

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 20th OCTOBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/220615/0009632

COMPLAINANT.....

**LT.CDR. GEORGE JOHN (RETD.)
C-214, JALVAYU VIHAR
KAMMANAHALLI MAIN ROAD
BANGALORE-560043.**

(By Mr.M.S. Manjunath, Advocate)

Vs

RESPONDENT.....

**Ozone Urbana Infra Developers Pvt Ltd
No.38, Ulsoor Road
BANGALORE-560042.**

**Ozone Urbana Infra Developers Pvt Ltd
No.38, Ulsoor Road
BANGALORE-560042.**

**2.Represented by its Group CEO
Mr.S. Baaskaran**

3.Represented by its Vice President, CRM

**4.Represented by its Manager, Customer
Relationship**

5.Represented by its CRM, Mrs.Deepa

**6.Represented by its Authorized Signatory
Mrs.K.P. Nagarathna**

**(By Mr.Deepak Bhaskar & Associates,
Advocates)**

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J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "Ozone Aqua II" for the relief of refund with interest.

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Brief facts of the complaint are as under:-

2. The complainant had purchased an apartment in the project of respondent and entered into an agreement of sale and construction agreement on 26/5/2015 and has paid an amount of Rs.1,02,86,457/- (Rupees One Crore Two Lakh Eighty Six Thousand Four Hundred and Fifty Seven only) on various dates to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainant by the end of November 2017. Despite the entire sale consideration amount has been paid to the respondent, the respondent has failed to execute registered sale deed by delivering the vacant possession of the flat and thus has violated the terms and conditions of the sale and construction agreements. Though many other apartments have been completed and handed over to the purchasers, the complainant's flat is not completed till today. In view of the complainant's continuous follow up, the respondent finally replied their inability to complete and handover the said flat and offered alternate apartment to him. The alternate apartment was not accepted by the complainant as it did not suit his requirement and hence, requested for refund of entire amount. The complainant sent cancellation request duly filled to the respondent on 20/3/2019. At that juncture, the complainant had claimed Rs.1,33,72,394/- whereas the respondent refunded Rs.87,14,842/- and failed to refund the balance amount. The complainant has also sent legal notice on 8/4/2022 to the respondent to refund the balance amount with interest. The legal notice has been acknowledged by the respondent. Due to this delay, the complainant has been put to financial loss and suffered mental agony. Hence, this complaint.

3. 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 either by filing statement of objections or

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producing documents on its behalf. The respondent has filed a calculation sheet as on 31/8/2022.

4. In support of his claim, the complainant has produced in all 7 documents such as copies of Agreement of Sale, Construction Agreement, Cancellation form sent by the Respondent, Cancellation form duly filled sent by the complainant, Legal Notice dated 8/4/2022 Payment receipts and memo of calculation for refund with interest dated 27/08/2022.

5. Heard arguments of both sides.

6. 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?

7. My answer to the above points are as under:-

1. In the Affirmative.
2. As per final order for the following

REASONS

8. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale and construction to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project, 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 dated 26/5/2015. The respondent has also pleaded his inability to complete the apartment of the complainant and has offered him an alternate, which has not been accepted by the complainant as it did not



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meet his requirements. There seems to be no possibility of completing the project or handing over the possession in near future.

9. 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.
10. 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.
11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid the full sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainant herein for refund with interest. The complainant has filed his memo of calculation as on 27/8/2022 claiming an amount of Rs.67,59,844/- as refund with interest. The respondent in their calculation sheet as on 31/8/2022 submit that the refund amount to be paid to the complainant is Rs.52,19,640/-. The complainant in his memo of calculation as on 27/8/2022 has also admitted that the respondent has refunded an amount of Rs.87,14,842/- on various dates. During the process of the hearing, the complainant agreed to accept the amount submitted by the respondent vide its calculation as on 31/8/2022 i.e. Rs.52,19,640/-. Having regard to all these aspects, this Authority

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concludes that the complainant is entitled for refund with interest as submitted by the respondent vide its memo of calculation.

12. Further, the complainant has sought compensation for mental agony which does not come under the jurisdiction of this Authority and hence, same cannot be considered.

13. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under -

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST AS ON 31-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,02,86,457	36,48,295	87,14,842	52,19,640

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

15. **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/220615/0009632** is hereby allowed. Respondent is directed to pay a sum of **Rs.52,19,640/- (Rupees Fifty Two Lakh Nineteen Thousand Six Hundred and Forty only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 31/10/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 31/08/2022. The interest due from 01/09/2022 up to the date of final payment will be calculated

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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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