

**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 2<sup>ND</sup> NOVEMBER 2022**

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

**COMPLAINT NO.: CMP/220116/0008802**

**COMPLAINANTS.....**

**MR. SYED AJMAL AHMED &  
MRS. SHIREEN FATHIMA  
VILLA NO.14, THE RETREAT  
TARABANAHALLI, JALA HOBLI  
BANGALORE-562157.**

**(By Mr.N.C. Srinivas, Advocate)**

**V/S**

**RESPONDENT.....**

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

**(By Sri.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 the respondent under pre-EMI Subvention Scheme with the respondent bearing the pre-EMIs cost till the possession of the apartment is handed over and registration is done and entered into agreement of sale and construction agreement dated 6/6/2015. The

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complainants have paid an amount of Rs.98,97,785/- (Rupees Ninety Eight Lakh Ninety Seven Thousand Seven Hundred and Eighty Five only) (including Housing Loan from Indiabulls) on various dates to the respondent. The respondent was supposed to handover the possession of the apartment to the complainants by December 2017 with a grace period of six months i.e. latest by June 2018. Despite the substantial total sale consideration has been paid to the respondent, the respondent failed to handover the possession of the apartment 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 due to the enormous delay, the complainants have suffered monetary losses. The complainants are requesting for entire refund of amount paid to respondent and refund of pre-EMIs paid by the complainant 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 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 as on 31/8/2022.

4. In support of their claim, the complainants have produced documents such as agreement of sale, construction agreement, tripartite agreement, payment receipts and memo of calculation as on 02/07/2022.

5. Heard arguments of both sides.

6. On the above averments, the following points would arise for my consideration:

- Whether the complainants are entitled for the relief claimed?
- What order?

7. My answer to the above points are as under:-

*22/11/2022* *ALW*

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- c. In the Affirmative.
- d. 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 and construction agreement to handover the possession of an apartment, the builder has not completed the project as agreed and has delayed the project, and has not handed over the Unit in favour of the complainants till date. Hence the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 6/6/2015 and also has 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 complainants have paid full total sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainants herein for refund with interest. The complainants have filed their memo of calculation as on 02/07/2022 claiming an amount of Rs.1,53,00,710/- as refund with interest. The respondent in their calculation sheet as on 31/8/2022 submitted that the

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refund amount to be paid to the complainants is Rs.1,00,60,790/-. As there was difference in the principal amount as well as the memo of calculation between both the parties, the Authority directed both the complainants and respondent to reconcile the amount. The Authority also directed both the complainants and respondent to submit statement regarding money transferred to Ozone on behalf of the complainants. The complainants filed a synopsis of documents, payment receipts, updated Statement of Accounts issued by Indiabulls, email communications between both the parties, according to which the refund amount with interest claimed stands to **Rs.1,46,43,581/- as on 18/10/2022**. The complainants also admits that an amount of Rs.5,15,069/- has been refunded by the respondent on different dates. Despite sufficient opportunity was given to the respond. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted by them on 18/10/2022.

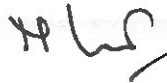
12. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST AS ON 18-10-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
9,897,784	52,60,865	5,15,069	1,46,43,581

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



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In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220116/0008802** is hereby allowed. Respondent is directed to pay the amount of **Rs.1,46,43,581/- (Rupees One Crore Forty Six Lakh Forty Three Thousand Five Hundred and Eighty One only) towards refund with interest** calculated at 9% from 23/03/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 18/10/2022 to the complainants within 60 days from the date of this order. The interest due from 19/10/2022 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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