

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

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

**COMPLAINT NO.: CMP/220725/0009793**

**COMPLAINANT.....**

**MR. NARESH KUMAR VIJAY  
A 403, VASSWANI BRENTWOOD  
VIBGYOR HIGH SCHOOL ROAD  
THUABARAHALLI  
BANGALORE-560066.**

**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 complainant had purchased an apartment in the project of respondent under pre-EMI Subvention Scheme and entered into an agreement of sale and construction agreement on 28/04/2014 with the respondent bearing the pre-EMI costs till property is handedover and registration is done. The complainant has paid an amount of Rs.62,67,132/- (Rupees Sixty Two Lakh Sixty Seven Thousand One Hundred and Thirty Two only) including Housing Loan from HDFC on various dates to the respondent till date. The

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respondent was supposed to hand over the possession of the flat to the complainant by the end of October 2016 with a grace period of six months. The project too was supposed to be completed by December 2020. But the project is completely stalled and there is no progress even after two years. Despite 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 and construction agreement. The respondent has also failed to pay pre-EMIs to HDFC and the complainant is bearing the burden of pre-EMI. The complainant is requesting for full refund with interest. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative. 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 30/09/2022.
4. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Construction Agreement, Tripartite Agreement, Payment receipts, Allotment Letter, Subvention Scheme Agreement, Customer Statement of Account issued by Ozone Group, HDFC statement of account regarding pre-EMIs paid by the complainant and memo of calculation for refund with interest dated 19/09/2022.
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?

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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 complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 28/04/2014 and also has not paid pre-EMIs as agreed. 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 paid almost full total sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the

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complainant herein for refund with interest. The complainant has filed his memo of calculation as on 19/09/2022 claiming an amount of Rs.1,09,69,781/- as refund with interest. The respondent in their calculation sheet as on 30/09/2022 submits that the refund amount to be paid to the complainant is Rs.97,53,033/-. The complainant denied to accept it. There is no dispute over the principal amount paid and received by both the parties. A thorough verification of the documentary proof furnished by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as claimed by him in his memo of calculation as on 19/09/2022.

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	23-01-2014	73,681	1193	30-04-2017	21,674
2	03-02-2014	6,00,000	1182	30-04-2017	1,74,871
3	11-03-2014	6,73,681	1146	30-04-2017	1,90,365
4	31-05-2014	12,11,891	1065	30-04-2017	3,18,245
5	28-01-2015	12,10,228	823	30-04-2017	2,45,593
6	01-09-2015	12,15,074	607	30-04-2017	1,81,861
7	06-02-2016	12,82,577	449	30-04-2017	1,41,997
8				TOTAL INTEREST (11)	12,74,606

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Interest Calculation From 01/05/2017 (After RERA)							
S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	01-05-2017	62,67,132	1967	19-09-2022	8.15	10.15 as on 01-05-2017	34,28,043
2	TOTAL AMOUNT	62,67,132				TOTAL INTEREST (I2)	34,28,043

Memo Calculation by Respondent			
PRINCIPLE AMOUNT ( A )	INTEREST (I1 + I2) AS ON 19-09-2022 (B)	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
62,67,132	47,02,649	0	1,09,69,781

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**

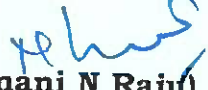
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**CMP/220725/0009793** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,09,69,781/- (Rupees One Crore Nine Lakh Sixty Nine Thousand Seven Hundred and Eighty One only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 23/01/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 till



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19/09/2022. The interest due from 20/09/2022 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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