

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 2ND NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220116/0008799

COMPLAINANTS.....

**MR. VIJAY KUMAR KIDAMBI
3641, 2ND FLOOR, 2 D CROSS
GIRINAGAR PHASE 1
BANGALORE-560085.**

(By Mr.Karan Gupta, Advocate)

V/S

RESPONDENT.....

**Ozone Urbana Infra Developers Pvt Ltd.
No.38, Ulsoor Road ,
Bengaluru - 560042.**

**(By Sri.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" 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 the respondent and entered into an agreement of sale and construction agreement dated 01/03/2014. The complainant has paid an amount of Rs.56,39,873/- (Rupees Fifty Six Lakh Thirty Nine Thousand Eight Hundred



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and Seventy Three only) (including housing loan) on various dates to the respondent. The respondent was supposed to handover the possession of the apartment to the complainant by October 2016 with a grace period of six months i.e. latest by April 2018. Despite the substantial sale consideration amount has been paid to the respondent, the respondent failed to handover the possession of the apartment even after four years and thus failed to abide by the terms and conditions of the agreement. The respondent has also stopped paying pre-EMIs to the Bank. The respondent is nowhere close to handing over possession of the apartment and has refused any form of compensation to the complainants. Due to the enormous delay caused by the respondent, the complainants have suffered huge monetary losses. 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 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. During the proceedings, the respondent has filed a calculation sheet on 30/9/2022.
4. In support of his claim, the complainant has produced documents such as agreement of sale, construction agreement, Statement of Account issued by the respondent, Payment receipts and memo of calculation as on 21/9/2022.
5. Heard arguments of both sides.
6. On the above averments, the following points would arise for my consideration:
 - a. Whether the complainant is entitled for the relief claimed?
 - b. What order?
7. My answer to the above points are as under:-

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- a. In the Affirmative.
 - b. As per final order for the following
8. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement of 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 the complainant till date. Hence the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 01/03/2014 and has also stopped paying pre-EMIs as agreed. There seems to be no possibility of completing the project or handing over the possession of the apartment in the 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 the complainant has paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of the apartment certainly entitles the complainant herein for refund with interest. The respondent has also stopped paying pre-EMIs to the Bank. Initially the complainant had filed his memo of calculation as on 09/06/2022 claiming an amount of Rs.92,11,549/- as refund with interest. The respondent in

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their calculation sheet as on 31/8/2022 submitted that the refund amount to be paid to the complainant is Rs.89,87,541/-. Though there was no dispute over the payment received and paid between both the parties, due to difference in the calculation, the Authority directed both the parties to reconcile and file fresh memo of calculation during the next hearing. On 18/10/2022 during the process of the hearing, the complainant submitted his memo of calculation as on 21/9/2022 claiming an amount of Rs.95,38,547/- as refund with interest and also admitted to the refund of Rs.80,935/- from the respondent on different dates. The respondent also submitted their fresh calculation sheet as on 30/9/2022 submitting that the amount to be paid to the complainant is Rs.96,39,373/- as refund with interest. The complainant agreed to the calculation submitted by the respondent in their calculation sheet as on 30/9/2022. Having regard to all these aspects, this Authority concludes that the complainant is entitled for an amount of Rs.96,39,373/- as refund with interest.

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

Memo Calculation submitted by Respondent as on 30/9/2022			
PRINCIPLE AMOUNT (A)	INTEREST (B) AS ON 22-09-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
56,39,873	40,95,966	96,466	96,39,373

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

NWS

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bearing **No.CMP/220116/0008799** is hereby allowed. Respondent is directed to pay the amount of **Rs.96,39,373/- (Rupees Ninety Six Lakh Thirty Nine Thousand Three Hundred and Seventy Three only) towards refund with interest** calculated at 9% from 29/01/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 30/09/2022 to the complainant within 60 days from the date of this order. The interest due from 01/10/2022 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

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