

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 12th SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220530/0009546

COMPLAINANT.....

MRS. PADMA NARAYANAN

Villa 92, The Hills by QVC,
Angata(V), Kudavati Post,
Nandi Hobli,
Chikballapur District-562103.
Karnataka State.

V/S

RESPONDENT.....

Ozone Infra Developers Pvt Ltd

No.51/7-1, Rathna Avenue,
Off Richmond Road,
Civil Station,
Bangalore-560025.

(By Mr.Deepak Bhaskar & 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 booked an apartment in the project of respondent and entered into an agreement of sale and construction agreement on 26/2/2020 and has paid an amount of Rs.12,83,228/- (Rupees Twelve

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Lakh Eighty Three Thousand Two Hundred and Twenty Eight only) to the respondent till date. The respondent was supposed to complete the project and hand over the possession of the flat to the complainant in 2023. However, the complainant came to know that the project has been stalled project in 2021. The complainant submits that she has sent cancellation in October 2021 through email. Despite the fact that almost 2 years have lapsed, the respondent has 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, despite which the respondent has not contested the matter by filing statement of objections on its behalf. But have submitted a memo of calculation as on 31/8/2022.
4. In support of her claim, the complainant has produced in all 10 documents such as copies of Booking Form, Payment receipts, Cancellation form dated 4/10/2021, email confirmation for cancellation dated 4/10/2021, Letter dated 21/1/2022 sent by registered post with acknowledgement due and memo of calculation as on 30/7/2022.
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.

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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 dated 26/2/2020. 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. 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 in her memo of calculation as on 30/7/2022 has claimed an amount of Rs.15,72,532/-



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as refund with interest from the respondent. The respondent in their memo of calculation have agreed with the principle amount received by them and the amount to be refunded to the complainant as per complainant's memo of calculation as on 30/7/2022. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest and upholds the claim for Rs.15,72,532/- as on 30/7/2022.

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	30-04-2017	0	0	0
2			TOTAL INTEREST (11)	0

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	0	1916	30-07-2022	8.15	10.15 as on 01-05-2017	0
2	26-02-2020	2,00,000	885	30-07-2022	8.15	10.15 as on 10-02-2020	49,220
3	17-04-2020	10,83,228	834	30-07-2022	7.7	9.7 as on 10-04-2020	2,40,084
4	TOTAL AMOUNT	12,83,228				TOTAL INTEREST (12)	2,89,304

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B) AS ON 30-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
12,83,228	2,89,304	0	15,72,532

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/220530/0009546** is hereby allowed. Respondent is directed to pay a sum of **Rs.15,72,532/- (Rupees Fifteen Lakh Seventy Two Thousand Five Hundred and Thirty Two only)** calculated at MCLR + 2% from 01/05/2017 till 30/07/2022 towards refund with interest to the complainant, within 60 days from the date of this order. The interest due from 31/07/2022 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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