated in the Construction Agreements. The Complainant has submitted that it has come to her knowledge that the Respondent has attempted to sell the unit towards which the Complainant has paid an advance of Rs.65,00,000/- from hard earned money. This was done prior to intimating the Complainant's husband to cancel the booking of the unit. The Complainant has also stated that she and her husband have refused to cancel booking towards purchase of the unit and has been requesting the Respondent on several occasions to hand over possession and register the unit in the name of the Complainant. The Respondent has turned a deaf ear to the Complainant and her husband's requests and has put the Complainant and her husband through irreparable hardship.

5. The Complainant has further submitted that she and her husband are more than willing to pay the balance amount Rs.47,26,192/- towards finalizing the purchase of the unit, yet the Respondent is refusing to accept the payment and register the property in the name of the Complainant. The Complainant has also stated that as per e-mail communications, the

Respondent with an intention to cheat the Complainant's husband as promised in the e-mails annexed as evidence. Further the Complainant has stated that her husband has received e-mails from employees namely Mr.Srinivasan Gopalan who is the Ex-CEO and current Vice-Chairman of the Respondent Company confirming that the incentive of Rs.65,40,240/- is to be adjusted towards the purchase of the unit and the remainder to be paid would be Rs.47,26,192/- exclusive of registration cost. The Respondents have been extremely unprofessional and unethical given that the Complainant's husband has been working at the Respondent's Company for a period of 3 years.

6. The Complainant has further submitted that yet again, the Respondents had changed their mind and on 10.11.2020 stating that they would revoke their offer as stipulated in paragraph-10. Further the Respondent had instructed the Complainant's husband to move forward with the purchase of the unit. The Complainant and her husband were instructed by the Respondent to pay the balance amount of Rs.47,26,192/- coupled with a 12% hike on the original price as stipulated in the sale agreement which is in violation of the sale agreement and a breach of contract under the Indian Contract Act, 1872. The Complainant has stated that the Respondent has breached the contract by demanding a sum of Rs.2,00,00,000/- which is Rs.23 lakhs above the mutually agreed amount as stipulated in the sale agreement and the Respondent is put to strict proof of the same.

7. The Complainant has sought the following reliefs:

- a) *Direction to penalize the Respondents for non compliance of the rules and regulations as stipulated under RERA Act.*
- b) *Direction to the Respondent to hand over possession of the aforementioned properties to the Complainant.*
- c) *Direction to the Respondent to register the property in favour of the Complainant.*
- d) *Direction to the Respondent to provide the building completion certificate to the Complainant.*

Interim order prayer for:

- a) *Direction to the Respondent not to execute any sale agreement or sale deed with third parties in respect of property mentioned in "Unit No.F-601", Metrozone in Tower-F, Anna Nagar, Chennai".*

8. In the Counter Affidavit, the Respondent has submitted that this is not a typical/regular complaint by a Customer who had booked apartment in the project of the Respondent and seeking for handing over of possession. The spouse of the Complainant namely Mr.Vivek Jaiswal who has not come forward to file this complaint and had filed the complaint through his wife Mrs.Priti Jaiswal was a former employee of the Respondent. He was Chief Marketing Officer of the Respondent when the booking for Unit No. F 601. The Metrozone was done. The Complainant is trying to canvass the employer employee dispute before this Forum and hence the same is liable to be dismissed in limine. The pleadings of the Complaint relate to the

communication between Mr.Vivek Jaiswal and the Respondent and hence Mr.Vivek Jaiswal is a necessary party to the proceedings. The Complaint is liable to be dismissed for non-joinder of necessary parties.

9. The Respondent has also submitted that Mr.Vivek Jaiswal who was the then Chief Marketing Officer of the Respondent was fully aware that the Unit F 601 was originally booked by one Mr.Vijay Emmanuel for a total sale consideration of Rs.2.26 Crores and entire amount paid by the said customer to the Respondent. As the erstwhile customer Mr.Vijay Emmanuel opted to buy two Penthouses in the same project, he had voluntarily surrendered Unit F-601 and desired to purchase two Penthouses. Knowing fully well that the rate of the said flat F-601 was around Rs.2.26 crores, Mr.Vivek Jaiswal offered to purchase the said flat for Rs.1.77 Crores after adjusting the incentives that was claimed by Mr.Vivek Jaiswal. The Respondent in good faith believed in the claim made by Mr.Vivek Jaiswal and entered into agreement for the reduced sale consideration of Rs.1.77 crores after giving due benefit of the incentives claimed by Mr.Vivek Jaiswal. It is true that the Respondent had entered into Agreements for sale and construction dated 18th January 2020 with the Complainant and her spouse Mr.Vivek Jaiswal for the sale of undivided share of land and for the construction of residential apartment F-601, on the 6th floor, in their project "The Metrozone" at Anna Nagar.

10. The Respondent has further submitted that the Complainant had also paid Rs.65 Lakhs towards advance sale consideration and agreed to pay the balance sale consideration of nearly one Crore within 30 days of booking as duly captured in the Sale and Construction Agreements.

Admittedly, the Complainant had not paid the balance sale consideration within 30 days as mutually agreed and hence, on this count; the agreement is liable to be terminated for breach of mutually agreed terms and conditions, particularly mutually agreed payment schedule. In the meantime, the audit department of the Respondent verified the incentive claim made by Mr.Vivek Jaiswal and observed many irregularities. When the audit investigation was under process, Mr.Vivek Jaiswal left the services of the Respondent and sought for cancellation and refund of the amount paid by him and accordingly the Respondent had initiated sale of the said Unit. Having already obtained the incentives by way of reduction of cost from 2.26 crores to 1.77 crores, the Respondent felt that their own employee has submitted inflated claims which are not duly supported by proper documents. Hence, the incentive which is already offered by way of reduction of cost is being revisited by the Respondent in the light of audit queries.

11. The Respondent has further submitted that the basis of this case is a dispute between employer and former employee and it is not a typical case of customer and developer. The Complainant cannot seek to enforce the alleged incentives payable by the Respondent through this Forum, more so when the Respondent had already offered the same by way of reduction of cost of the unit from Rs.2.26 crores to Rs.1.77 crores as admitted by the Complainant. Now the Respondent is seriously considering whether such reduction in cost which was offered as incentive should be actually given to the Complainant because of the audit queries and irregularities pointed out in the inflated claims made by Mr.Vivek Jaiswal. The Unit booked by the Complainant is ready with Completion Certificate

issued by CMDA. It is not the case of the Complainant that the Unit is not ready. The reason for not proceeding further with the sale transaction is nonpayment of balance dues as per the agreement. Even after such reduction of cost, the Complainant has not come forward to make the balance sale consideration.

12. The allegation that the Respondent promised to adjust the incentive of Rs.65,40,240/- is hereby specifically denied by the Respondent. The Respondent had already offered a reduction of Rs.49 Lakhs based on the incentive claim made by the spouse of the Complainant who was former Chief Marketing Officer of the Respondent. Hence, claiming further Rs.65 lakhs over and above the reduction of Rs.49 lakhs is a preposterous claim and not sustainable. The allegation that such an understanding was approved and acknowledged by the Chairman and Managing Director of the Respondent is hereby specifically denied by the Respondent and the Complainant is put to strict proof of the same. The allegation that the remainder payment is only Rs.47,26,192/- is hereby specifically denied by the Respondent. As per the executed agreements, the Complainant is liable to pay Rs.1.12 crores and hence the claim that the Complainant is liable to pay only Rs.47,62,192/- is hereby specifically denied and the Complainant is put to strict proof of the same.

13. The Respondent has further stated that the allegation made in para 13 of the Complaint that the Complainant had received mail from Ex CEO and current Vice Chairman of the Respondent confirming the incentive of Rs.65 Lakhs is to be adjusted towards purchase of the unit and the remainder to be paid would be Rs.47,26,192 is specifically denied and the Complainant is put to strict proof of the same. The allegation made in

para-15 of the Complaint that the Respondent sought the Complainant to pay the balance amount of Rs.47,26,192/- coupled with a 12% hike on the original price is specifically denied by the Respondent. The allegation made in Para 16 of the Complaint that the Respondent has malafide intention to buy time by putting the Complainant through irreparable hardship whilst they sell the unit to another customer at the hiked price is specifically denied by the Respondent. Also the Respondent has submitted that having breached the terms and conditions of the Construction Agreement in making milestone payment of more than Rs.1 crore which is overdue for more than one year, the Complainant has no locus to allege that the Respondent has violated the agreement.

14. The Respondent has placed the following on record:

- a) *The Residential Unit F 601 is ready for occupation with CC.*
- b) *The Respondent is willing to register and handover the unit to the Complainant upon payment of Rs.1.61 crores being the balance sale consideration (Rs.2.26 crores less Rs.65 lakhs already paid) **or***
- c) *The Respondent is willing to refund the amount paid by the Complainant along with applicable interest as per TNRERA Rules from the sale proceeds of Unit F 601.*

15. In the written submission of arguments, the Complainant has stated that the said unit F-601 was sold to 2 Allottees namely Priti Jaiswal and Vivek Jaiswal who are husband and wife. The Complainant's husband was the Chief Marketing Officer of the Respondent Company for a period of 3 years. The Complainant and her husband were approached by the CEO

of the Respondent Company Mr.Srinivasan Gopalan towards purchase of the Unit F-601 for a sum of Rs.1,77,66,192/- after its booking was cancelled by the Company's erstwhile customer Mr. Vijay Immanuel. The Respondent Company had en-cashed the Complainant's cheque dated 02.12.2019 on 03.01.2020 and acknowledged receipt of the payment. It is well settled law that no deposit or advance is to be taken by a promoter without first entering into an Agreement for Sale. It is to be further noted that the money was taken into a current account with an intent to use the money where it suited them which is in clear violation of Section 4(i)(d) of the RERA, Act.

16. The Complainant has also submitted that the Respondents have clearly violated Section-13 of the RERA Act by entering into a Sale Agreement with a delay of 46 days. The CEO of the Respondent Company vide e-mail dated 26.08.2020 confirmed the incentive of Rs.65,40,240/- which is owed to the Complainant. Hence, it cannot be contended by the Respondent Company that the incentive owed to the Complainant is Rs.49,00,000/- which is apparently still under "review" by the Respondent Company.

17. The Complainant has further submitted that she is also a homebuyer and an Allottee as stipulated in the Sale Agreement and the Construction Agreement. Hence, there is no dispute as to whether the Complainant is an Allottee as it is clearly stipulated in the Sale Agreement and the Construction Agreement entered into between the Complainant and the Respondent Company. The Agreement for Sale and Construction agreement entered into between the parties was for a total consideration of Rs.1,77,66,192/- and hence the claim of the Respondent that the

original purchase value of the Unit was Rs.2.26 crores towards which the incentives were deducted is liable to be set aside as the Respondent Company do not possess and have failed to provide sufficient evidence to prove their claims. The Respondent has admitted in para 11(b) and para 11(c) of the Respondent's Counter that a sum of Rs.49,00,000/- had been adjusted towards purchase of the said unit. Moreover, the claim that the incentive amount to Rs.49,00,000/- is categorically false as the CEO of the Respondent Company vide e-mails dated 26.08.2020 has confirmed that the incentive owed to the Complainant's husband is Rs.65,40,240/-.

18. The Complainant has further submitted that the Respondent Company have entered into a Sale Agreement with one Mr.Daniel Chellappa Gnanaselvam towards purchase of the same unit F-601 by receiving an advance consideration of Rs.5,00,000/- on 11.11.2020 and Rs.15,00,000/- on 25.11.2020 vide receipt numbers 144551 and 144554. Moreover, the same has been enclosed as evidence in the additional index to typed set of papers under S.No.5 – "Applicant file of subsequent buyers". The Respondent Company has been completely silent over the fact that they have clearly violated Section 13 of the RERA Act by receiving 40% of the total consideration of the unit without entering into a Sale Agreement. Secondly, the Respondent Company has also violated Section 11(h) of the RERA Act, 2016 by failing to clear their outstanding lien or mortgage on the property with the previous homebuyer Mr.Vijay Immanuel. Thirdly, the Respondent Company with an intent to strong-arm the Complainant and her husband towards purchase of the Unit at a hike of 12%, has entered into a Sale and Construction Agreements with one

Mr.Daniel Chellapa and have received a consideration from the same individual towards purchase of the F-601 Unit.

19. In the written submission of arguments, the Respondent has submitted that the present Complaint has been filed by the wife of Mr.Vivek Jaiswal who was a Chief Marketing Officer of the Respondent from 04.12.2017 till 14.11.2020. The Complainant's husband was fully aware that the Unit F-601 was originally booked by one Mr.Vijay Emmanuel for a total sale consideration of Rs.2.26 crores and entire amount paid by the said customer to the Respondent (A copy of the Agreement for Sale and Construction Agreement both dated 31.12.2014 is enclosed as Annexure-I). Since the erstwhile customer Mr.Vijay Emmanuel opted to buy two Penthouses in the same project, he had voluntarily surrendered Unit F-601 and desired to purchase two Penthouses. The Agreements executed with Mr.Vijay Emmanuel is filed as Exhibit R1. Knowing fully well that the rate of the said flat F-601 was around Rs.2.26 crores, Mr.Vivek Jaiswal offered to purchase the said flat for Rs.1.77 crores after adjusting the incentives that was claimed by Mr.Vivek Jaiswal. The Respondent in good faith believed in the claim made by Mr.Vivek Jaiswal and entered into agreement for the reduced sale consideration of Rs.1.77 crores after giving due benefit of the incentives claimed by Mr.Vivek Jaiswal Rs.1.77 crores after giving due benefit of the incentives claimed by Mr.Vivek Jaiswal.

20. In terms of the above Agreements, out of the total consideration of Rs.1,77,661,83/- the Complainant has paid a sum of Rs.65,00,000/- which leaves an outstanding of Rs.1,12,66,183/- However, the Complainant has now instituted the Complaint under the guise that the remaining

amount to be paid by the Complainant and her husband is only Rs.47,26,192/- as if the Respondent has already set off the amount as against the alleged incentives. In so far as issues of incentives are concerned, the Complainant's husband who was the employee with the Respondent had submitted inflated claims which are not duly supported by proper documents and in any event the Complainant's husband has already obtained the incentives by way of reduction of cost from Rs.2.26 crores to 1.77 crores. Further, the Complainant who relies on the issue of incentives concerning her husband's employment with the Respondent to obtain relief from this Forum, has not made her husband as a party to this proceeding. Such non joinder of necessary party is fatal to the present proceedings.

21. The Respondent has further stated that as per Section 19(6) of the RERA Act, 2016, the Complainant herein ought to have made timely payments as per the Schedule of Payments to the Agreement executed between Complainant, her Husband and the Respondent herein. As per the terms of the Agreement executed between the parties in Clause 4(d), the Complainant and her husband is entitled for possession of the unit only upon clearance of the outstanding sum of Rs.1,77,661,83/- and any alleged dues of incentives cannot be set off against this sum without the same being adjudicated upon and quantified by the appropriate Civil Court. There has been no Supplementary Agreements entered to factor in the alleged incentive amount and in the absence of the same, Complainant and her Husband are bound by the terms of the Agreement of Sale and Construction Agreements.

22. The Respondent has further submitted that since Mr.Vivek Jaiswal has sought for cancellation and refund, the Unit F-601 was rebooked for a total Sale Consideration of Rs.1,99,73,650/- and allotted to one Dr.Daniel Chellappa and he has already executed agreements, paid Rs.20 lakhs and is ready with balance sale consideration of Rs.1,78,23,845/- (after deducting applicable TDS). (A Copy of the Cheques issued by Dr.Daniel Chellappa is enclosed as Annexure-2). The Complainant has to either make the mutually agreed balance sale consideration and get the unit registered or take back the advance amount together with interest.

23. The Respondent has reiterated in the written arguments as below:

- a. The Residential Unit F 601 is ready for occupation with Completion Certificate.*
- b. The issue that is agitated by the Complainant pertains to employer employee dispute which is outside the scope of TNRERA.*
- c. Mr.Vivek Jaiswal is neither the home owner nor has come forward before this Hon'ble Tribunal and hence on this sole ground, the complaint is liable to be dismissed. The Complainant is not privy to correspondence between the Respondent and Mr.Vivek Jaiswal and hence the Complainant has no locus to file and rely on the same.*
- d. The issue of incentives requires elaborate evidence and has to be agitated before a Civil Court or a Labour Court as the case may be, and not in summary*

proceedings before this Authority. Seriously disputed Questions of fact are involved.

- e. The Respondent is willing to register and hand over the unit to the Complainant upon payment of Rs.1.61 Crore being the balance sale consideration (2.26 Crore less 65 lakhs already paid) or*
- f. The Respondent is willing to refund the amount paid by the Complainant along with applicable interest as per TNRERA Rules from the sale proceeds of Unit F 601. To substantiate the stand of the Respondent, the Respondent had already filed proof of Cheques issued by the prospect that is ready and willing to pay the balance sale consideration upon registration of the unit. The Respondent has not proceeded further with the sale since the matter is pending before this Authority.*

24. This be so, the Complainant cannot claim for the registration of the Unit in their favour without paying the legitimate dues.

25. This Authority has examined the Complaint, Counter Affidavit filed by the Respondent Promoter and the arguments by both sides carefully.

26. As far as the sale consideration of the apartment booked by the Complainant is concerned, the governing documents are the Sale Agreement and the Construction Agreement.

27. As per these two Agreements and as stated by the Respondent Promoter, the total sale consideration is Rs.1,77,66,183/- The Complainant has paid a sum of Rs.65,00,000/- which leaves an outstanding of Rs.1,12,66,183/- The Respondent has also stated that the apartment booked by the Complainant F-601 is ready for occupation with Completion Certificate.

28. Therefore, the Respondent Promoter is directed to hand over the apartment F-601 booked by the Complainant Allottee completed in all respects on receipt of balance sale consideration strictly as per Sale and Construction Agreements.

29. It is seen that the Respondent Promoter has collected more than 10% of the cost of the apartment without first entering into a written Agreement for Sale with the Allottee and registering the Agreement for Sale as required under Section 13 of the Act. The Complainant has also stated that there is a delay of 46 days from the date of payment to the date of execution of Sale Agreement.

30. Therefore, for this contravention of Section 13 of the Act, this Authority imposes a penalty of Rs.3,00,000/- invoking the penal power under Section 61 of the Act. This penalty shall be remitted before 30.11.2021.

31. It is ascertained from the registration wing of this Authority that the Tower in which the unit F-601 is housed has already been registered with this Authority.

32. The Respondent Promoter has also stated that the Completion Certificate has been obtained. Therefore, the Respondent Promoter is directed to furnish a copy of the Completion Certificate for Tower in which the apartment F-601 is situated to the Complainant Allottee at the time of handing over of the apartment on receipt of balance sale consideration as per the Sale and Construction Agreements.

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

Sd/-...22.09.2021
MEMBER (M), TNRERA

Sd/-...22.09.2021
MEMBER (J), TNREA

Sd/-...22.09.2021
CHAIRPERSON, TNRERA

/TRUE COPY/FORWARDED/BY ORDER


ADMINISTRATIVE OFFICER

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22-9-21