

**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/220112/0008785**

**RECTIFICATION ORDER UNDER SECTION 39 RERA ACT**

**COMPLAINANTS.....**

**SHERRY JOSHUA &**

**ANN JOSHUA**

**7-B, SKYLINE ALTON HEIGHTS**

**PUTHENANGADY**

**KOTTAYAM DISTRICT**

**STATE: KERALA**

**PINCODE: 686001.**

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

**(2<sup>ND</sup> COMPLAINANT'S NAME RECTIFIED  
VIDE ORDER DATED 19/3/2024)**

**Vs**

**RESPONDENT.....**

**Ozone Urbana Infra Developers Pvt Ltd**

**No.38, Ulsoor Road**

**BANGALORE-560042.**

**(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 Urbana" for the relief of refund with interest.

**Brief facts of the complaint are as under:-**

2. The complainants had purchased an apartment in the project of respondent and entered into an agreement of sale and construction agreement on 18/11/2015 and has paid an amount of Rs.89,96,414/- (Rupees Eighty Nine Lakh Ninety Six Thousand Four Hundred and Fourteen only) (including 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 2017 with grace period of six months. There is enormous delay in handing over the apartment. Despite several

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requests to the respondent has failed to handover the possession of the said Unit due to which the complainants have suffered monetary losses. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative/counsel. But it has not contested the matter either by filing statement of objections or producing documents on its behalf. They have filed a calculation sheet as on 31/08/2022.
4. In support of their claim, the complainant has produced in all 3 documents such as copies of Agreement of Sale, Payment receipts, and memo of calculation for refund with interest dated 22/08/2022.
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 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 agreement

*M L S*



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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 complainants have filed their memo of calculation as on 22/8/2022 claiming an amount of Rs.1,49,34,800/- as refund with interest. The respondent in its calculation sheet as on 31/8/2022 submits that an amount of Rs.1,49,59,559/- as refund with interest has to be paid to the complainants. During the process of the hearing, both the complainants and respondent agreed with the principal amount paid and received respectively. The complainants agreed to accept the amount of Rs.1,49,59,559/- as refund with interest as on 31/8/2022 as calculated by the respondent. Having regard to all these aspects, this Authority concludes that the complainants are entitled for an amount of Rs.1,49,59,559/- as refund with interest as calculated by the respondent as on 31/8/2022.

*[Handwritten signature]*

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


Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 31-08-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
89,96,415	59,63,144	0	1,49,59,559

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/220112/0008785** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,49,59,559/- (Rupees One Crore Forty Nine Lakh Fifty Nine Thousand Five Hundred and Fifty Nine only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 30/05/2014 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 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