

**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 3<sup>RD</sup> SEPTEMBER 2022**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.:CMP/200928/0006692**

**COMPLAINANT**

**:** **MR.KANNAN SUBBARAJ**  
**No.12/5-1**  
**Bengaluru-560003.**

**V/S**

**RESPONDENT**

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

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

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**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 Pavillion" for the relief of refund with interest.

**BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-**

2. The complainant has purchased an apartment in the project of respondent and entered into an agreement of sale and construction agreement on 4/3/2014 and has paid an amount of Rs.61,65,338/- (Rupees Sixty One Lakh Sixty Five Thousand Three Hundred and Thirty Eight only) to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainant by the end of October 2016. The complainant contends that there has been huge unexplained delay of 4 years and till this date Ozone Group have not completed the construction

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and handed over the possession of the flat. Despite several requests the respondent has failed to handover possession of the flat and refund the amount with interest. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel. The respondent has not contested the matter by filing statement of objections, producing documents on its behalf. The respondent has filed their memo of calculation as on 31/8/2022.
4. In support of his claim, the complainant has produced in all 4 documents such as copies of Agreement for Sale, Payment receipts, Allotment letter, Application form, HDFC Bank Loan letter dated 19/8/2019 and memo of calculation for refund with interest as on 24/05/2022.
5. Heard arguments of both sides.
6. **On the above averments, the following points would arise for my consideration:**
  1. Whether the complainant is 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 –

## 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, and has failed to hand over the unit in favour of complainant till date. Hence, the builder has failed to

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abide by the terms of the agreement for sale and construction agreement dated 4/3/2014. 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 complainant has paid the sale consideration amount. Due to huge delay in the construction of the project, the complainant has requested the respondent for refund of amount with interest. The failure on the part of the respondent, certainly entitles the complainant herein for refund with interest. The complainant in his memo of calculation as on 24/5/2022 has claimed Rs.61,65,338/- including Bank loan of Rs.46,97,757/- sanctioned by HDFC and for interest of Rs.25,43,741/- in all Rs.87,09,079/- as refund from the respondent as on 24/5/2022. The complainant has produced documentary evidence for the same. The respondent has submitted that they have received Rs.60,14,745/- as the principle amount from the complainant and are contending that there is a difference in the memo of calculation between both the parties and claim that they have to refund an amount of

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Rs.86,33,917/- with interest as on 31/8/2022. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest and upholds the memo of calculation pertaining to refund with interest submitted by the complainant as on 24/5/2022.

12. 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	22-01-2014	14,67,581	1194	4,32,071
2			TOTAL INTEREST ( I1 )	4,32,071

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	14,67,581	1849	24-05-2022	8.15	10.15 as on 01-05-2017	7,54,591
2	19-08-2019	46,97,757	1009	24-05-2022	8.45	10.45 as on 10-08-2019	13,57,079
3	TOTAL AMOUNT	61,65,338				TOTAL INTEREST ( I2 )	21,11,670

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 24-05-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
61,65,338	25,43,741	0	87,09,079

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

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14. 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/200928/0006692** is hereby allowed. Respondent is directed to pay a sum of **Rs.87,09,079/- (Rupees Eighty Seven Lakh Nine Thousand and Seventy Nine only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 01/05/2017 till 24/5/2022. The interest due from 25/5/2022 up to the date of final payment will be calculated likewise and paid to the complainant. The complainant is 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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