

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 30TH SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/200909/0006519

COMPLAINANT.....

**MRS. MANISHA GUPTA
NO.223, OPERA BLOCK
SLS SYMPHONY, 2ND CROSS
BHUVANESHWARI NAGAR
BANGALORE-560024.**

V/S

RESPONDENT.....

**Ozone Urbana 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 Avenue" of the respondent and entered into an agreement of sale under a buyback/subvention scheme on 18/01/2017 and had paid an amount of Rs.67,77,881/- to the respondent (Rupees Sixty Seven Lakh Seventy Seven Thousand Eight Hundred and Eighty One only) (including loan from India Bulls) 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



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agreement dated 18/01/2017, the respondent was supposed to hand over the possession of the flat by the end of August 2018 with a grace period of six months, which was extended to 2019. There was no progress of work in the project since mid 2018. The respondent unilaterally stopped paying pre-EMIs as agreed and put more financial burden on the complainant. Though the respondent informed about the credit note, actually there was no credit reflected in my account. 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 7 documents such as copies of Agreement for Sale, Construction Agreement, Tripartite Agreement, Booking Form, Payment receipts, Home Loan Account statement issued by India Bulls 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

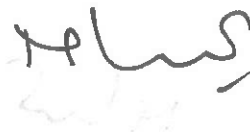
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7. **My answer to point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of the apartment and agreeing to pay the pre-EMIs to the Bank till the possession of 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 two years. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 18/01/2017. 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. 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 02/07/2022 claiming an amount of Rs.95,65,400/- as refund including



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interest. The complainant in her memo of calculation has also admitted for having received a refund of Rs.13,69,020/- (i.e. Rs.5,71,742/- and Rs.7,97,278/-) on 4/2/2017 and 31/1/2019 respectively from the respondent. A thorough verification of the documentary proof submitted by the complainant reveals that her claim is genuine. The respondent has filed a calculation sheet as on 31/8/2022 submitting that they have to refund an amount of Rs.73,34,705/- including interest which is not acceptable as the calculation sheet was filed after the case was posted for orders. Having regard to these aspects, the Authority concludes that the complainant is entitled for refund of an amount of Rs.95,65,400/- including interest as on 02/07/2022 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	NO OF DAYS TILL	INTEREST @9%
1	09-01-2017	1,00,000	111	30-04-2017	2,736
2	27-01-2017	23,67,084	93	30-04-2017	54,280
3	01-02-2017	2,37,898	88	30-04-2017	5,162
4				TOTAL INTEREST (I1)	62,178

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	27,04,982	640	31-01-2019	8.15	10.15 as on 01-05-2017	4,81,412

14/5/22

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2	19-08-2017	3,00,000	530	31-01-2019	8.15	10.15 as on 01-08-2017	44,215
3	06-09-2017	37,988	512	31-01-2019	8.15	10.15 as on 01-09-2017	5,408
4	28-12-2017	6,10,436	399	31-01-2019	8.1	10.1 as on 01-12-2017	67,397
5	28-12-2017	64,896	399	31-01-2019	8.1	10.1 as on 01-12-2017	7,165
6	13-04-2018	47,925	293	31-01-2019	8.35	10.35 as on 01-04-2018	3,981
7	13-04-2018	6,53,359	293	31-01-2019	8.35	10.35 as on 01-04-2018	54,283
8	10-08-2018	39,581	174	31-01-2019	8.45	10.45 as on 01-08-2018	1,971
9	13-08-2018	10,12,346	171	31-01-2019	8.45	10.45 as on 01-08-2018	49,561
10	10-07-2019	36,288	1088	02-07-2022	8.6	10.6 as on 10-07-2019	11,465
11	10-08-2019	36,288	1057	02-07-2022	8.45	10.45 as on 10-08-2019	10,981
12	10-09-2019	36,288	1026	02-07-2022	8.35	10.35 as on 10-09-2019	10,557
13	10-10-2019	36,288	996	02-07-2022	8.25	10.25 as on 10-10-2019	10,149
14	10-11-2019	36,288	965	02-07-2022	8.2	10.2 as on 10-11-2019	9,785
15	10-12-2019	36,288	935	02-07-2022	8.2	10.2 as on 10-12-2019	9,481
16	10-01-2020	36,288	904	02-07-2022	8.2	10.2 as on 10-01-2020	9,167

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17	10-02-2020	36,288	873	02-07-2022	8.15	10.15 as on 10-02-2020	8,809
18	10-03-2020	36,288	844	02-07-2022	8.05	10.05 as on 10-03-2020	8,432
19	10-04-2020	36,288	813	02-07-2022	7.7	9.7 as on 10-04-2020	7,840
20	10-05-2020	36,288	783	02-07-2022	7.55	9.55 as on 10-05-2020	7,434
21	10-06-2020	36,288	752	02-07-2022	7.3	9.3 as on 10-06-2020	6,952
22	10-07-2020	36,288	722	02-07-2022	7.3	9.3 as on 10-07-2020	6,675
23	10-08-2020	36,288	691	02-07-2022	7.3	9.3 as on 10-08-2020	6,388
24	10-09-2020	36,288	660	02-07-2022	7.3	9.3 as on 10-09-2020	6,102
25	10-10-2020	36,288	630	02-07-2022	7.3	9.3 as on 10-10-2020	5,824
26	10-11-2020	36,288	599	02-07-2022	7.3	9.3 as on 10-11-2020	5,538
27	10-12-2020	36,288	569	02-07-2022	7.3	9.3 as on 10-12-2020	5,260
28	10-01-2021	36,288	538	02-07-2022	7.3	9.3 as on 10-01-2021	4,974
29	10-02-2021	36,288	507	02-07-2022	7.3	9.3 as on 10-02-2021	4,687
30	10-03-2021	36,288	479	02-07-2022	7.3	9.3 as on 10-03-2021	4,428
31	10-04-2021	36,288	448	02-07-2022	7.3	9.3 as on 10-04-2021	4,142

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32	10-05-2021	36,288	418	02-07-2022	7.3	9.3 as on 10-04-2021	3,864
33	10-06-2021	36,288	387	02-07-2022	7.3	9.3 as on 15-05-2021	3,578
34	10-07-2021	36,288	357	02-07-2022	7.3	9.3 as on 15-06-2021	3,300
35	10-08-2021	36,288	326	02-07-2022	7.3	9.3 as on 15-07-2021	3,014
36	10-09-2021	36,288	295	02-07-2022	7.3	9.3 as on 15-08-2021	2,727
37	10-10-2021	36,288	265	02-07-2022	7.3	9.3 as on 15-09-2021	2,450
38	10-11-2021	36,288	234	02-07-2022	7.3	9.3 as on 15-10-2021	2,163
39	10-12-2021	36,288	204	02-07-2022	7.3	9.3 as on 15-11-2021	1,886
40	10-01-2022	36,288	173	02-07-2022	7.3	9.3 as on 15-12-2021	1,599
41	10-02-2022	36,288	142	02-07-2022	7.3	9.3 as on 15-01-2022	1,312
42	10-03-2022	36,288	114	02-07-2022	7.3	9.3 as on 15-02-2022	1,054
43	10-04-2022	36,288	83	02-07-2022	7.3	9.3 as on 15-03-2022	767
44	10-05-2022	36,288	53	02-07-2022	7.4	9.4 as on 15-04-2022	495
45	10-06-2022	36,288	22	02-07-2022	7.5	9.5 as on 15-05-2022	207
46	TOTAL AMOUNT	67,77,881				TOTAL INTEREST (12)	9,08,879

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Refund Interest Calculation From 01/05/2017 (After RERA)									
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	67,77,881	04-02-2017	5,71,742	62,06,139	726	31-01-2019	7.7	9.7 as on 15-06-2022	11,97,393
2	62,06,139	31-01-2019	7,97,278	54,08,861	1248	02-07-2022	8.75	10.75 as on 10-01-2019	19,88,089
3								TOTAL INTEREST (I3)	31,85,482

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 02-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
67,77,881	41,56,539	13,69,020	95,65,400

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/UR/200909/0006519** is hereby allowed. Respondent is directed to pay a sum of **Rs.95,65,400/- (Rupees Ninety Five Lakh Sixty Five Thousand Four Hundred only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 09/01/2017 to 30/04/2017 and MCLR + 2% from

MP/WS

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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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