

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 20th SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/220416/0009355

COMPLAINANTS.....

**MR. THIAGARAJAN HARIHARAN &
MRS.SARASWATHI THIAGARAJAN
A-803, HILLGRANGE
HIRANANDANI ESTATE
GHODBUNDER ROAD
THANE-400607.
DISTRICT: THANE
STATE: MAHARASHTRA**

(By Mr. S. Muralidhar, Advocate)

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 Prime" 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 under buyback scheme on 21/01/2016 and have paid an amount of Rs.70,25,444/- (Rupees Seventy Lakh Twenty Five Thousand

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Four Hundred and Forty Four 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 April 2018. However, the respondent has failed to handover the possession of the said Unit, and has also stopped paying pre-EMI to Bank. 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 8 documents such as copies of Sale Agreement, PEMI paid by Builder, Tripartite Agreement with HDFC, Subvention Extension, Possession delay to June 2018, June 2020 & April 2022, Statement of Account from HDFC as on December 2022 and memo of calculation for refund with interest as on 02/06/2022.
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 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 21/01/2016. 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 have submitted their memo of calculation as on 2/6/2022 claiming refund of Rs.1,08,45,778/- with

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interest. The respondent has filed a calculation sheet as on 31/7/2022 claiming that they have to refund Rs.84,81,865/- with interest and not Rs.1,08,45,778/- as claimed by the complainants. The respondent has also claimed that they have refunded an amount of Rs.59,874/- to the complainants. The complainants have denied it in their memo of calculation. A through verification of the documentary proofs furnished by the complainants reveals that their claim is genuine. Whereas the respondent has not produced any document proof in support of their claim. Having regard to these aspects, the Authority concludes that the complainants are entitled for refund of Rs.1,08,45,778/- with interest as on 2/6/2022 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	01-02-2016	7,09,620	454	79,438
2	01-02-2016	7,097	454	794
3	23-02-2016	3,48,812	432	37,155
4	23-02-2016	17,80,049	432	1,89,611
5	28-05-2016	1,51,383	337	12,579
6	28-05-2016	9,13,048	337	75,870
7	21-06-2016	1,45,726	313	11,246
8	21-06-2016	9,18,705	313	70,903
9	26-08-2016	86,397	247	5,261
10	26-08-2016	6,23,223	247	37,956
11	19-10-2016	38,763	193	1,844
12	19-10-2016	3,16,047	193	15,040
13			TOTAL INTEREST (I1)	5,37,697

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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	60,38,870	1858	02-06-2022	8.15	10.15 as on 01-05-2017	31,20,143
2	16-08-2019	44,574	1021	02-06-2022	8.45	10.45 as on 10-08-2019	13,029
3	16-09-2019	38,364	990	02-06-2022	8.35	10.35 as on 10-09-2019	10,769
4	15-10-2019	38,364	961	02-06-2022	8.25	10.25 as on 10-10-2019	10,353
5	15-11-2019	38,364	930	02-06-2022	8.2	10.2 as on 10-11-2019	9,970
6	16-12-2019	37,921	899	02-06-2022	8.2	10.2 as on 10-12-2019	9,526
7	15-01-2020	37,921	869	02-06-2022	8.2	10.2 as on 10-01-2020	9,208
8	16-03-2020	37,699	808	02-06-2022	8.05	10.05 as on 10-03-2020	8,387
9	18-04-2020	37,699	775	02-06-2022	7.7	9.7 as on 10-04-2020	7,764
10	15-05-2020	37,699	748	02-06-2022	7.55	9.55 as on 10-05-2020	7,378
11	15-06-2020	36,812	717	02-06-2022	7.3	9.3 as on 10-06-2020	6,725
12	15-07-2020	34,151	687	02-06-2022	7.3	9.3 as on 10-07-2020	5,977
13	17-08-2020	34,151	654	02-06-2022	7.3	9.3 as on 10-08-2020	5,690

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14	15-09-2020	34,151	625	02-06-2022	7.3	9.3 as on 10-09-2020	5,438
15	15-10-2020	34,151	595	02-06-2022	7.3	9.3 as on 10-10-2020	5,177
16	05-11-2020	4,043	574	02-06-2022	7.3	9.3 as on 10-10-2020	591
17	16-11-2020	30,108	563	02-06-2022	7.3	9.3 as on 10-11-2020	4,318
18	15-12-2020	37,921	534	02-06-2022	7.3	9.3 as on 10-12-2020	5,159
19	23-12-2020	34,151	526	02-06-2022	7.3	9.3 as on 10-12-2020	4,576
20	15-01-2021	33,707	503	02-06-2022	7.3	9.3 as on 10-01-2021	4,319
21	15-02-2021	33,707	472	02-06-2022	7.3	9.3 as on 10-02-2021	4,053
22	15-03-2021	33,707	444	02-06-2022	7.3	9.3 as on 10-03-2021	3,813
23	15-04-2021	33,486	413	02-06-2022	7.3	9.3 as on 10-04-2021	3,523
24	15-05-2021	33,485	383	02-06-2022	7.3	9.3 as on 15-05-2021	3,267
25	15-06-2021	33,485	352	02-06-2022	7.3	9.3 as on 15-06-2021	3,003
26	15-07-2021	33,485	322	02-06-2022	7.3	9.3 as on 15-07-2021	2,747
27	15-08-2021	33,485	291	02-06-2022	7.3	9.3 as on 15-08-2021	2,482
28	15-09-2021	29,937	260	02-06-2022	7.3	9.3 as on 15-09-2021	1,983

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29	15-10-2021	29,909	230	02-06-2022	7.3	9.3 as on 15-10-2021	1,752
30	15-11-2021	29,937	199	02-06-2022	7.3	9.3 as on 15-11-2021	1,517
31	TOTAL AMOUNT	70,25,444				TOTAL INTEREST (I2)	32,82,637

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 02-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
70,25,444	38,20,334	0	1,08,45,778

Accordingly the point raised above is answered in the Affirmative.

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/UR/220416/0009355** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,08,45,778/- (Rupees One Crore Eight Lakh Forty Five Thousand Seven 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 01/02/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 02/06/2022 to the complainants within 60 days from the date

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of this order. The interest due from 03/06/2022 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

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