

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/220622/0009651

COMPLAINANTS.....

**MR. MANOJ KUMAR NIMESH
& MRS. SHRAMITA NIMESH
A5-334, JANAPRIYA GREENWOOD
APARTMENT
CHIKKABANAVARA
BANGALORE-560090.**

(By Mr.Akash R Bantia, Advocate)

Vs

RESPONDENT.....

**Ozone Urbana Infra Developers Pvt Ltd
NO.51/7-1, Rathna Avenue
Off Richmond Road
Civil Station
Bangalore-560025.**

**(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 Urbana Prime" 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 11/10/2018 under tripartite subvention scheme, with the respondent bearing the pre-EMI costs till property is handedover and registration is done. The complainants have paid an amount of Rs.25,71,322/- (Rupees

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Twenty Five Lakh Seventy One Thousand Three Hundred and Twenty Two only) including Housing Loan from Piramal Capital & Housing Finance on various dates to the respondent till date. The respondent was supposed to hand over the possession of the flat to the complainants by the end of June 2021. Despite part of the sale consideration amount has been paid to the respondent, the respondent has failed to handover the possession of the flat and thus violated the terms and conditions of the sale agreement. The respondent has also not paid pre-EMIs and hence converted my pre-EMI to EMI. It appears that the Finance Company and the respondent have colluded. Due to this delay, the complainant has been put to financial loss. The complainants want to exit from the project and requesting for refund with interest as well as cancellation of loan. 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 producing documents on its behalf. The respondent has filed a calculation sheet as on 30/9/2022.
4. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Tripartite Agreement, Payment receipts, Loan Sanction Letter, EMI commencement for loan taken from PCHFL and memo of calculation for refund with interest dated 26/08/2022.
5. Heard arguments of both sides.
6. 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?

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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 complainants till date. Hence, the builder has failed to abide by the terms of the agreement for sale dated 11/10/2018 and also failed to pay pre-EMI to the Finance Company. 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 complainants have paid part of the total sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly

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entitles the complainants herein for refund with interest. The complainant has filed his memo of calculation as on 26/8/2022 claiming an amount of Rs.35,15,530/- as refund with interest. The respondent in their calculation sheet as on 30/9/2022 submit that the refund amount to be paid to the complainants is Rs.35,40,480/-. During the process of the hearing the Authority noticed that there is no dispute with the refund amount between both the parties. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted by the respondent vide its calculation sheet as on 30/9/2022.

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

Memo Calculation submitted by Respondent			
PRINCIPLE AMOUNT (A)	INTEREST AS ON 30-09-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
25,71,322	9,69,158	0	35,40,480

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/220622/0009651** is hereby allowed. Respondent is directed to pay a sum of **Rs.35,40,480/- (Rupees Thirty Five Lakh Forty Thousand Four Hundred and Eighty only)** towards refund with interest

[Handwritten Signature]

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to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 20/9/2018 till 30/09/2022. The interest due from 01/10/2022 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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