

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 29TH AUGUST 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/210805/0008214

COMPLAINANTS

: **MR. TOM CYRIAC &
MRS.MARIA COLLETTE TOM
47/285G, NO.11,
Dream Flower Villa, RIO
Thrikkovil Road,
Chalikkavatom, Vennala,
ERNAKULAM – 682 028.
DISTRICT: ERNAKULAM
STATE: KERALA**

**(By Mr. Rohan George Mathews
Advocate)**

V/S

RESPONDENT

: **OZONE URBANA INFRA
DEVELOPERS PVT LTD.,
NO.38, ULSOOR ROAD,
BENGALURU-560042.**

**(By Mr.Deepak Bhaskar and
Associates, Advocates)**

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Ozone Urbana Avenue" for the relief of refund with interest and closure of loan with bank.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:

2. The complainants have purchased an apartment in the project of respondent and entered into an agreement of sale and construction

Handwritten signature

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

agreement on 13/11/2015 and have paid an amount of Rs.7,19,992/-on 30/10/2015 through DD and subsequently paid Rs.28,99,435/- 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 2017 with a grace period of six months. Despite several requests the respondent has failed to handover the possession of the said Unit, and has also stopped paying pre-EMI to Bank. Hence, this complaint.

3. 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. But has submitted their memo of calculation for refund with interest dated 20/6/2022.
4. In support of their claim, the complainants have produced in all 6 documents such as copies of Agreement for Sale, Payment Receipts, Allotment Letter, Construction Agreement, Tripartite Agreement and memo of calculation for refund with interest as on 03/06/2022.
5. Heard arguments of both sides.
6. **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?
7. **My answer to the above points are as under:**
 1. In the Affirmative.
 2. As per final order for the following –

Handwritten signature in blue ink.

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

REASONS

8. **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 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 and has 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 13/11/2015. There seems to be no possibility of completing the project or handing over the possession in near future.
9. 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.
10. 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.
11. 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, certainly entitles the complainants herein for refund with interest. In addition, it is relevant to note that after submitting memo of



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

calculation by the complainants, the respondent also filed their memo of calculation as on 20/6/2022 in which they claim that they have refunded an amount of Rs.7,35,660/- and Rs.14,05,397/- on 21/1/2019 and 31/1/2019 respectively out of total principle amount of Rs.28,81,221/- and has to refund only Rs.11,31,392/- with interest to the complainants. Whereas, the complainants in their memo of calculation as on 3/6/2022 have submitted that they have received only Rs.10,43,377/- on 20/12/2019 and claimed that the respondent has to refund an amount of Rs.41,66,851/- including interest. The authority directed the respondent to clarify the difference in the calculation submitted by both the parties. The respondent resubmitted its memo of calculation as on 31/7/2022 showing that the amount to be refunded to the complainants is Rs.41,47,809/- and that there was only a meagre difference of Rs.19,042/- with the amount to be refunded as calculated by the complainants. The respondent filed a memo before the Authority and agreed to refund an amount of Rs.41,66,851/- as on 3/6/2022 to the complainants as claimed by them.

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

Memo of Calculation by the Complainants as on 3/6/2022

Principle amount (A)	Interest (B) As on 3/6/2022	Refund from Promoter (C)	Total Balance Amount (A+B-C)
28,81,220	23,29,008	10,43,377	41,66,851

13. Accordingly the point raised above is answered in the Affirmative.
14. My answer to Point No.2:- In view of the above discussion, I proceed to pass the following –


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

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing **No.CMP/210805/0008214** is hereby allowed. Respondent is directed to pay a sum of **Rs.41,66,851/- (Rupees Forty One Lakh Sixty Six Thousand Eight Hundred and Fifty One only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 13/11/2015 to 30/4/2017 and MCLR + 2% from 01/05/2017 till 3/6/2022. The interest due from 4/6/2022 up to the date of final payment will be calculated likewise and paid to the complainants. 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

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY