

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 27TH SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210328/0007847

COMPLAINANT.....

**MR. ABHISHEK MAKKAR
2ND BLOCK, 304, HERITAGE ESTATE
DODDABALLAPURA ROAD
YELAHANKA
BENGALURU-560064.**

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 booked an apartment in the project "Ozone Urbana" of the respondent and entered into an agreement of sale and agreement of construction on 19/08/2016 and had paid an amount of Rs.78,39,050/- to the respondent (Rupees Seventy Eight Lakh Thirty Nine Thousand and Fifty only) (including loan from Bank) to the respondent till date. At the time of agreement, the respondent had agreed to pay pre-EMIs till the date of

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possession. As per the sale agreement dated 19/08/2016, the respondent was supposed to hand over the possession of the flat by the end of August 2018. However, the respondent has not handed over the possession of the flat and has also stopped paying pre-EMIs to Bank, putting more financial burden on 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.
3. In support of his claim, the complainant has produced in all 4 documents such as copies of Sale Agreement, email correspondence with Ozone, Statement of Accounts issued by Indiabulls 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

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 the apartment and agreeing to pay the pre-EMIs to the Bank




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till the possession of the flat is handed over to the complainant, the builder has stopped paying pre-EMIs to the Bank and not handed over the possession of the flat even after a delay of more than three years. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 19/08/2016. 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 02/07/2022 claiming an amount of Rs.1,12,93,282/- as refund including interest. Despite giving enough opportunities, the respondent has not filed his memo of calculation. Having regard to these aspects, the Authority concludes that the complainant is entitled for refund of an amount of



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Rs.1,12,93,282/- including interest as on 02/07/2022 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	04-08-2016	1,00,000	269	6,632
2	27-09-2016	2,54,020	215	13,466
3	27-09-2016	5,85,074	215	31,016
4	29-09-2016	22,46,926	213	1,18,009
5	22-02-2017	2,80,000	67	4,625
6	28-02-2017	1,20,862	61	1,817
7	28-02-2017	5,87,946	61	8,843
8	15-03-2017	74,025	46	839
9			TOTAL INTEREST (I1)	1,85,247

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	42,48,853	1888	02-07-2022	8.15	10.15 as on 01-05-2017	22,30,729
2	20-04-2018	6,90,002	1534	02-07-2022	8.35	10.35 as on 01-04-2018	3,00,139
3	20-04-2018	49,385	1534	02-07-2022	8.35	10.35 as on 01-04-2018	21,481
4	08-08-2018	10,65,892	1424	02-07-2022	8.45	10.45 as on 01-08-2018	4,34,556
5	08-08-2018	43,188	1424	02-07-2022	8.45	10.45 as on 01-08-2018	17,607

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6	10-07-2019	45,585	1088	02-07-2022	8.6	10.6 as on 10-07-2019	14,403
7	10-08-2019	45,585	1057	02-07-2022	8.45	10.45 as on 10-08-2019	13,794
8	10-09-2019	45,585	1026	02-07-2022	8.35	10.35 as on 10-09-2019	13,262
9	10-10-2019	45,585	996	02-07-2022	8.25	10.25 as on 10-10-2019	12,750
10	10-11-2019	45,585	965	02-07-2022	8.2	10.2 as on 10-11-2019	12,292
11	10-12-2019	45,585	935	02-07-2022	8.2	10.2 as on 10-12-2019	11,910
12	10-01-2020	45,585	904	02-07-2022	8.2	10.2 as on 10-01-2020	11,515
13	10-02-2020	45,585	873	02-07-2022	8.15	10.15 as on 10-02-2020	11,066
14	10-03-2020	45,585	844	02-07-2022	8.05	10.05 as on 10-03-2020	10,593
15	10-04-2020	48,916	813	02-07-2022	7.7	9.7 as on 10-04-2020	10,568
16	10-05-2020	49,329	783	02-07-2022	7.55	9.55 as on 10-05-2020	10,105
17	10-06-2020	49,329	752	02-07-2022	7.3	9.3 as on 10-06-2020	9,451
18	10-07-2020	49,329	722	02-07-2022	7.3	9.3 as on 10-07-2020	9,074
19	10-08-2020	49,329	691	02-07-2022	7.3	9.3 as on 10-08-2020	8,685
20	10-09-2020	49,329	660	02-07-2022	7.3	9.3 as on 10-09-2020	8,295
21	10-10-2020	49,329	630	02-07-2022	7.3	9.3 as on 10-10-2020	7,918
22	10-11-2020	49,329	599	02-07-2022	7.3	9.3 as on 10-11-2020	7,528
23	10-12-2020	49,329	569	02-07-2022	7.3	9.3 as on 10-12-2020	7,151
24	10-01-2021	49,329	538	02-07-2022	7.3	9.3 as on 10-01-2021	6,761

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25	10-02-2021	49,329	507	02-07-2022	7.3	9.3 as on 10-02-2021	6,372
26	10-03-2021	49,329	852	02-07-2022	8.15	10.15 as on 10-02-2020	11,687
27	10-04-2021	49,329	813	02-07-2022	7.7	9.7 as on 10-04-2020	10,657
28	10-05-2021	49,329	418	02-07-2022	7.3	9.3 as on 10-04-2021	5,253
29	10-06-2021	49,329	387	02-07-2022	7.3	9.3 as on 15-05-2021	4,864
30	10-07-2021	49,329	357	02-07-2022	7.3	9.3 as on 15-06-2021	4,487
31	10-08-2021	49,329	326	02-07-2022	7.3	9.3 as on 15-07-2021	4,097
32	10-09-2021	49,329	295	02-07-2022	7.3	9.3 as on 15-08-2021	3,707
33	10-10-2021	49,329	265	02-07-2022	7.3	9.3 as on 15-09-2021	3,330
34	10-11-2021	49,329	234	02-07-2022	7.3	9.3 as on 15-10-2021	2,941
35	10-12-2021	49,329	204	02-07-2022	7.3	9.3 as on 15-11-2021	2,564
36	10-01-2022	49,329	173	02-07-2022	7.3	9.3 as on 15-12-2021	2,174
37	10-02-2022	49,329	142	02-07-2022	7.3	9.3 as on 15-01-2022	1,784
38	10-03-2022	49,329	114	02-07-2022	7.3	9.3 as on 15-02-2022	1,432
39	10-04-2022	49,329	83	02-07-2022	7.3	9.3 as on 15-03-2022	1,043
40	10-05-2022	49,329	53	02-07-2022	7.4	9.4 as on 15-04-2022	673
41	10-06-2022	49,329	22	02-07-2022	7.5	9.5 as on 15-05-2022	282
42	TOTAL AMOUNT	78,39,055				TOTAL INTEREST (I2)	32,68,980

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 02-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
78,39,055	34,54,227	0	1,12,93,282

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/210328/0007847** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,12,93,282/- (Rupees One Crore Twelve Lakh Ninety Three Thousand Two Hundred and Eighty Two only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 04/08/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 02/07/2022 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 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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