

**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 28<sup>th</sup> SEPTEMBER 2022**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/220105/0008768**

**COMPLAINANT.....**

**MRS. SHAILA MANOHAR  
41, 1<sup>ST</sup> MAIN, 2<sup>ND</sup> CROSS  
BTM 2<sup>ND</sup> STAGE  
BENGALURU-560076.**

(Authorised her husband  
Sri.C.R. Manohar through  
Special Power of Attorney to  
represent on behalf of her)

**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 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 "Ozone Urbana Avenue" of the respondent under subvention scheme and entered into an agreement of sale and construction agreement on 25/04/2016 and had paid



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an amount of Rs.69,16,656/- (Rupees Sixty Nine Lakh Sixteen Thousand Six Hundred and Fifty Six only) (including Housing Loan from HDFC) 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 25/04/2016, the respondent was supposed to hand over the possession of the flat to the complainant by the end of August 2018 with a grace period of six months, but the respondent vide his email communication dated Nil sent to the complainant intimated that they are gearing up to handover the possession of the flat by 31/12/2020. Despite which 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 counsel. But it has not contested the matter by filing statement of objections, producing documents on its behalf. But has filed a calculation sheet as on 31/8/2022.
3. The complainant has authorized her husband Sri.C.R. Manohar through a Special Power of Attorney to attend the case on her behalf. In support of her claim, the complainant has produced in all 7 documents such as copies of Sale Agreement, Construction Agreement, Tripartite Agreement, email pertaining to Pre-EMI take over promise by Ozone, Letter dated Nil regarding intimation of date for handing over the possession of the flat, Statement of Account from HDFC and memo of calculation for refund with interest as on 31/07/2022.
4. Heard arguments of both sides.
5. **On the above averments, the following points would arise for my consideration:-**

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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, 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 25/04/2016. 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.



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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 her memo of calculation as on 04/07/2022 without showing the deduction of EMI paid by the respondent. As such, the Authority directed the complainant to submit supporting documents to that effect by 3/8/2022. The complainant has resubmitted her memo of calculation as on 31/7/2022 in which she has shown the EMIs to the tune of Rs.5,58,144/- paid by the respondent. The complainant has claimed Rs.1,02,84,458/- as refund with interest as on 31/07/2022. Though the respondent has filed a calculation sheet as on 31/8/2022 claiming that they have to refund an amount of Rs.87,90,958/- 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 her claim is genuine. Having regard to these aspects, the Authority concludes that the complainant is entitled for refund of an amount of Rs.1,02,84,458/- including interest as on 31/07/2022 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	03-10-2015	1,00,000	575	14,178
2	04-06-2016	5,86,848	330	47,751
3	27-06-2016	11,45,750	307	86,731

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4	15-07-2016	1,42,657	289	10,165
5	15-07-2016	8,87,615	289	63,251
6	28-07-2016	115	276	7
7	14-12-2016	1,04,227	137	3,520
8	14-12-2016	9,26,049	137	31,282
9	28-12-2016	39,619	123	1,201
10	21-04-2017	67,247	9	149
11	21-04-2017	9,13,104	9	2,026
12	24-04-2017	10,303	6	15
13			TOTAL INTEREST ( I1 )	2,60,276

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	49,23,534	281	06-02-2018	8.15	10.15 as on 01-05-2017	3,84,730
2	28-06-2017	34,335	223	06-02-2018	8.15	10.15 as on 01-06-2017	2,129
3	28-06-2017	6,45,645	223	06-02-2018	8.15	10.15 as on 01-06-2017	40,037
4	29-06-2017	3,39,990	222	06-02-2018	8.15	10.15 as on 01-06-2017	20,989
5	31-08-2017	10,303	159	06-02-2018	8.15	10.15 as on 01-08-2017	455
6	30-07-2019	31,494	1	31-07-2019	8.6	10.6 as on 10-07-2019	9
7	31-07-2019	31,008	1096	31-07-2022	8.6	10.6 as on 10-07-2019	9,869
8	06-09-2019	33,820	1059	31-07-2022	8.45	10.45 as on 10-08-2019	10,253
9	31-10-2019	32,403	1004	31-07-2022	8.25	10.25 as on 10-10-2019	9,135
10	12-11-2019	32,093	992	31-07-2022	8.2	10.2 as on 10-11-2019	8,896
11	19-12-2019	32,093	955	31-07-2022	8.2	10.2 as on 10-12-2019	8,564

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12	20-01-2020	32,093	923	31-07-2022	8.2	10.2 as on 10-01-2020	8,277
13	26-02-2020	31,938	886	31-07-2022	8.15	10.15 as on 10-02-2020	7,868
14	10-03-2020	31,938	873	31-07-2022	8.05	10.05 as on 10-03-2020	7,677
15	24-04-2020	31,938	828	31-07-2022	7.7	9.7 as on 10-04-2020	7,027
16	09-06-2020	31,318	782	31-07-2022	7.55	9.55 as on 10-05-2020	6,407
17	30-06-2020	31,318	761	31-07-2022	7.3	9.3 as on 10-06-2020	6,072
18	29-07-2020	31,318	732	31-07-2022	7.3	9.3 as on 10-07-2020	5,841
19	28-08-2020	30,698	702	31-07-2022	7.3	9.3 as on 10-08-2020	5,490
20	22-09-2020	30,698	677	31-07-2022	7.3	9.3 as on 10-09-2020	5,295
21	17-10-2020	30,698	652	31-07-2022	7.3	9.3 as on 10-10-2020	5,099
22	05-11-2020	4,159	633	31-07-2022	7.3	9.3 as on 10-10-2020	670
23	27-11-2020	30,698	611	31-07-2022	7.3	9.3 as on 10-11-2020	4,779
24	24-12-2020	30,698	584	31-07-2022	7.3	9.3 as on 10-12-2020	4,567
25	29-01-2021	26,539	548	31-07-2022	7.3	9.3 as on 10-01-2021	3,705
26	28-02-2021	30,388	518	31-07-2022	7.3	9.3 as on 10-02-2021	4,010
27	31-03-2021	30,388	487	31-07-2022	7.3	9.3 as on 10-03-2021	3,770
28	28-04-2021	30,388	459	31-07-2022	7.3	9.3 as on 10-04-2021	3,553
29	31-05-2021	30,232	426	31-07-2022	7.3	9.3 as on 15-05-2021	3,281
30	09-06-2021	30,232	417	31-07-2022	7.3	9.3 as on 15-05-2021	3,212
31	30-07-2021	30,232	366	31-07-2022	7.3	9.3 as on 15-07-2021	2,819

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32	19-08-2021	48,659	346	31-07-2022	7.3	9.3 as on 15-08-2021	4,289
33	23-09-2021	22,297	311	31-07-2022	7.3	9.3 as on 15-09-2021	1,766
34	23-10-2021	18,822	281	31-07-2022	7.3	9.3 as on 15-10-2021	1,347
35	29-11-2021	18,699	244	31-07-2022	7.3	9.3 as on 15-11-2021	1,162
36	30-12-2021	18,575	213	31-07-2022	7.3	9.3 as on 15-12-2021	1,008
37	27-01-2022	18,451	185	31-07-2022	7.3	9.3 as on 15-01-2022	869
38	28-02-2022	18,326	153	31-07-2022	7.3	9.3 as on 15-02-2022	714
39	31-03-2022	18,200	122	31-07-2022	7.3	9.3 as on 15-03-2022	565
40	TOTAL AMOUNT	69,16,656				TOTAL INTEREST (12)	6,06,205

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	69,16,656	06-02-2018	31,008	68,85,648	27	05-03-2018	8.1	10.1 as on 01-02-2018	51,444
2	68,85,648	05-03-2018	31,008	68,54,640	32	06-04-2018	8.35	10.35 as on 01-03-2018	62,198
3	68,54,640	06-04-2018	31,008	68,23,632	29	05-05-2018	8.35	10.35 as on 01-04-2018	56,112
4	68,23,632	05-05-2018	31,008	67,92,624	32	06-06-2018	8.35	10.35 as on 01-05-2018	61,636

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5	67,92,624	06-06-2018	31,008	67,61,616	31	07-07-2018	8.45	10.45 as on 01-06-2018	60,011
6	67,61,616	07-07-2018	31,008	67,30,608	31	07-08-2018	8.45	10.45 as on 01-07-2018	59,736
7	67,30,608	07-08-2018	31,008	66,99,600	31	07-09-2018	8.45	10.45 as on 01-08-2018	59,461
8	66,99,600	07-09-2018	31,008	66,68,592	28	05-10-2018	8.65	10.65 as on 01-09-2018	54,481
9	66,68,592	05-10-2018	31,008	66,37,584	31	05-11-2018	8.7	10.7 as on 01-10-2018	60,320
10	66,37,584	05-11-2018	31,008	66,06,576	30	05-12-2018	8.7	10.7 as on 01-11-2018	58,101
11	66,06,576	05-12-2018	31,008	65,75,568	31	05-01-2019	8.7	10.7 as on 01-11-2018	59,756
12	65,75,568	05-01-2019	31,008	65,44,560	31	05-02-2019	8.75	10.75 as on 10-12-2018	59,752
13	65,44,560	05-02-2019	31,008	65,13,552	30	07-03-2019	8.75	10.75 as on 10-01-2019	57,551
14	65,13,552	07-03-2019	31,008	64,82,544	34	10-04-2019	8.75	10.75 as on 10-02-2019	64,914
15	64,82,544	10-04-2019	31,008	64,51,536	27	07-05-2019	8.7	10.7 as on 10-04-2019	51,064
16	64,51,536	07-05-2019	31,008	64,20,528	34	10-06-2019	8.7	10.7 as on 10-04-2019	63,994
17	64,20,528	10-06-2019	31,008	63,89,520	51	31-07-2019	8.65	10.65 as on 10-06-2019	95,081
18	63,89,520	31-07-2019	31,008	63,58,512	1096	31-07-2022	8.6	10.6 as on 10-07-2019	20,23,853
19								TOTAL INTEREST (13)	30,59,465

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Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 31-07-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
69,16,656	39,25,946	5,58,144	1,02,84,458

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/220105/0008768** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,02,84,458/- (Rupees One Crore Two Lakh Eighty Four Thousand Four Hundred and Fifty Eight only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 03/10/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 31/07/2022 to the complainant within 60 days from the date of this order. The interest due from 01/08/2022 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, KRERA

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