

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 23rd SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/200911/0006555

COMPLAINANTS.....

**MR. DEEPANKAR ARORA
NO.35/36, JANAKPURI
ENGINEERS ENCLAVE PHASE-3
GMS ROAD
DEHRADUN-248001
DISTRICT: DEHRADUN
STATE: UTTARAKHAND**

(By Mr. Sadanand Shastri, Advocate)

V/S

RESPONDENT.....

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

(By Mr.Deepak Bhaskar & Associates,
Advocates)

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 Pavilion" for the relief of refund with interest.

Brief facts of the complaint are as under:-

1. The complainant has purchased an apartment in the project of respondent and entered into an agreement of sale and construction agreement under subvention scheme on 30/06/2014 and has paid an

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amount of Rs.69,40,718/- (Rupees Sixty Nine Lakh Forty Thousand Seven Hundred and Eighteen only) (including Bank Loan) to the respondent till date. At the time of agreement, the respondent had agreed to pay pre-EMIs till the date of possession. The respondent was supposed to hand over the possession of the flat to the complainants by the end of October 2016. However, the respondent has failed to handover the possession of the said Unit, and has also stopped paying pre-EMIs 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 counsel. 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, Construction Agreement, Allotment letter, Payment receipts issued by Ozone, Home Loan disbursement details from HDFC dated 31/8/2020, loan sanction letter, whatsapp messages exchanged with Ozone and memo of calculation for refund with interest as on 23/05/2022.
4. Heard arguments of both sides.
5. **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?
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 complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 30/6/2014. 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.
10. 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 failing 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 has submitted his memo of calculation as on 2/6/2022 claiming an amount of Rs.92,27,768/- being

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refund with interest. Though the respondent has filed a calculation sheet as on 31/8/2022 claiming that they have to refund an amount of Rs.1,09,56,574/- including interest, the same cannot be accepted as they have filed the calculation sheet after the case was posted for orders. The complainant has also admitted that he has received an amount of Rs.20,89,616/- as refund from the respondent and the same has been indicated in his memo of calculation also. A thorough verification of the documentary proofs furnished by the complainant reveals that his claim is genuine. On 22/9/2022 the complainant has also made a submission to the Authority that he has agreed to accept the refund with interest as claimed in his memo of calculation as on 23/5/2022. Having regard to these aspects, the Authority concludes that the complainant is entitled for refund of an amount of Rs.92,27,768/- including interest as on 23/5/2022 as claimed by him in his memo of calculation.

11. 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 | 31-05-2014 | 7,43,784 | 1066 | 1,95,503 |
| 2 | 17-06-2014 | 7,43,784 | 1048 | 1,92,201 |
| 3 | 28-07-2014 | 13,40,566 | 1007 | 3,32,864 |
| 4 | 28-01-2015 | 13,38,810 | 823 | 2,71,686 |
| 5 | 24-08-2015 | 13,44,159 | 615 | 2,03,833 |
| 6 | 26-11-2015 | 7,46,755 | 521 | 95,932 |
| 7 | 25-01-2016 | 6,72,080 | 461 | 76,396 |
| 8 | 14-06-2016 | 10,780 | 320 | 850 |
| 9 | | | TOTAL INTEREST (I1) | 13,69,265 |

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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 | 69,40,718 | 761 | 01-06-2019 | 8.15 | 10.15 as on 01-05-2017 | 14,68,798 |
| 2 | TOTAL AMOUNT | 69,40,718 | | | | TOTAL INTEREST(I2) | 14,68,798 |

| 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 | 69,40,718 | 01-06-2019 | 20,89,616 | 48,51,102 | 1087 | 23-05-2022 | 8.65 | 10.65 as on 10-05-2019 | 15,38,603 |
| 2 | | | | | | | | TOTAL INTEREST (I3) | 15,38,603 |

| Memo Calculation | | | |
|---------------------------|---|-------------------------------|---|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2 + I3) AS ON 23-05-2022 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 69,40,718 | 43,76,666 | 20,89,616 | 92,27,768 |

12. Accordingly the point raised above is answered in the Affirmative.

13. **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/200911/0006555** is hereby allowed.

(Signature)

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Respondent is directed to pay a sum of **Rs.92,27,768/-**
(Rupees Ninety Two Lakh Twenty Seven Thousand Seven
Hundred and Sixty Eight only) towards refund with interest to
the complainants within 60 days from the date of this order,
calculated at 9% from 31/5/2014 to 30/04/2017 and MCLR +
2% from 01/05/2017 till 23/05/2022 to the complainant
within 60 days from the date of this order. The interest due
from 24/05/2022 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