

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/220112/0008786

COMPLAINANT.....

MR. NITHIN SHET

18, BLOCK-3

JEEVAN GRIHA COLONY

24TH MAIN, 1ST PHASE

JP NAGAR

BANGALORE-560078.

(BY MR. KARAN GUPTA, ADVOCATE)

V/S

RESPONDENT.....

OZONE URBANA INFRA DEVELOPERS

PRIVATE LIMITED

NO.38, ULSOOR ROAD

BANGALORE - 560042.

(BY MR. DEEPAK BHASKAR &

ASSOCIATES, ADVOCATE)

*** * * * ***

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 has purchased an apartment in the project of the respondent under subvention scheme and entered into an agreement of sale and construction dated 20/11/2015 and tripartite agreement. The complainant has paid an amount of Rs.1,09,84,138/- (Rupees One Crore

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Nine Lakh Eighty Four Thousand One Hundred and Thirty Eight only) (including housing loan from HDFC) on various dates to the respondent. The respondent was supposed to handover the possession of the apartment to the complainant by December 2017 with a grace period of six months i.e. latest by June 2018. Despite the full 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. Though the respondent had agreed to pay the PEMIs until handing over possession of the apartment, has not paid 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 complainant. 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 20/9/2022 and 18/10/2022, the respondent has filed a calculation sheet as on 31/8/2022 and revised calculation sheet as on 30/9/2022.
4. In support of his claim, the complainant has produced documents such as agreement of sale, construction agreement, tripartite agreement, Statement of Account issued by the respondent, Statement of Account issued by HDFC regarding pre-EMIs and memo of calculation as on 10/6/2022.
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?

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- 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 complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 20/11/2015 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 full 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 adding more

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financial burden on the complainant. The complainant has filed his memo of calculation as on 10/06/2022 claiming an amount of Rs.1,69,96,105/- as refund with interest. The respondent vide their calculation sheet as on 31/8/2022 submitted that the refund amount to be paid to the complainants is Rs.1,32,33,625/-. During the proceedings, as there was difference in the principal amount shown by the respondent, the Authority directed the respondent to furnish a statement regarding how much disbursement they received from the Bank. The respondent submitted fresh calculation sheet as on 30/9/2022 during the process of the hearing on 18/10/2022, that the refund amount payable to the complainant as refund with interest is Rs.1,33,00,852/-. The complainant has produced statement of account issued by the respondent which clarifies that the principal amount claimed by the complainant is correct. The complainant has also submitted statement of account with regard to PEMIs issued by HDFC. Having regard to all these aspects, this Authority concludes that the complainant is entitled for an amount of Rs.1,69,96,105/- as refund with interest.

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	08-04-2015	9,43,349	755	30-04-2017	1,75,617
2	20-11-2015	6,67,276	743	30-04-2017	1,22,248
3	26-11-2015	49,66,798	521	30-04-2017	6,38,063
4	21-02-2017	19,43,114	68	30-04-2017	32,580
5				TOTAL INTEREST (11)	9,68,508

Interest Calculation From 01/05/2017 (After RERA)

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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	85,20,537	1866	10-06-2022	8.15	10.15 as on 01-05-2017	44,21,318
2	03-05-2017	6,47,710	1864	10-06-2022	8.15	10.15 as on 01-05-2017	3,35,737
3	10-07-2019	63,610	1066	10-06-2022	8.6	10.6 as on 10-07-2019	19,692
4	17-09-2019	1,27,069	997	10-06-2022	8.35	10.35 as on 10-09-2019	35,923
5	05-10-2019	62,981	979	10-06-2022	8.35	10.35 as on 10-09-2019	17,483
6	05-11-2019	62,981	948	10-06-2022	8.25	10.25 as on 10-10-2019	16,766
7	05-12-2019	62,351	918	10-06-2022	8.2	10.2 as on 10-11-2019	15,995
8	06-01-2020	62,351	886	10-06-2022	8.2	10.2 as on 10-12-2019	15,437
9	05-02-2020	62,351	856	10-06-2022	8.2	10.2 as on 10-01-2020	14,915
10	05-03-2020	62,036	827	10-06-2022	8.15	10.15 as on 10-02-2020	14,266
11	08-04-2020	62,036	793	10-06-2022	8.05	10.05 as on 10-03-2020	13,545
12	05-05-2020	62,036	766	10-06-2022	7.7	9.7 as on 10-04-2020	12,628
13	05-06-2020	60,776	735	10-06-2022	7.55	9.55 as on 10-05-2020	11,687
14	06-07-2020	60,776	704	10-06-2022	7.3	9.3 as on 10-06-2020	10,901

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15	05-08-2020	60,776	674	10-06-2022	7.3	9.3 as on 10-07-2020	10,437
16	28-09-2020	45,661	620	10-06-2022	7.3	9.3 as on 10-09-2020	7,213
17	27-10-2020	45,661	591	10-06-2022	7.3	9.3 as on 10-10-2020	6,875
18	05-11-2020	7,722	582	10-06-2022	7.3	9.3 as on 10-10-2020	1,145
19	27-11-2020	37,939	560	10-06-2022	7.3	9.3 as on 10-11-2020	5,413
20	28-12-2020	45,031	529	10-06-2022	7.3	9.3 as on 10-12-2020	6,069
21	27-01-2021	45,031	499	10-06-2022	7.3	9.3 as on 10-01-2021	5,725
22	27-02-2021	45,031	468	10-06-2022	7.3	9.3 as on 10-02-2021	5,369
23	29-03-2021	45,031	438	10-06-2022	7.3	9.3 as on 10-03-2021	5,025
24	27-04-2021	45,031	409	10-06-2022	7.3	9.3 as on 10-04-2021	4,692
25	27-05-2021	45,031	397	10-06-2022	7.3	9.3 as on 10-04-2021	4,555
26	28-06-2021	44,716	347	10-06-2022	7.3	9.3 as on 15-06-2021	3,953
27	27-07-2021	44,716	318	10-06-2022	7.3	9.3 as on 15-07-2021	3,623
28	27-08-2021	44,716	287	10-06-2022	7.3	9.3 as on 15-08-2021	3,269
29	27-09-2021	44,716	256	10-06-2022	7.3	9.3 as on 15-09-2021	2,916

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30	27-10-2021	44,716	226	10-06-2022	7.3	9.3 as on 15-10-2021	2,574
31	27-11-2021	44,716	195	10-06-2022	7.3	9.3 as on 15-11-2021	2,221
32	27-12-2021	44,716	165	10-06-2022	7.3	9.3 as on 15-12-2021	1,879
33	27-01-2022	44,716	134	10-06-2022	7.3	9.3 as on 15-01-2022	1,526
34	27-02-2022	44,716	103	10-06-2022	7.3	9.3 as on 15-02-2022	1,173
35	27-03-2022	44,716	75	10-06-2022	7.3	9.3 as on 15-03-2022	854
36	27-04-2022	44,716	44	10-06-2022	7.3	9.3 as on 15-03-2022	501
37	27-05-2022	44,716	14	10-06-2022	7.3	9.3 as on 15-03-2022	159
38	TOTAL AMOUNT	1,09,84,138				TOTAL INTEREST (I2)	50,43,459

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 10-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,09,84,138	60,11,967	0	1,69,96,105

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

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bearing **No.CMP/220112/0008786** is hereby allowed.
Respondent is directed to pay the amount of **Rs.1,69,96,105/-**
(Rupees One Crore Sixty Nine Lakh Ninety Six Thousand One
Hundred and Five only) towards refund with interest calculated
at 9% from 08/04/2015 to 30/04/2017 and MCLR + 2% from
01/05/2017 till 10/06/2022 to the complainant within 60 days
from the date of this order. The interest due from 11/06/2022 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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