

**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 11<sup>th</sup> OCTOBER 2022**

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

**COMPLAINT NO.:CMP/220116/0008803**

**COMPLAINANTS.....**

**MR. PHALAKSH SHRISHAIL WALISHETTY  
& MRS. MEENAKSHI HANDI  
2908, 9<sup>TH</sup> FLOOR, 2<sup>ND</sup> BLOCK  
SOBHA MAYFLOWER, GREEN GLEN  
LAYOUT, BELLANDUR  
BENGALURU-560103.**

**(By Mr. Karan Gupta, Advocate)**

**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 complainants have booked an apartment in the project "Ozone Urbana" of the respondent under buyback scheme and entered into an agreement of sale on 15/12/2017 and had paid an amount of Rs.1,43,32,317/- (Rupees One Crore Forty Three Lakh Thirty Two Thousand Three Hundred and Seventeen only) to the respondent till date. At the time of agreement, the

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respondent had agreed to pay pre-EMIs till the date of possession. As per the sale agreement dated 15/12/2017, the respondent is supposed to hand over the possession of the flat by the end of December 2022. The respondent had agreed to return investment of 10% booking amount with 100% returns after 36 months, buyback the apartment at the end of the tenure from the customer clearing all the loan disbursed by Indiabulls. The respondent has stopped paying pre-EMIs to Indiabulls, failed to refund the deposit amount and clear bank loan despite exercising the buyback option in a timely manner. The respondent has failed to keep up its promise as agreed. The complainants have submitted that with no other option left, they have approached this Authority for refund with interest. 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 have not contested the matter by filing statement of objections, producing documents on its behalf. The respondent has filed a calculation sheet as on 31/08/2022.
3. In support of their claim, the complainants have produced in all 10 documents such as copies of Sale Agreement, Tripartite Agreement, Loan Disbursement issued by Indiabulls, Payment receipts, Statement of Account issued by Indiabulls in respect of Pre-EMI account, Order dated 18/12/2021 of the Hon'ble High Court of Karnataka in W.P.No.21912/2021, email communications with the respondent and memo of calculation for refund with interest as on 23/05/2022.
4. Heard arguments of both sides.

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**5. On the above averments, the following points would arise for my consideration:-**

1. Whether the complainants are 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 the respondent inspite of entering into an agreement for sale and returning the investment of 10% booking amount with 100% returns after 36 months, pay pre-EMIs to the Bank for 36 months, buyback the apartment at the end of the tenure from the customer and clear all the loan disbursed by Indiabulls, has stopped paying pre-EMIs to Indiabulls, failed to refund the deposit amount and clear bank loan despite the buyback option exercised. Hence, the builder has failed to abide by the terms of the agreement for sale dated 15/12/2017.
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.

*[Handwritten signature]*

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10. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid the sale consideration amount. Having accepted the said amount and failing to keep up promise as agreed into and not paying pre-EMIs to the Bank, certainly entitles the complainants herein for refund with interest. The complainants have submitted their memo of calculation as on 23/05/2022 claiming an amount of Rs.2,28,43,562/- as refund including interest. The respondent has filed a calculation sheet as on 31/8/2022 submitting that the amount to be refunded to the complainants is Rs.2,09,53,789/- including interest. On 23/8/2022 the Authority directed both the parties to reconcile with the difference in the calculation of refund. On 20/9/2022, the complainant agreed with the calculation statement regarding refund of Rs.2,09,53,789/-. Having regard to all these aspects, the Authority concludes that the complainants are entitled for an amount of Rs.2,09,53,789/- being refund with interest as on 31/08/2022 as submitted by the respondent in their calculation statement.

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

Respondent Memo of Calculation			
PRINCIPLE AMOUNT	INTEREST AS ON 31-08-2022	REFUND FROM PROMOTER	TOTAL BALANCE AMOUNT
1,53,59,739	71,30,769	15,36,719	2,09,53,789

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

plus,

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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/220116/0008803** is hereby allowed. Respondent is directed to pay a sum of **Rs.2,09,53,789/- (Rupees Two Crore Nine Lakh Fifty Three Thousand Seven Hundred and Eighty Nine only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 20/11/2017 till 31/08/2022. The interest due from 01/09/2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are 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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