

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 4th NOVEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220516/0009459

COMPLAINANTS.....

**MR. AJITH MURTHY
NO.C 601, BRIGADE RESIDENCY
8TH MAIN, MALLESWARAM
BANGALORE-560055.**

(BY MR.SANDEEP LAHIRI, 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 interest on delay period in handing over the apartment to the complainant, completion/possession of the apartment and reimbursement of PEMIs paid by the complainant to the Bank.

Brief facts of the complaint are as under:-

2. The complainant had purchased an apartment T 304 in the project of respondent by entering into an agreement of sale and construction dated 11/01/2017 and has paid the respondent an amount of Rs.70,48,676/- (Rupees Seventy Lakh Forty Eight Thousand Six Hundred and Seventy Six only) including

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Housing Loan from HDFC. As per sale and construction agreement the respondent was under obligation to handover possession before the end of 31/03/2019 with a grace period of six months i.e. latest by 30/09/2019. Though more than three years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the apartment to the complainant. As per the Tripartite Agreement, the respondent was supposed to pay pre-EMIs to the Bank till the handing over of the possession of the apartment to the complainant. But the respondent has not at all paid any pre-EMIs to the Bank. The complainant has paid the pre-EMIs to the Bank from September 2019 till July 2022 amounting to Rs.16,92,526/-. Due to the enormous delay by the respondent in handing over the possession of the apartment and not paying pre-EMIs as agreed, the complainant has suffered monetary losses. The complainant prays the Authority to direct the respondent to pay interest on delay period, speeding up the construction and handover the apartment to him immediately as well as refund the pre-EMIs paid by him 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 has not contested the matter by filing objections and producing documents on its behalf. During the proceedings, they have filed a calculation sheet as on 31/8/2022 and 30/9/2022.

4. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Construction agreement, Tripartite Agreement, Payment receipts, Customer statement of account issued by Ozone dated 20/7/2021, Statement of account from HDFC regarding pre-EMIs paid by the complainant to the Bank and Memo of calculation for interest on delay period as on 06/09/2022.

5. Heard arguments of both sides.



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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?

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:- It is undisputed that the respondent has failed to handover possession of the apartment to the complainant herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale and construction between the parties, the possession of the apartment had to be handed over before the end of March 2019 with a grace period of six months i.e. latest by 30/9/2019. As per the Tripartite agreement, the respondent had agreed to pay pre-EMIs to the Bank till the handover of the apartment to the complainant. The respondent has not paid pre-EMIs to the Bank till today. The complainant has paid an amount of Rs.16,92,526/- towards the pre-EMIs to the Bank from September 2019 till July 2022. When the respondent has failed to handover possession and pay pre-EMIs to the Bank as agreed by them, the complainant has approached this forum for direction to the respondent for speeding up the construction, handover possession of the apartment, to pay interest on delay period and refund pre-EMIs paid with interest.

9. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already 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 even after three years and not paying pre-EMIs to the Bank, certainly entitles the

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complainant herein for delay period interest. The complainant has claimed Rs.23,49,944/- (Rupees Twenty Three Lakh Forty Nine Thousand Nine Hundred and Forty Four only) as delay period interest vide his memo of calculation as on 6/9/2022 calculated from 31/3/2019 to 6/9/2022. The respondent has filed its calculation sheet as on 31/8/2022 in respect of refund with interest. The complainant disputed with the principal amount. The Authority directed the respondent to submit fresh calculation sheet with regard to delay period interest and also to reconcile the principal amount. Accordingly, the respondent filed fresh calculation sheet as on 30/9/2022 submitting that the delay period interest payable to the complainant is Rs.25,09,586/-. The respondent also submitted that they have refunded an amount of Rs.2,56,190/- to the complainant. The complainant did not agree with the contention of the respondent and denied any refund.

10. The respondent failed to pay pre-EMIs to the Bank as agreed, due to which the complainant has paid pre-EMIs to the Bank from September 2019 to July 2022 to the tune of Rs.16,92,526/-. In addition to the delay period interest, the complainant has prayed for refund of pre-EMIs paid to the Bank with interest.

11. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest calculated from 30/9/2019 to 11/10/2022 and refund of Rs.16,92,526/- with interest paid towards pre-EMIs from September 2019 to July 2022 to the Bank.

12. Therefore, it is incumbent upon the respondent to pay interest for the principle amount for the delay period which is determined as under:

Payment Details		
TYPE	AMOUNT	DATE
TOTAL PAYMENT TILL POSSESSION	70,48,676	31-03-2019

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Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION Rs.70,48,676/-						
1	31-03-2019	30-04-2019	30	8.75	10.75 as on 10-03-2019	62,279
2	30-04-2019	30-05-2019	30	8.7	10.7 as on 10-04-2019	61,989
3	30-05-2019	30-06-2019	31	8.65	10.65 as on 10-05-2019	63,756
4	30-06-2019	30-07-2019	30	8.65	10.65 as on 10-06-2019	61,700
5	30-07-2019	30-08-2019	31	8.6	10.6 as on 10-07-2019	63,457
6	30-08-2019	30-09-2019	31	8.45	10.45 as on 10-08-2019	62,559
7	30-09-2019	30-10-2019	30	8.35	10.35 as on 10-09-2019	59,962
8	30-10-2019	30-11-2019	31	8.25	10.25 as on 10-10-2019	61,362
9	30-11-2019	30-12-2019	30	8.2	10.2 as on 10-11-2019	59,093
10	30-12-2019	30-01-2020	31	8.2	10.2 as on 10-12-2019	61,062
11	30-01-2020	29-02-2020	30	8.2	10.2 as on 10-01-2020	59,093
12	29-02-2020	29-03-2020	29	8.15	10.15 as on 10-02-2020	56,843

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13	29-03-2020	29-04-2020	31	8.05	10.05 as on 10-03-2020	60,164
14	29-04-2020	29-05-2020	30	7.7	9.7 as on 10-04-2020	56,196
15	29-05-2020	29-06-2020	31	7.55	9.55 as on 10-05-2020	57,171
16	29-06-2020	29-07-2020	30	7.3	9.3 as on 10-06-2020	53,878
17	29-07-2020	29-08-2020	31	7.3	9.3 as on 10-07-2020	55,674
18	29-08-2020	29-09-2020	31	7.3	9.3 as on 10-08-2020	55,674
19	29-09-2020	29-10-2020	30	7.3	9.3 as on 10-09-2020	53,878
20	29-10-2020	29-11-2020	31	7.3	9.3 as on 10-10-2020	55,674
21	29-11-2020	29-12-2020	30	7.3	9.3 as on 10-11-2020	53,878
22	29-12-2020	29-01-2021	31	7.3	9.3 as on 10-12-2020	55,674
23	29-01-2021	28-02-2021	30	7.3	9.3 as on 10-01-2021	53,878
24	28-02-2021	28-03-2021	28	7.3	9.3 as on 10-02-2021	50,286
25	28-03-2021	28-04-2021	31	7.3	9.3 as on 10-03-2021	55,674
26	28-04-2021	28-05-2021	30	7.3	9.3 as on 10-04-2021	53,878
27	28-05-2021	28-06-2021	31	7.3	9.3 as on 15-05-2021	55,674

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28	28-06-2021	28-07-2021	30	7.3	9.3 as on 15-06-2021	53,878
29	28-07-2021	28-08-2021	31	7.3	9.3 as on 15-07-2021	55,674
30	28-08-2021	28-09-2021	31	7.3	9.3 as on 15-08-2021	55,674
31	28-09-2021	28-10-2021	30	7.3	9.3 as on 15-09-2021	53,878
32	28-10-2021	28-11-2021	31	7.3	9.3 as on 15-10-2021	55,674
33	28-11-2021	28-12-2021	30	7.3	9.3 as on 15-11-2021	53,878
34	28-12-2021	28-01-2022	31	7.3	9.3 as on 15-12-2021	55,674
35	28-01-2022	28-02-2022	31	7.3	9.3 as on 15-01-2022	55,674
36	28-02-2022	28-03-2022	28	7.3	9.3 as on 15-02-2022	50,286
37	28-03-2022	28-04-2022	31	7.3	9.3 as on 15-03-2022	55,674
38	28-04-2022	28-05-2022	30	7.4	9.4 as on 15-04-2022	54,458
39	28-05-2022	28-06-2022	31	7.5	9.5 as on 15-05-2022	56,872
40	28-06-2022	28-07-2022	30	7.7	9.7 as on 15-06-2022	56,196
41	28-07-2022	28-08-2022	31	7.8	9.8 as on 15-07-2022	58,668
42	28-08-2022	28-09-2022	31	8	10.0 as on 15-08-2022	59,865

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43	28-09-2022	11-10-2022	13	8	10.0 as on 15-08-2022	25,104
					TOTAL DELAYED INTEREST as on 11/10/2022	20,41,793

13. Accordingly 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:

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220516/0009459** is hereby allowed. Respondent is directed to


1. pay the amount of **Rs.20,41,793/- (Rupees Twenty Lakh Forty One Thousand Seven Hundred and Ninety Three only)** towards delay period interest calculated at MCLR + 2% from 30/09/2019 till 11/10/2022 to the complainant within 60 days from the date of this order. The interest due from 12/10/2022 up to the date of final payment will be calculated likewise and paid to the complainant.
2. refund an amount of **Rs.16,92,526/- plus interest** calculated at MCLR + 2% for the pre-EMIs paid by the complainant to the Bank from September 2019 to July 2022 and later on, if any.

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3. Respondent is directed to complete the construction and handover the possession of the apartment to the complainant immediately.

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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