

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

Dated 28th October 2022

COMPLAINANTS.....

1. **CMP/211002/0008411**
Suchitra Prasad
441, 1-B Cross, 7th Block
Koramangala
Bangalore-560 0095
2. **CMP/211002/0008410**
Santhosh Bethur,
B-1003, Mantri Elite,
J.P. Nagar, 4th Phase
Bangalore - 560076.
3. **CMP/210930/0008400**
Janath
Near Omkareshwara Temple
Madikeri, Kodagu-571201.
4. **CMP/210929/0008399**
Balaji
303, Kristal Sunstone
Apartments, 17-E Main,
5-A Cross, Koramangala 6th Block
Bangalore-560 095.
5. **CMP/210929/0008395**
Navin Lionel Peter
80-82, Captain Marius Xavier St.
Puduchety-605001.
6. **CMP/220517/0009475**
Hariharan Ganapathy
115, Chinnammal Street KK Pudur
Tamil Nadu
Tamilnadu-641038

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Mhs

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7. **CMP/210926/0008384**

Anitha Nagendra Prasad

1670, 18th Cross, M.C. layout
Vijayanagar
Bangalore-560 040.

(In person)

V/S

RESPONDENT.....

**ITALIX LIVING SPACES PRIVATE
LIMITED(SPV of OZONE GROUP)**

No: 38, Ulsoor Road
Bangalore-560 042.

(Rep. by Sri. E. Suhail Ahmed,
Advocate)

JUDGEMENT

1. The background of the project in brief is that M/s Pebblebay Developers Private Limited have obtained registration from RERA for the two projects viz: Pebblebay Koramangala Phase-I and Raheja Chambers.

2. After commencement of initial civil works by the said promoter of the projects, one Sri. N. Anand and others have filed a civil petition with regard to the ownership title of the property on which the proposed projects are to be put up. However, the said matter was amicably settled before the court of XLIII Additional City and Civil and Sessions Judge vide order dated 15.2.2019. Thereafter M/s Pebblebay Developers Private Limited reached an understanding with M/s Italix Living Spaces Private Limited to transfer both the above projects to the latter. Based upon such

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understanding, the application dated 16.5.2019 has been filed before this Authority seeking approval of the transfer of these two projects u/s 15 of the Act. On 30.8.2019, this Authority has granted approval of these two projects from the transfer company M/s Pebblebay Developers to the transferee company M/s Italix Living Spaces Private Limited along with entire rights and liabilities.

3. Thereafter the project has been transferred under third party with promoter name retains the same as earlier i.e. "ITALIX LIVING SPACES PRIVATE LIMITED" however project name has been changed from "Pebble Bay-Koramangla Phase I to "Green Veiw Koramangala" vide registration dated 09/01.2020 approved by K-RERA.
4. All these seven complaints are filed under section 31 of the RERA Act against the project "**Green View Koramangala**" developed by "**Italix Living Space Private Limited (SPV of Ozone Group)**" in the limits of No. 395, Roopena Agrahara Village, Begur Hobli, Bangalore South Taluk, for the relief of refund with compensation.
5. This project has been registered under RERA bearing registration No. PRM/KA/RERA/1251/309/PR/200109/0001520.
6. All these seven complaints are arising out of the same project and hence they are taken up together for disposal in order to avoid repetition and for the sake of convenience.
7. The gist of the complaints filed by the complainants is as under:
8. **CMP/211002/0008411:** Complainant Suchitra Prasad has booked a flat no. A-203 in the project "**Ozone Green View Koramangala**" and

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executed agreement of sale(AOS) in her favour on 22.06.2018. She has made a total payment of Rs.1,21,08,109 out of sale consideration of Rs.1,67,36,750 to the respondent on different dates. Though the timeline for the completion of the project by the respondent was 30th September 2021, the respondent was unable to give possession of the apartment and has even failed to commence the project in compliance with the RERA Act and the terms and conditions of the AOS and sought relief of refund of invested sum with interest till refund date

In support of her claim, the complainant has produced documents such as agreement of sale and details of transactions of the payment made to the respondent.

9. **CMP/211002/0008410:** Complainant Santosh Bethur has booked a flat no. B-1003 in the project “**Ozone Green View Koramangala**” and has executed agreement of sale(AOS) in his favour on 22.06.2018. He has made a total payment of Rs.61,46,122 on different dates to the respondent on different dates. Though the timeline for the completion of the project by the respondent was 30th September 2021, the respondent was unable to give possession of the apartment and has even failed to commence the project in compliance with the RERA Act and the terms and conditions of the AOS and sought relief of refund of invested sum with interest till refund date.

In support of his claim, the complainant has produced documents such as agreement of sale and details of transactions of the payment made to the respondent.

10. **CMP/210930/0008400:** Complainant Janath has booked a flat no. A-701 in the project “**Ozone Green View Koramangala**” and executed

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agreement of sale(AOS) in his favour on 29.7.2016. He has made a total payment of Rs.36,39,349/- to the respondent on different dates. Though the timeline for the completion of the project by the respondent was 30th September 2021, the respondent was unable to give possession of the apartment and has even failed to commence the project in compliance with the RERA Act and the terms and conditions of the AOS and sought relief of refund of invested sum with interest till refund date

In support of his claim, the complainant has produced documents such as agreement of sale and details of transactions of payment made to the respondent.

11. **CMP/210929/0008399:** Complainant Balaji has booked a flat in the project “**Ozone Green View Koramangala**” by making a total payment of Rs.33,55,092/- but agreement of sale has not been executed. The complainant further contended that the project has not been completed even after a lapse of more than 5 years and Ozone group is not responding or refund of his money. Hence, he sought relief of refund of invested sum with interest till refund date.

In support of his claim, the complainant has produced details of transactions of payment made to the respondent.

12. **CMP/210929/0008395:** Complainant **Navin Lionel Peter** has booked a flat No; A-403 in the project “**Ozone Green View Koramangala**” by making total payment of Rs.33,37,147/- on different dates but agreement of sale was not executed. He further contended that the project has not been completed even after a lapse of more than 5 years and Ozone group is not responding or refund of his money. Hence, he sought relief of refund of invested sum with interest till refund date.

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In support of his claim, the complainant has produced details of transactions of payment made to the respondent.

13. **CMP/220517/0009475:** Complainant **Hariharan Ganapathy** has booked a flat in the project “**Ozone Green View Koramangala**” and executed agreement of sale(AOS) in his favour on 29.01.2020 by making advance payment of Rs.1,00,000/-. Thereafter, the complainant has made payment of Rs.39,20,071 on different dates to the respondent. In all the complainant has made total payment of Rs.40,20,071/- to the respondent. Though the project was scheduled to start in January, 2019, but it was not started.. The respondent was unable to give possession of the apartment and has even failed to commence the project in compliance with the RERA Act and the terms and conditions of the AOS and sought relief of refund of invested sum with interest till refund date.

In support of his claim, the complainant has produced documents such as agreement of sale and details of transactions of payment made to the respondent

14. **CMP/210926/0008384:** Complainant Anita Nagendra Prasad has booked a flat no. A-602 in the project “**Ozone Green View Koramangala**” and executed agreement of sale(AOS) in her favour on 07.06.2016 by making a total payment of Rs.65,64,312/- on different dates. The complainant further contended that the project is completely stalled and that the builder is not refunding the amount paid to him and has sought relief of refund of invested sum of with interest till refund date.

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In support of her claim, the complainant has produced documents such as agreement of sale and details of transactions of payment made to the respondent.

15. Hence these complaints.

16. After registration of the complaints, in pursuance to notice, the respondent has appeared before this Authority through his counsel Sri. E. Suhail Ahmed and has not made any written submissions but instead filed a Memo for Agreeing to settle claims by conciliation dated 07.03.2022 where in it is stated that the complaints in the project "Green View Koramangala" be referred for settlement by conciliation and a suitable time and date fixed by this Authority for the same in the interest of justice. Subsequent to this, during the hearing the promoter promised to settle of all the claims before 1.8.2022 but has failed to do so.

17. Heard both the parties.

18. On the above averments, the following points would arise for our consideration.

19. 1. Whether the complainants are entitled to the relief claimed?
2. What order?

20. Our findings on the above points are as under:

21. 1. In the Affirmative

2. As per final order for the following findings.

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22. Our findings on point no.1:

From the materials placed on record, it is apparent that in spite of entering into an agreement for sale to hand over possession of an apartments, the builder has not completed the project as per agreement and has delayed the project and has not handed over the apartments to the complainants till date. Hence the builder has failed to abide by the terms of agreement for sale. There seems to be no possibility of completing the project or handing over the possession in near future.

As per section **18(1) of RERA**, 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, plat, building as the case may be with interest such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

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.

In the meanwhile, information was received that the existing structure also was being demolished. Hence, this Authority has ordered for spot inspection of the project by a team of Engineers from RERA Authority and the Engineering Team has conducted spot inspection of the project on 10.6.2022. Inspection was also held by the full Authority on 22.8.2022 in the presence of the complainants and one Mr. Nagaraja Naik from the respondent side. During the course of spot inspection, it was apparent from the fact that the residential building already constructed upto 2 floors has almost been dismantled by the respondent.

Ans

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It is observed that the respondent has applied for modified sanctioned plans and this has been admitted by the respondent before this Authority on 25.08.2018, thus violating the order dated 17.5.2022 of this Authority wherein it was directed as under:

"Until and unless the issues before the Authority and the complaints are resolved, change of plan to commercial building shall not be initiated by the promoter and accordingly the promoter is restrained from taking any action to transfer and alienate or modifying the project".

It is evident from the above facts that the respondent has acted in contravention of its undertaking to make refund payments by 01.08.2022 which was recorded in the Order dated 14.6.2022 of this Authority. Section 15(2) of the Act reads as under:

"On the transfer or assignment being permitted by the allottees and the Authority under sub-section(I), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees.

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder."

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Hence it is a obligation of the incoming promoter to settle the liabilities he has taken over from the earlier developer.

The judgement of the Hon'ble Supreme Court of India in CIVIL APPEAL NO(S). 3581-359 2022, Civil Appeal Diary No: 9796/2019 between M/s Imperia Structures Limited vs. Anil Patni & others, it is held as under:

"23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1)..... The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to hand over possession of apartment certainly entitles the complainants herein for refund with interest.

Having regard to all the aspects, this Authority concludes that the complainants are entitled for refund with interest. Therefore it is incumbent upon the respondent to refund the amount with interest.

23. Accordingly, the point raised above is answered in the Affirmative.

24. **Our findings on point no.2:** In view of the above discussion, the complaints deserves to be allowed. Hence, we proceed to pass the following:

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ORDER

In exercise of the powers conferred with the Authority u/s 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No: **CMP/0008411, 8410, 8400, 8399, 8395, 9475 8384** filed u/s 31 of the Act is hereby allowed.

1. In Complaint No. **CMP/211002/0008411**, the respondent is directed to refund the entire amount of Rs.1,21,08,109 along with interest calculated at the rate of SBI MCLR + 2% per annum commencing from 14.05.2018 till the date of realization.

2. In Complaint No. **CMP/211002/0008410**, the respondent is directed to refund the entire amount of Rs.61,46,122/- along with interest calculated at the rate 9% per annum commencing from 24.06.2016 till 30/4/2017. Further, at the rate of SBI MCLR + 2% per annum commencing from 1.5.2017 till the date of realization

3. In Complaint No. **CMP/210930/0008400**, the respondent is directed to refund the entire amount of Rs.36,39,349/- along with interest calculated at the rate of 9% per annum commencing from 02.06.2016 till 30/4/2017. Further, at the rate of SBI MCLR + 2% per annum commencing 1.5.2017 till the date of realization

4. In Complaint No. **CMP/210929/0008399**, the respondent is directed to refund the entire amount of Rs.33,55,092 along with interest calculated at the rate of SBI MCLR + 2% per annum commencing from 10.5.2017 till the date of realization

5. In Complaint No. **CMP/210929/0008395**, the respondent is directed to refund the amount of Rs.33,37,147/- along with interest calculated at the rate of SBI MCLR + 2% per annum commencing from 19.05.2017 till the date of realization.

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6. In Complaint No. **CMP/220517/0009475**, the respondent is directed to refund the entire amount of Rs. **40,20,071/-** along with interest calculated at the rate of SBI MCLR + 2% per annum commencing from 14/05/2018 till the date of realization.

7. In Complaint No. **CMP/210926/0008384**, the respondent is directed to refund the amount of Rs. **65,64,312/-** along with interest calculated at the rate 9% per annum 10/09/2015 till 30/4/2017. Further at the rate of SBI MCLR + 2% per annum commencing from 1.5.2017 till the date of realization.

8. The respondent shall refund the amount within 60 days from the date of this order, failing which, the complainants are at liberty to enforce this order in accordance with law.


(D. Vishnuvardhana Reddy)
Member-1
K-RERA


(Neelmani N. Raju)
Member-2
K-RERA


(H.C. Kishore Chandra)
Chairman
K-RERA