

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 6

Dated 18th AUGUST 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210206/0007584

COMPLAINANTS.....

**ERROL JOHN NORONHA
MRS. DELFINA NORONHA**
Ozone Urbana Aqua, D-405,
Devanahalli Taluk,
Kannamangala Village,
Bengaluru-562110.

(By Aakash Raman Sinha and
Ankita Paul, Advocates)

V/S

RESPONDENT.....

Ozone Urbana Infra Developers Pvt Ltd
No.38, Ulsoor Road,
Bengaluru-560042.

(By Sri.Deepak Bhaskar & Associates
Advocates)

* * * * *

J U D G E M E N T

This complaint is filed under section 31 of the RERA Act against the project "Ozone Urbana" for the relief of refund with interest and compensation for mental agony.

Brief facts of the complaint are as under:-

The complainants have purchased an apartment in the project of respondent and entered into an agreement of sale and construction agreement on 23/07/2018 and have paid an amount of Rs.70,95,294/- (including pre-EMI

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amount paid to the bank) to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainants by the end of December 2022. The complainants have submitted that due to the enormous delay in delivery of the flat, has put them to financial crisis and caused mental agony. Despite several requests the respondent has failed to handover the possession of the said Unit, but also failed to pay pre-EMI to Bank till the handover of the Unit. Hence, this complaint.

After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel. But it has not contested the matter by filing statement of objections, producing documents on its behalf, etc but has filed memo of calculation.

In support of their claim, the complainants have produced in all 6 documents such as copies of Agreement for Sale, Tripartite Agreement, Loan agreement, memo of calculation (upto 5/7/2022), e-mail conversations and Payment receipts.

Heard arguments of both sides.

On the above averments, the following points would arise for my consideration:-

1. Whether the complainants are entitled for the relief claimed?
2. What order?

My answer to the above points are as under:-

1. In the Affirmative.
2. As per final order for the following

REASONS

My answer to point No.1:- From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover

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the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project, stopped paying pre-EMIs to the Bank towards loan account and not handed over the unit in favour of complainants till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 23/07/2018. There seems to be no possibility of completing the project or handing over the possession in near future.

As per section 18(1) of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building as the case may be with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

In addition, having chosen to keep silence inspite of appearance about the claim of the complainants, the respondent builder has virtually accepted the claim in question. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid the sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment and not paying pre-EMIs to the Bank towards loan account, certainly entitles the complainants herein for refund with interest. It is also relevant to note that in spite of putting in appearance and submitting their memo of calculation there was huge difference in



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the calculation and the Authority directing them to reconcile the calculation with the complainant, and given sufficient time of six months by the Authority to resubmit memo of calculation for refund with interest due to the complainant, the respondent company claimed that they have not received the RERA link for calculation and sought more time on one or the other reasons, amounts nothing but refusal to obey the directions of the Authority. In view of the above, the Authority has taken serious view of the matter as the company is just not sensitive to the plight of the customers and have taken them on a ride. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest.

Further, the complainant has sought compensation for mental agony which does not come under the jurisdiction of this Authority and hence, same cannot be considered.

Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under.

Interest Calculation Till 30/04/2017 (Before RERA)				
S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS TILL 30/04/2017	INTEREST @9%
1	30-04-2017	0	0	0
			TOTAL INTEREST (I1)	0

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Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	0	1891	05-07-2022	8.15	10.15 as on 01-05-2017	0
2	17-07-2018	10,000	1449	05-07-2022	8.45	10.45 as on 01-07-2018	4,148
3	30-07-2018	4,40,354	1436	05-07-2022	8.45	10.45 as on 01-07-2018	1,81,042
4	10-12-2018	5,60,793	1303	05-07-2022	8.75	10.75 as on 10-12-2018	2,15,210
5	10-12-2018	54,39,207	1303	05-07-2022	8.75	10.75 as on 10-12-2018	20,87,351
6	30-04-2020	44,000	796	05-07-2022	7.7	9.7 as on 10-04-2020	9,307
7	31-05-2020	44,323	765	05-07-2022	7.55	9.55 as on 10-05-2020	8,871
8	30-06-2020	43,633	735	05-07-2022	7.3	9.3 as on 10-06-2020	8,171
9	31-07-2020	43,946	704	05-07-2022	7.3	9.3 as on 10-07-2020	7,882
10	31-08-2020	44,261	673	05-07-2022	7.3	9.3 as on 10-08-2020	7,589
11	10-09-2020	43,542	663	05-07-2022	7.3	9.3 as on 10-09-2020	7,355
12	12-10-2020	43,542	631	05-07-2022	7.3	9.3 as on 10-10-2020	7,000
13	10-11-2020	43,542	602	05-07-2022	7.3	9.3 as on 10-11-2020	6,678
14	10-12-2020	42,989	572	05-07-2022	7.3	9.3 as on 10-12-2020	6,265
15	11-01-2021	42,989	540	05-07-2022	7.3	9.3 as on 10-01-2021	5,914
16	10-02-2021	42,989	510	05-07-2022	7.3	9.3 as on 10-02-2021	5,586
17	10-03-2021	42,989	482	05-07-2022	7.3	9.3 as on 10-03-2021	5,279
18	12-04-2021	42,989	449	05-07-2022	7.3	9.3 as on 10-04-2021	4,918
19	10-05-2021	42,989	421	05-07-2022	7.3	9.3 as on 10-04-2021	4,611

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20	10-06-2021	42,730	390	05-07-2022	7.3	9.3 as on 15-05-2021	4,246
21	12-07-2021	42,730	358	05-07-2022	7.3	9.3 as on 15-06-2021	3,897
22	10-08-2021	42,730	329	05-07-2022	7.3	9.3 as on 15-07-2021	3,581
23	10-10-2021	42,730	268	05-07-2022	7.3	9.3 as on 15-09-2021	2,917
24	10-11-2021	42,730	237	05-07-2022	7.3	9.3 as on 15-10-2021	2,580
						TOTAL INTEREST (I2)	26,00,398

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 05-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
72,72,727	26,00,398	0	98,73,125

Accordingly, the point raised above is answered in the Affirmative.

My answer to point No.2:- In view of the above discussion, I proceed to pass the following

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**CMP/210206/0007584** is hereby allowed. Respondent is directed to pay a sum of **Rs.98,73,125/- (Rupees Ninety Eight Lakh Seventy Three Thousand One Hundred and Twenty Five only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 01/05/2017 till 05/07/2022 to the complainants within 60 days from the date of this order. The interest due from

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06/07/2022 up to the date of final payment will be calculated likewise and paid to the complainant. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.


(Neelmani N Raju)
Member-2
K-RERA

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