

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 19th SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220117/0008810

COMPLAINANTS.....

**Ms. EKTA VERMA &
Ms. PRABHA VERMA
A-803, MERMAID 1
SECTOR 11, CBD BELAPUR
NAVI MUMBAI-400614.
DISTRICT: THANE
STATE: MAHARASHTRA**

(By Mr. Akash R Bantia &
Mr.Chetan Chandrashekar,
Advocates)

V/S

RESPONDENT.....

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

J U D G E M E N T

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:-

1. The complainants have purchased an apartment in the project of respondent and entered into an agreement of sale and construction agreement on 14/10/2016 and have paid an amount of Rs.73,34,408/- (Rupees Seventy Three Lakh Thirty Four Thousand Four Hundred and

M/S

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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 March 2019. Despite several requests the respondent has failed to handover the possession of the said Unit, and has also stopped paying pre-EMI to Bank and have failed to close the loan account and as such, the complainants have opted to exit from the Project. Hence, this complaint.

2. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative. But it has not contested the matter by filing statement of objections, producing documents on its behalf.
3. In support of their claim, the complainants have produced in all 9 documents such as copies of Sale Agreement, Advance Payment Receipt, Letter from Ozone Urbana, email interactions with Ozone, Ozone buy back agreement, Ozone Tripartite Agreement, Agreement for Construction, email on loan closure and memo of calculation for refund with interest as on 19/6/2022.
4. Heard arguments of both sides.

5. 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?

6. 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

7. **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 complainants till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 14/10/2016. There seems to be no possibility of completing the project or handing over the possession in near future.
8. 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.
9. 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 failing to keep up promise to handover possession of apartment and not paying pre-EMIs to the Bank, certainly entitles the complainants herein for refund with interest. The complainants also submits that on their



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regular follow up, the respondent initially reimbursed pre-EMIs till 5th February 2020 and thereafter again stopped paying it. The complainants further admits that they have also received Rs.20,76,811/- as refund from the promoter which they have reflected in their memo of calculation too. The complainants have submitted their memo of calculation as on 19/6/2022 claiming a refund of Rs.88,26,878/- including interest. The respondent has filed a calculation sheet as on 31/7/2022 claiming that they have to refund Rs.65,01,609/- with interest and not Rs.88,26,878/- as claimed the complainants. On verification of the documentary proofs produced by the Complainants in respect of their claim, the Authority concludes that the complainants are entitled for refund of Rs.88,26,878/- with interest as on 19/6/2022 as claimed by them in their memo of calculation.

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	14-09-2016	1,00,000	228	5,621
2	16-09-2016	5,75,145	226	32,050
3	22-09-2016	75,030	220	4,070
4	29-10-2016	21,76,357	183	98,204
5			TOTAL INTEREST (I1)	1,39,945

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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	29,26,532	450	25-07-2018	8.15	10.15 as on 01-05-2017	3,66,217
2	28-06-2017	11,25,444	661	20-04-2019	8.15	10.15 as on 01-06-2017	2,06,870
3	31-10-2017	11,25,444	536	20-04-2019	8.15	10.15 as on 01-10-2017	1,67,749
4	30-01-2018	7,50,296	445	20-04-2019	8.1	10.1 as on 01-01-2018	92,389
5	05-05-2018	39,479	350	20-04-2019	8.35	10.35 as on 01-05-2018	3,918
6	05-06-2018	40,342	319	20-04-2019	8.45	10.45 as on 01-06-2018	3,684
7	05-07-2018	40,342	289	20-04-2019	8.45	10.45 as on 01-07-2018	3,337
8	05-09-2018	41,637	227	20-04-2019	8.65	10.65 as on 01-09-2018	2,757
9	05-02-2019	42,068	74	20-04-2019	8.75	10.75 as on 10-01-2019	916
10	05-08-2019	42,499	1049	19-06-2022	8.6	10.6 as on 10-07-2019	12,946
11	05-09-2019	42,068	1018	19-06-2022	8.45	10.45 as on 10-08-2019	12,260
12	05-10-2019	42,068	988	19-06-2022	8.35	10.35 as on 10-09-2019	11,785
13	05-11-2019	42,068	957	19-06-2022	8.25	10.25 as on 10-10-2019	11,305

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14	05-12-2019	41,637	927	19-06-2022	8.2	10.2 as on 10-11-2019	10,786
15	06-01-2020	41,637	895	19-06-2022	8.2	10.2 as on 10-12-2019	10,413
16	05-02-2020	41,637	865	19-06-2022	8.2	10.2 as on 10-01-2020	10,064
17	05-03-2020	41,421	836	19-06-2022	8.15	10.15 as on 10-02-2020	9,629
18	09-04-2020	41,421	801	19-06-2022	8.05	10.05 as on 10-03-2020	9,135
19	05-05-2020	41,421	775	19-06-2022	7.7	9.7 as on 10-04-2020	8,531
20	05-06-2020	40,558	744	19-06-2022	7.55	9.55 as on 10-05-2020	7,895
21	05-07-2020	40,558	714	19-06-2022	7.3	9.3 as on 10-06-2020	7,378
22	05-08-2020	40,558	683	19-06-2022	7.3	9.3 as on 10-07-2020	7,058
23	05-09-2020	39,695	652	19-06-2022	7.3	9.3 as on 10-08-2020	6,594
24	05-10-2020	39,695	622	19-06-2022	7.3	9.3 as on 10-09-2020	6,290
25	05-11-2020	39,695	591	19-06-2022	7.3	9.3 as on 10-10-2020	5,977
26	05-12-2020	34,631	561	19-06-2022	7.3	9.3 as on 10-11-2020	4,950
27	05-01-2021	39,695	530	19-06-2022	7.3	9.3 as on 10-12-2020	5,360
28	05-02-2021	39,695	499	19-06-2022	7.3	9.3 as on 10-01-2021	5,046

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29	05-03-2021	39,264	471	19-06-2022	7.3	9.3 as on 10-02-2021	4,712
30	05-04-2021	39,264	440	19-06-2022	7.3	9.3 as on 10-03-2021	4,401
31	05-05-2021	39,263	410	19-06-2022	7.3	9.3 as on 10-04-2021	4,101
32	05-06-2021	39,047	379	19-06-2022	7.3	9.3 as on 15-05-2021	3,770
33	05-07-2021	39,047	349	19-06-2022	7.3	9.3 as on 15-06-2021	3,472
34	05-08-2021	39,047	318	19-06-2022	7.3	9.3 as on 15-07-2021	3,163
35	06-09-2021	39,047	286	19-06-2022	7.3	9.3 as on 15-08-2021	2,845
36	06-10-2021	39,047	256	19-06-2022	7.3	9.3 as on 15-09-2021	2,546
37	05-11-2021	39,047	226	19-06-2022	7.3	9.3 as on 15-10-2021	2,248
38	06-12-2021	39,047	195	19-06-2022	7.3	9.3 as on 15-11-2021	1,940
39	05-01-2022	39,047	165	19-06-2022	7.3	9.3 as on 15-12-2021	1,641
40	TOTAL AMOUNT	73,34,408				TOTAL INTEREST (I2)	10,46,078

Refund Interest Calculation									
S. NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	66,59,251	25-07-2018	1,20,263	65,38,988	51	14-09-2018	8.45	10.45 as on 01-07-2018	95,478

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2	65,38,988	14-09-2018	41,637	64,97,351	198	31-03-2019	8.65	10.65 as on 01-09-2018	3,75,368
3	61,17,446	31-03-2019	75,108	60,42,338	20	20-04-2019	8.75	10.75 as on 10-03-2019	35,591
4	73,34,408	20-04-2019	6,75,157	66,59,251	48	07-06-2019	8.7	10.7 as on 10-04-2019	93,703
5	60,42,338	20-04-2019	7,42,673	52,99,665	48	07-06-2019	8.7	10.7 as on 10-04-2019	74,572
6	64,97,351	07-06-2019	42,068	64,55,283	57	03-08-2019	8.65	10.65 as on 10-05-2019	1,07,361
7	64,55,283	03-08-2019	42,499	64,12,784	33	05-09-2019	8.6	10.6 as on 10-07-2019	61,457
8	64,12,784	05-09-2019	42,499	63,70,285	29	04-10-2019	8.45	10.45 as on 10-08-2019	52,890
9	63,70,285	04-10-2019	42,499	63,27,786	43	16-11-2019	8.35	10.35 as on 10-09-2019	77,155
10	63,27,786	16-11-2019	42,068	62,85,718	19	05-12-2019	8.2	10.2 as on 10-11-2019	33,374
11	62,85,718	05-12-2019	42,068	62,43,650	32	06-01-2020	8.2	10.2 as on 10-11-2019	55,833
12	62,43,650	06-01-2020	42,068	62,01,582	59	05-03-2020	8.2	10.2 as on 10-12-2019	1,02,249
13	62,01,582	05-03-2020	42,068	61,59,514	210	01-10-2020	8.15	10.15 as on 10-02-2020	3,59,698
14	61,59,514	01-10-2020	42,068	61,17,446	91	31-12-2020	7.3	9.3 as on 10-09-2020	1,41,840
15	52,99,665	31-12-2020	42,068	52,57,597	535	19-06-2022	7.3	9.3 as on 10-12-2020	7,16,689
16								TOTAL INTEREST (I3)	23,83,258

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 19-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
73,34,408	35,69,281	20,76,811	88,26,878

Accordingly the point raised above is answered in the Affirmative.

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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/220117/0008810** is hereby allowed. Respondent is directed to pay a sum of **Rs.88,26,878/- (Rupees Eighty Eight Lakh Twenty Six Thousand Eight Hundred and Seventy Eight only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 14/09/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 19/06/2022 to the complainants within 60 days from the date of this order. The interest due from 20/06/2022 up to the date of final payment will be calculated likewise and paid to the complainant. 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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