

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/220624/0009677

COMPLAINANT.....

MRS.N.S. SHUBHA

1231, 11th Cross, BSK 1st Stage,
2nd Block, Near Shankarnag Circle,
Bangalore-560060.

V/S

RESPONDENT.....

Ozone Realtors Private Limited

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 Polestar" for the relief of refund with interest and closure of loan with Indiabulls.

Brief facts of the complaint are as under:-

2. The complainants have booked an apartment in the project of respondent and entered into an agreement of sale and construction agreement on 18/7/2018 under subvention schme/pre-EMI and have paid an amount of Rs.34,25,725/- (Rupees Thirty Four Lakh Twenty Five Thousand Seven Hundred and Twenty Five only) to the respondent till date. The respondent



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

was supposed to complete the project and hand over the possession of the flat to the complainant in 2020. However, the respondent stalled project from 2018. The complainant submits that the flat was booked under subvention scheme and made request for cancellation and closure of loan, the respondent failed to comply with it till date. Due to this enormous delay by the respondent in payment of EMI, Bankers are harassing the complainant for payment. Despite the fact that almost 4 years have lapsed, the respondent has failed to close the loan account. 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 Agreement for Sale, Cost Sheet, Payment receipts, email correspondence dated 30/3/2021, Subvention Scheme letter dated 19/7/2018, India Bulls – Loan Sanction letter, email sent to India Bulls for closing loan with Ozone, Statement of Accounts of Indiabulls dated 31/8/2022 and letter dated 7/9/2022 from Indiabulls Housing Finance Ltd indicating the loan amount to be repaid.
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

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

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, stopped paying pre-EMIs to the Bank, not closed the loan account 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 18/7/2018. 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 not paying pre-EMIs to the Bank, certainly entitles the complainant herein for refund with interest. The complainant in their written submission dated 7/9/2022 has claimed that they have paid principle amount of Rs.18,00,000/- to the

44 WS

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

respondent on different dates for which she has received a refund of Rs.1,72,655/- from the respondent on 19/11/2019. The complainant made a written submission on 8/9/2022 enclosing copy of Loan Closure Statement issued by Indiabulls showing that an amount of Rs.34,32,252/- has to be settled as on 7/9/2022. The respondent in their memo of calculation as on 31/8/2022 have claimed that the net amount to be refunded is Rs.34,58,954/-. During the process of the hearing both the parties agreed for settlement of Rs.34,38,252/- and closure of the loan account as requested by the complainant despite the amount quoted by the respondent is little on higher side. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest and upholds her claim of Rs.34,38,252/- for settlement towards the closure of bank loan raised in Indiabulls.

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

Memo Calculation by the Respondent as on 31/8/2022			
PRINCIPLE AMOUNT (A)	INTEREST (B) AS ON 31-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
33,30,178	13,17,981	11,89,205	34,58,954 The amount to be settled is Rs.34,38,252/-

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

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

complaint bearing No.**CMP/220624/0009677** is hereby allowed. Respondent is directed to pay a sum of **Rs.34,38,252/- (Rupees Thirty Four Lakh Thirty Eight Thousand Two Hundred and Fifty Two only)** calculated at MCLR + 2% from 01/05/2017 till 31/08/2022 towards refund with interest to the complainant, within 60 days from the date of this order. The interest due from 01/09/2022 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

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY