

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/220117/0008814

COMPLAINANT.....

**MR. JEETENDRA BHANU KUMAR VERMA
G 01, FORTUNA CLASSIC
APARTMENTS, 12TH MAIN
BENGALURU-560097.**

(In Person)

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 "Ozone Urbana Aqua" of the respondent and entered into an agreement of sale under subvention scheme on 02/02/2016 and had paid an amount of Rs.80,31,480/- to the respondent (Rupees Eighty Lakh Thirty One Thousand Four Hundred and Eighty only) (including Bank Loan from

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Indiabulls Housing Finance Limited) to the respondent till date. At the time of agreement, the respondent had agreed to pay pre-EMIs till the date of possession. As per the sale agreement dated 2/2/2016, the respondent was supposed to hand over the possession of the flat to the complainant by the end of December 2017. However, the respondent has failed to handover the possession of the said Unit till date, 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 representative. But it has not contested the matter by filing statement of objections, producing documents on its behalf. They have filed a calculation sheet as on 31/8/2022.
3. In support of his claim, the complainant has produced in all 8 documents such as copies of Sale Agreement, Allotment letter, Payment receipts, Customer Statement dated 17/6/2022 issued by Ozone, Statement of Account issued by Indiabulls and memo of calculation for refund with interest as on 11/06/2022.
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

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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 2/2/2016. 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.
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 16/6/2022 claiming an amount of Rs.1,60,32,892/- as refund including

14/6/22

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interest. Though the respondent has filed a calculation sheet as on 31/8/2022 claiming that they have to refund an amount of Rs.1,18,49,270/- including interest, the Authority opines that their claim cannot be accepted as the respondent has filed the calculation sheet after the case was posted for orders. A thorough verification of the documentary proofs furnished by the complainant reveals that his claim is genuine. Having regard to these aspects, the Authority concludes that the complainant is entitled for refund of an amount of Rs.1,60,32,892/- including interest as on 16/6/2022 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	19-11-2015	1,00,000	528	13,019
2	14-01-2016	9,30,333	472	1,08,275
3	29-02-2016	46,68,907	426	4,90,427
4	29-02-2016	6,82,240	426	71,663
5	16-09-2016	15,28,732	226	85,190
6	16-09-2016	1,21,268	226	6,757
7			TOTAL INTEREST (I1)	7,75,331

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	80,31,480	1872	16-06-2022	8.15	10.15 as on 01-05-2017	41,80,946
2	05-10-2019	81,526	985	16-06-2022	8.35	10.35 as on	22,770

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						10-09-2019	
3	05-11-2019	81,526	954	16-06-2022	8.25	10.25 as on 10-10-2019	21,841
4	05-12-2019	81,526	924	16-06-2022	8.2	10.2 as on 10-11-2019	21,051
5	05-01-2020	81,526	893	16-06-2022	8.2	10.2 as on 10-12-2019	20,344
6	05-02-2020	81,526	862	16-06-2022	8.2	10.2 as on 10-01-2020	19,638
7	05-03-2020	81,526	833	16-06-2022	8.15	10.15 as on 10-02-2020	18,884
8	05-04-2020	81,526	802	16-06-2022	8.05	10.05 as on 10-03-2020	18,002
9	05-05-2020	81,526	772	16-06-2022	7.7	9.7 as on 10-04-2020	16,726
10	05-06-2020	81,526	741	16-06-2022	7.55	9.55 as on 10-05-2020	15,806
11	05-07-2020	81,526	711	16-06-2022	7.3	9.3 as on 10-06-2020	14,769
12	05-08-2020	81,526	680	16-06-2022	7.3	9.3 as on 10-07-2020	14,125
13	05-09-2020	81,526	649	16-06-2022	7.3	9.3 as on 10-08-2020	13,481
14	05-10-2020	81,526	619	16-06-2022	7.3	9.3 as on 10-09-2020	12,858
15	05-11-2020	81,526	588	16-06-2022	7.3	9.3 as on 10-10-2020	12,214
16	05-12-2020	81,526	558	16-06-2022	7.3	9.3 as on 10-11-2020	11,590
17	05-01-2021	81,526	527	16-06-2022	7.3	9.3 as on 10-12-2020	10,947
18	05-02-2021	81,526	496	16-06-2022	7.3	9.3 as on 10-01-2021	10,303
19	05-03-2021	81,526	468	16-06-2022	7.3	9.3 as on 10-02-2021	9,721
20	05-04-2021	81,526	437	16-06-2022	7.3	9.3 as on 10-03-2021	9,077
21	05-05-2021	81,526	407	16-06-2022	7.3	9.3 as on 10-04-2021	8,454

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22	05-06-2021	81,526	376	16-06-2022	7.3	9.3 as on 15-05-2021	7,810
23	05-07-2021	81,526	346	16-06-2022	7.3	9.3 as on 15-06-2021	7,187
24	05-08-2021	81,526	315	16-06-2022	7.3	9.3 as on 15-07-2021	6,543
25	05-09-2021	81,526	284	16-06-2022	7.3	9.3 as on 15-08-2021	5,899
26	05-10-2021	81,526	254	16-06-2022	7.3	9.3 as on 15-09-2021	5,276
27	05-11-2021	81,526	223	16-06-2022	7.3	9.3 as on 15-10-2021	4,632
28	05-12-2021	81,526	193	16-06-2022	7.3	9.3 as on 15-11-2021	4,009
29	05-01-2022	81,526	162	16-06-2022	7.3	9.3 as on 15-12-2021	3,365
30	05-02-2022	81,526	131	16-06-2022	7.3	9.3 as on 15-01-2022	2,721
31	05-03-2022	81,526	103	16-06-2022	7.3	9.3 as on 15-02-2022	2,139
32	05-04-2022	81,526	72	16-06-2022	7.3	9.3 as on 15-03-2022	1,495
33	05-05-2022	81,526	42	16-06-2022	7.3	9.3 as on 15-03-2022	872
34	05-06-2022	81,526	11	16-06-2022	7.3	9.3 as on 15-03-2022	228
35	TOTAL AMOUNT	1,07,21,838				TOTAL INTEREST (I2)	45,35,723

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 16-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,07,21,838	53,11,054	0	1,60,32,892

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

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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/220117/0008814** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,60,32,892/- (Rupees One Crore Sixty Lakh Thirty Two Thousand Eight Hundred and Ninety Two only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 19/11/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 16/06/2022 to the complainant within 60 days from the date of this order. The interest due from 17/06/2022 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

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