

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/201227/0007312

COMPLAINANT.....

**MR. ASHISH JAISWAL
MOHALLA SADARGANJ
NEAR RAMJANKI MANDIR
MARIAHU
JAUNPUR-222161
STATE: UTTAR PRADESH**

(By Mr.L.P. DEEPAK, 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" 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 11/10/2017 and has paid an amount of Rs.54,44,650/- (Rupees Fifty Four Lakh Forty Four Thousand Six Hundred

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and Fifty only) (including loan amount from HDFC) to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainants by the end of December 2022. However, the respondent has stopped paying pre-EMIs to the Bank as agreed due to which the complainant has received legal notice from HDFC to pay PEMI or otherwise they will be compelled to take legal action against the complainant. 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. The respondent has filed their calculation sheet as on 31/8/2022.
3. In support of his claim, the complainant has produced in all 5 documents such as copies of Sale Agreement, Customer statement dated 18/2/2020 for having received payments from the complainant issued by Ozone, Legal Notice issued by HDFC and memo of calculation for refund with interest as on 02/07/2022.
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 paying pre-EMIs to the Bank till the possession is handed over to the complainant, the respondent has failed to abide by the terms of the agreement for sale and agreement dated 11/10/2017, due to which the complainant has received legal notice from HDFC asking him to pay the pre-EMIs, failing which they will initiate legal action against the complainant.
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. The complainant has submitted his memo of calculation as on 2/7/2022 claiming an amount of Rs.79,60,317/- 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.67,11,110/- including interest, the same cannot be accepted as they have filed the calculation sheet after the case was posted for orders. The principal amount received by the respondent tallies with the claim of the

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complainant vide Customer Statement dated 18/2/2020 issued by Ozone. A thorough verification of the documentary proofs furnished by the complainant reveals that his claim is genuine. Having accepted the said amount and failing to keep up promise in paying pre-EMIs to the Bank, 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.79,60,317/- including interest as on 2/7/2022 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	30-04-2017	0	0	0
2			TOTAL INTEREST (I1)	0

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	0	1888	02-07-2022	8.15	10.15 as on 01-05-2017	0
2	21-09-2017	50,000	1745	02-07-2022	8.15	10.15 as on 01-09-2017	24,262
3	23-11-2017	6,30,116	1682	02-07-2022	8.1	10.1 as on 01-11-2017	2,93,274
4	30-11-2017	34,14,112	1675	02-07-2022	8.1	10.1 as on 01-11-2017	15,82,417
5	30-11-2017	6,69,942	1675	02-07-2022	8.1	10.1 as on 01-11-2017	3,10,513

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6	23-01-2018	5,77,061	1621	02-07-2022	8.1	10.1 as on 01-01-2018	2,58,841
7	24-01-2018	1,03,419	1620	02-07-2022	8.1	10.1 as on 01-01-2018	46,360
8	TOTAL AMOUNT	54,44,650				TOTAL INTEREST (I2)	25,15,667

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 02-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
54,44,650	25,15,667	0	79,60,317

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/201227/0007312** is hereby allowed. Respondent is directed to pay a sum of **Rs.79,60,317/- (Rupees Seventy Nine Lakh Sixty Thousand Three Hundred and Seventeen only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 21/09/2017 till 2/7/2022 to the complainant within 60 days from the date of this order. The interest due from 03/07/2022 up to the date of final


HWS

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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

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