

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 3rd NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210813/0008243

COMPLAINANTS.....

**MRS. BHAVNA GUPTA &
MR.NEERAJ GUPTA
3, SCARBOROUGH WAY
CHERRYBROOK
NSW2126, AUSTRALIA**

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 have purchased an apartment in the project of the respondent under buyback scheme and entered into an agreement of sale, construction agreement dated 28/7/2016 and tripartite agreement. The complainants have paid an amount of Rs.58,88,892/- (Rupees Fifty Eight



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

Lakh Eighty Eight Thousand Eight Hundred and Ninety Two only) (including housing loan) on various dates to the respondent. The respondent was supposed to handover the possession of the apartment to the complainants by March 2019 with a grace period of six months i.e. latest by September 2019. Despite the substantial sale consideration amount has been paid to the respondent, the respondent failed to handover the possession of the apartment even after three years and thus failed to abide by the terms and conditions of the agreement. Though the respondent had agreed to pay the PEMIs until handing over possession of the apartment, has stopped paying pre-EMIs to the Bank due to which Indiabulls have issued a SARFAESI notice. At this juncture, the builder through an email committed to pay the outstanding PEMIs but failed to honour the same. The complainants also requested the builder to execute buyback in August 2018 along with cancellation of allotment, the respondent sent an email accepting the buyback. Later, the respondent did not honour the buyback agreement/cancellation of allotment citing financial difficulties and made the complainants to accept the extension for two years with additional profits of Rs.5,00,000/-. Though the complainant was not interested to accept this, with no other option, they accepted it. The respondent is nowhere close to handing over possession of the apartment and has refused any form of compensation to the complainants. 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 on 18/10/2022, 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 agreement of sale, construction agreement, tripartite agreement, Payment



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

receipts, buyback agreement, buyback extension agreement, cancellation request form, Loan sanction letter, email correspondence with the respondent and and memo of calculation as on 29/5/2022.

5. Heard arguments of both sides.
6. On the above averments, the following points would arise for my consideration:
 - a. Whether the complainants are entitled for the relief claimed?
 - b. What order?
7. My answer to the above points are as under:-
 - 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 and construction 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 complainants till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 15/7/2016 and has also stopped paying pre-EMIs as agreed, due to which the INDIABULLS has issued SARFAESI Notice to the complainants for not paying PEMIs. 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

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

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 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 complainants herein for refund with interest. The respondent has also stopped paying pre-EMIs to the Bank. The complainants have filed their memo of calculation as on 29/05/2022 claiming an amount of Rs.88,80,852/- as refund with interest. The respondent in their memo of calculation as on 20/6/2022 submitted that the refund amount to be paid to the complainants is Rs.59,38,562/- and also an amount of Rs.27,96,516/- was refunded to the complainants on 31/1/2019. As there was discrepancy in the calculation, the Authority directed the respondents to reconcile and file fresh memo of calculation during the next hearing. On 18/10/2022 during the process of the hearing, the respondent submitted its calculation sheet as on 31/8/2022 claiming an amount of Rs.62,87,658/- as refund with interest and informed the Authority that the complainants are agreeable to this. There was no dispute over the principal amount paid and received by both the parties. Having regard to all these aspects, this Authority concludes that the complainant is entitled for an amount of Rs.62,87,658/- as refund with interest.

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



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

Memo Calculation submitted by Respondent as 31/8/2022			
PRINCIPLE AMOUNT (A)	INTEREST (B) AS ON 31-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
56,70,422	29,02,125	22,84,888	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 bearing **No.CMP/210813/0008243** is hereby allowed. Respondent is directed to pay the amount of **Rs.62,87,658/- (Rupees Sixty Two Lakh Eighty Seven Thousand Six Hundred and Fifty Eight only)** towards refund with interest calculated at 9% from 14/10/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 31/08/2022 to the complainants within 60 days from the date of this order. The interest due from 01/09/2022 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

NOT AN OFFICIAL COPY