

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 1st SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220117/0008815

COMPLAINANT.....

Mr.PRASHANTH PANDURANGA
393, 17TH Main, 4th 'T' Block,
Jayanagar,
BENGALURU-560041.

V/S

RESPONDENT.....

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

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" 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 18/3/2017 and has paid an amount of Rs.1,29,45,701/- (Rupees One Crore Twenty Nine Lakh Forty Five Thousand Seven Hundred and One 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 May 2020. Despite several requests the respondent has failed to handover the possession of the said Unit and refund of the amount with interest. Hence, this complaint.

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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 or producing documents on its behalf. But has filed memo of calculation as on 3/6/2022.
4. In support of his claim, the complainant has produced in all 4 documents such as copies of Agreement of Sale, Payment receipts, Customer Statement of Account issued by Ozone Urbana dated 8/9/2021 and memo of calculation for refund with interest as on 2/7/2022.
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 not handed 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 18/3/2017. 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, certainly entitles the complainant herein for refund with interest. The complainant vide his memo of calculation as on 2/7/2022 has claimed that the respondent has to refund an amount of Rs.1,86,29,896/- including interest. During the process of the hearing, the respondent has agreed with the refund amount with interest as claimed by the complainant. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest.
12. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under –

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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	18-03-2017	13,23,648	43	14,034
2	31-03-2017	13,25,748	30	9,806
3	20-04-2017	13,25,748	10	3,268
4			TOTAL INTEREST (I1)	27,108

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	39,75,144	1888	02-07-2022	8.15	10.15 as on 01-05-2017	20,87,026
2	09-10-2017	39,751	1727	02-07-2022	8.15	10.15 as on 01-10-2017	19,090
3	10-11-2017	5,00,000	1695	02-07-2022	8.1	10.1 as on 01-11-2017	2,34,513
4	31-01-2018	8,73,624	1613	02-07-2022	8.1	10.1 as on 01-01-2018	3,89,930
5	27-03-2018	8,40,580	1558	02-07-2022	8.35	10.35 as on 01-03-2018	3,71,359
6	12-04-2018	8,45,315	1542	02-07-2022	8.35	10.35 as on 01-04-2018	3,69,615
7	19-04-2018	3,74,542	1535	02-07-2022	8.35	10.35 as on 01-04-2018	1,63,025
8	13-06-2018	7,01,602	1480	02-07-2022	8.45	10.45 as on 01-06-2018	2,97,287
9	22-06-2018	8,80,811	1471	02-07-2022	8.45	10.45 as on 01-06-2018	3,70,952

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11	02-11-2018	4,34,093	1338	02-07-2022	8.7	10.7 as on 01-11-2018	1,70,266
12	02-11-2018	9,41,780	1338	02-07-2022	8.7	10.7 as on 01-11-2018	3,69,399
13	24-01-2019	9,24,538	1255	02-07-2022	8.75	10.75 as on 10-01-2019	3,41,730
14	05-02-2019	4,49,086	1243	02-07-2022	8.75	10.75 as on 10-01-2019	1,64,405
15	TOTAL AMOUNT	1,29,45,702				TOTAL INTEREST (I2)	58,21,491

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 02-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,29,45,702	56,84,194	0	1,86,29,896

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/220117/0008815** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,86,29,896/- (Rupees One Crore Eighty Six Lakh Twenty Nine Thousand Eight Hundred and Ninety Six only)** calculated at 9% from 18/3/2017 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 02/07/2022 towards refund with

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order. The interest due from 03/07/2022 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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