

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 26th SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220120/0008836

COMPLAINANT.....

**DR. LAKSHMI KANNAN
1082, 12TH MAIN
WEST OF CHORD ROAD
BENGALURU-560086**

(By Mr.L.P. DEEPAK, Advocate)

V/S

RESPONDENT.....

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

(By its Representative)

J U D G E M E N T

This complaint is filed under section 31 of the RERA Act against the project "Urbana Avenue" 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 on 19/05/2017 and has paid an amount of Rs.66,67,058/- (Rupees Sixty Six Lakh Sixty Seven Thousand and Fifty Eight only) to the respondent till date. Prior to this the complainant had booked for an apartment in Ozone Urbana Belvedere (Unit No.D-303), but they changed it along with booking amount to Urbana Avenue in March 2016. The respondent was supposed to hand



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over the possession of the flat to the complainants by the end of March 2019. However, the respondent has failed to handover the possession of the said Unit seeking extension with undue delay. 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. The respondent has filed their calculation sheet as on 31/8/2022.

3. In support of her claim, the complainant has produced in all 5 documents such as copies of Sale Agreement, Construction Agreement, Payment receipts issued by Ozone, Statement of Account issued by HDFC dated 9/6/2022 and memo of calculation for refund with interest as on 09/06/2022.

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 –

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, and has failed to handover the unit to complainant till date. Hence, the builder has failed to abide by the

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terms of the agreement for sale and construction agreement dated 19/5/2017. 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. During the process of the hearing on 2/8/2022, the complainant's advocate also conceded that the principal amount paid to the respondent is Rs.59,46,328/- which tallies with the principal amount received by the respondent as submitted in their memo of calculation as on 31/8/2022 and not Rs.66,67,058/- as claimed by the complainant in her memo of calculation as on 9/6/2022. The complainant has submitted her memo of calculation as on 9/6/2022 claiming an amount of Rs.87,83,556/- being 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.89,11,974/- including interest, the same cannot be accepted as they have filed the calculation sheet after the case was posted for orders. A thorough verification of the documentary proofs furnished by the

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complainant reveals that her claim is genuine. Having accepted the said amount and failing to keep up promise to handover possession of apartment, certainly entitles the complainant herein for refund with interest. Having regard to these aspects, the Authority concludes that the complainant is entitled for refund of an amount of Rs.87,83,556/- including interest as on 9/6/2022 as claimed by her in her 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	09-03-2016	11,21,342	417	1,15,298
2			TOTAL INTEREST (I1)	1,15,298

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	11,21,342	1865	09-06-2022	8.15	10.15 as on 01-05-2017	5,81,554
2	30-05-2017	13,26,464	1836	09-06-2022	8.15	10.15 as on 01-05-2017	6,77,238
3	31-10-2017	9,52,560	1682	09-06-2022	8.15	10.15 as on 01-10-2017	4,45,544
4	31-01-2018	6,40,282	1590	09-06-2022	8.1	10.1 as on 01-01-2018	2,81,952
5	29-08-2018	6,35,040	1380	09-06-2022	8.45	10.45 as on 01-08-2018	2,50,901
6	05-10-2018	6,35,040	1343	09-06-2022	8.7	10.7 as on 01-10-2018	2,50,016

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7	01-01-2019	6,35,040	1255	09-06-2022	8.75	10.75 as on 10-12-2018	2,34,725
8	TOTAL AMOUNT	59,46,328				TOTAL INTEREST(I2)	27,21,930

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 09-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
59,46,328	28,37,228	0	87,83,556

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/220120/0008836** is hereby allowed. Respondent is directed to pay a sum of **Rs.87,83,556/- (Rupees Eighty Seven Lakh Eighty Three Thousand Five Hundred and Fifty Six only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 9/3/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 9/6/2022 to the complainant within 60 days from the date of this order. The interest due from 10/06/2022 up to the date of final payment will be calculated

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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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