

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 11th OCTOBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/211126/0008643

COMPLAINANT.....

**MR.V. MAHESH KUMAR
NO.305, UNIWORTH PEARL
OFF. BELLARY ROAD
OPP. SHARADA SCHOOL
AMRUTH NAGAR
BANGALORE-560092.**

(By Mr.M. Vikas, Advocate)

Vs

RESPONDENT.....

**Ozone Realtors Pvt Ltd
No.51/7-1, Rathna Avenue
Off Richmond Road
Civil Station
BANGALORE-560025.**

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

*** * * * ***

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 Polestar" for the relief of refund with interest.

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 28/06/2018 and has paid an amount of Rs.55,16,353/- (Rupees Fifty Five Lakh Nineteen Thousand Three Hundred and Fifty Three only) (including

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Housing Loan from HDFC) to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainant by the end of December 2021 including covid extension of nine months. Despite so much amount has been paid to the respondent, the construction of the complainant's apartment has not even started. In spite of respondent assuring that refund would be made, he has failed to refund the amount. The complainant has also sent legal notice on 25/10/2021 to the respondent through registered post ack due and the same has been received by the respondent.

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 producing documents on its behalf. The respondent has filed a calculation sheet as on 31/8/2022.
4. In support of their claim, the complainant has produced in all 7 documents such as copies of Agreement of Sale, Tripartite Agreement, Payment receipts, Statement of Account from HDFC, Pre-EMI Bank Statement, Legal Notice dated 25/10/2021 issued by the complainant to the respondent along with its receipt (ACK Due) and memo of calculation for refund with interest dated 19/07/2022.
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:-**

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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 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 dated 28/06/2018. 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 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 19/7/2022 claiming an amount of

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Rs.76,48,294/- as refund with interest. The respondent in their calculation sheet submit that the refund amount to be paid to the complainant is Rs.62,86,206/- as on 31/8/2022. During the process of the hearing, the Authority noticed that pre-EMI payments made by the complainant has not been taken into consideration by the respondent. Hence, no option is left to this Authority except to accept the claim of the complainant as per his memo of calculation as on 19/07/2022. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest and upholds his memo of calculation pertaining to refund.

12. 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	30/04/2017	0	0	30/04/2017	0
2				TOTAL INTEREST (I1)	0

Interest Calculation From 01/05/2017 (After RERA)							
S.N O	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAY S	NO OF DAYS TILL	MCLR INTERES T X%	INTERES T RATE X+2%	INTERES T @X+2%
1	01/05/2017	0	1905	19/07/2022	8.15	10.15 as on 01-05-2017	0
2	29/04/2018	50,000	1542	19/07/2022	8.35	10.35 as on 01-04-2018	21,862
3	01/05/2018	50,000	1540	19/07/2022	8.35	10.35 as on 01-05-2018	21,834

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4	19/05/2018	2,800	1522	19/07/2022	8.35	10.35 as on 01-05-2018	1,208
5	20/05/2018	11,918	1521	19/07/2022	8.35	10.35 as on 01-05-2018	5,140
6	14/06/2018	1,006,440	1496	19/07/2022	8.45	10.45 as on 01-06-2018	431,065
7	19/06/2018	107,946	1491	19/07/2022	8.45	10.45 as on 01-06-2018	46,079
8	25/07/2018	3,174,554	1455	19/07/2022	8.45	10.45 as on 01-07-2018	1,322,419
9	27/07/2018	558,972	1453	19/07/2022	8.45	10.45 as on 01-07-2018	232,530
10	30/10/2020	53,835	627	19/07/2022	7.3	9.3 as on 10-10-2020	8,600
11	30/11/2020	26,697	596	19/07/2022	7.3	9.3 as on 10-11-2020	4,054
12	31/12/2020	26,697	565	19/07/2022	7.3	9.3 as on 10-12-2020	3,843
13	31/01/2021	26,675	534	19/07/2022	7.3	9.3 as on 10-01-2021	3,629
14	28/02/2021	26,358	506	19/07/2022	7.3	9.3 as on 10-02-2021	3,398
15	31/03/2021	26,358	475	19/07/2022	7.3	9.3 as on 10-03-2021	3,190
16	30/04/2021	26,358	445	19/07/2022	7.3	9.3 as on 10-04-2021	2,988
17	31/05/2021	26,199	414	19/07/2022	7.3	9.3 as on 15-05-2021	2,763

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18	30/06/202 1	26,199	384	19/07/202 2	7.3	9.3 as on 15-06- 2021	2,563
19	31/07/202 1	26,199	353	19/07/202 2	7.3	9.3 as on 15-07- 2021	2,356
20	31/08/202 1	26,199	322	19/07/202 2	7.3	9.3 as on 15-08- 2021	2,149
21	30/09/202 1	26,199	292	19/07/202 2	7.3	9.3 as on 15-09- 2021	1,949
22	31/10/202 1	26,199	261	19/07/202 2	7.3	9.3 as on 15-10- 2021	1,742
23	30/11/202 1	26,199	231	19/07/202 2	7.3	9.3 as on 15-11- 2021	1,542
24	31/12/202 1	26,199	201	19/07/202 2	7.3	9.3 as on 15-12- 2021	1,341
25	31/01/202 2	26,199	170	19/07/202 2	7.3	9.3 as on 15-01- 2022	1,134
26	28/02/202 2	26,199	141	19/07/202 2	7.3	9.3 as on 15-02- 2022	941
27	31/03/202 2	26,199	111	19/07/202 2	7.3	9.3 as on 15-03- 2022	740
28	30/04/202 2	26,199	80	19/07/202 2	7.4	9.4 as on 15-04- 2022	539
29	31/05/202 2	26,357	50	19/07/202 2	7.5	9.5 as on 15-05- 2022	343
30	TOTAL AMOUNT	55,16,353				TOTAL INTERES T (12)	21,31,941

Memo Calculation

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PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 19-07- 2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
5,516,353	2,131,941	0	76,48,294

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

14. **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/211126/0008643** is hereby allowed. Respondent is directed to pay a sum of **Rs.76,48,294/- (Rupees Seventy Six Lakh Forty Eight Thousand Two Hundred and Ninety Four only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at MCLR + 2% from 29/04/2018 till 19/07/2022. The interest due from 20/07/2022 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
K-RERA

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