

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 2ND SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/210824/0008261

COMPLAINANT

: MR. YATIN SAMANT
RF 908, Purva Riviera,
Near Village Hypermarket,
Bengaluru-560037.

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 Prime" 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 5/9/2018 and has paid an amount of Rs.32,48,488/- (Rupees Thirty Two Lakh Forty Eight Thousand Four Hundred and Eighty Eight only) to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainants by 1/12/2020. Despite several requests the respondent has failed to handover the possession of the said

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Unit, and has not refunded 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. But it has not contested the matter by filing statement of objections, producing documents on its behalf. The respondent has submitted 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, Statement of Account dated 6/6/2022 and memo of calculation for refund with interest as on 28/05/2022.
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 abide by the terms of the agreement for sale and construction agreement

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dated 5/9/2018. 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 already paid the sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment and, certainly entitles the complainant herein for refund with interest. The complainant in his memo of calculation as on 28/5/2022 has claimed Rs.21,55,045/- as refund with interest from the respondent. In addition, it is relevant to note that after the complainant submitted his memo of calculation, the respondent has filed their memo of calculation as on 31/8/2022, in which they have admitted to the principal amount received from the complainant and have agreed to refund with interest an amount of Rs.21,98,221/- to the complainant 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 submitted by the respondent as on 31/8/2022 as above.

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

Memo Calculation submitted by Respondent as on 31/8/2022			
PRINCIPLE AMOUNT (A)	INTEREST (B) AS ON 28-05-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
15,85,894	6,12,327	0	21,98,221

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 –

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing **No.CMP/210824/0008261** is hereby allowed. Respondent is directed to pay a sum of **Rs.21,98,221/- (Rupees Twenty One Lakh Ninety Eight Thousand Two Hundred and Twenty One 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 31/8/2022. The interest due from 1/9/2022 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