

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/220714/0009750

COMPLAINANT : **MR.M.C. PARAMASHIVAIAH &
MRS. GAYATHRI PARAMESH
A 403, Garadi Apartments,
Tata Silk Farm,
K.R. Road,
BENGALURU-560004.**

V/S

RESPONDENT : **OZONE INFRA DEVELOPERS
PVT LTD.,
NO.51/7-1, Rathna Avenue,
Off Richmond Road,
Civil Station,
BENGALURU-560025.**

**(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 and cost of litigation.

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 agreement on 14/11/2018 and have paid an amount of Rs.15,20,158/-

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(Rupees Fifteen Lakh Twenty Thousand One Hundred and Fifty Eight only) 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 2021 and that there is no construction activities since 2019. Despite several requests the respondent has failed to handover the possession of the said Unit, and has also failed to 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. 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 as on 31/8/2022.
4. In support of their claim, the complainants have produced in all 6 documents such as copies of Agreement for Sale, Payment Vouchers, Cancellation Notice, email correspondence and memo of calculation for refund with interest as on 26/08/2022.
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 –

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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 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 14/11/2018. 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 complainants have already paid the sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment, certainly entitles the complainants herein for refund with interest. The complainants in their memo of calculation have claimed that they have paid principle amount of Rs.15,20,158/- for which they have produced payment receipts and claim

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claim Rs.20,37,658/- as refund with interest as on 26/8/2022. The respondent in their memo of calculation as on 31/8/2022 have agreed with the principle amount paid by the complainants and claim that they have to refund Rs.20,38,372/- including interest to the complainants. During the process of the hearing, both the parties agreed mutually and the Respondent agreed to refund with interest an amount of Rs.20,38,372/- as on 31/8/2022 to the complainants.

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

Memo of Calculation by the Respondent as on 31/8/2022

Principle amount (A)	Interest (B) As on 31/8/2022	Refund from Promoter (C)	Total Balance Amount (A+B-C)
15,20,158	5,18,214	0	20,38,372

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/220714/0009750** is hereby allowed. Respondent is directed to pay a sum of **Rs.20,38,372/- (Rupees Twenty Lakh Thirty Eight Thousand Three Hundred and Seventy Two only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from

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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 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

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