

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 16th DECEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210415/0007891

COMPLAINANTS.....

**MR. VENKATESH G IYER &
MRS. SUDHA V IYER
PRIDE APARTMENTS,
E-607, 181/182, BILEKAHALLI
BANNERGHATTA ROAD
BANGALORE-560076.**

**(BY MR. SADANAND SHASTRI,
ADVOCATE)**

V/S

RESPONDENT.....

**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
BANGALORE-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 PAVILLION" developed by **M/S. OZONE URBANA INFRA DEVELOPERS PVT LTD** on OZONE Urbana NH-7, Kannamangala Village, Devanahalli, Bengaluru Rural for the relief of refund with interest.



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2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1250/303/PR/171019/000287 and is valid from 30/7/2017 till 31/12/2022. The Authority has extended its registration till 30/09/2023.

Brief facts of the complaint are as under:

1. The complainants have purchased an apartment in the project of the respondent under subvention scheme and entered into an agreement of sale and construction agreement on 28/10/2014 and tripartite agreement for housing loan from HDFC. The complainants have paid an amount of Rs.76,96,575/- (Rupees Seventy Six Lakh Ninety Six Thousand Five Hundred and Seventy Five 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 complainants by October 2016 with a grace period of six months i.e. latest by April 2017. Despite the full sale consideration amount has been paid to the respondent, the respondent has failed to handover the possession of the apartment even after five years and thus failed to abide by the terms and conditions of the agreement. Though the respondent had agreed to pay the Pre-EMIs until handing over possession of the apartment, has not paid pre-EMIs to the Bank. The complainant has paid the pre-EMIs to the Bank till date. The respondent is nowhere close to handing over possession of the apartment and is not responding to give any form of compensation to the complainants. Thus, the complainants have approached this Authority, requesting for entire refund with interest. Hence, this complaint.
2. 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




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- producing documents on its behalf. During the proceedings on 28/09/2022, the respondent has filed a calculation sheet as on 31/8/2022.
3. In support of their claim, the complainants have produced documents such as agreement of sale, construction agreement, tripartite agreement, Payment receipts, Subvention Scheme agreement, Customer Statement of account issued by Ozone Group dated 8/4/2022, HDFC pre-EMI statement paid by the complainant to the Bank, Home Loan Agreement and memo of calculation as on 20/7/2022.
4. This case was heard on 31/5/2022, 23/6/2022, 2/8/2022, 15/9/2022, 20/9/2022, 28/9/2022 and 13/12/2022.
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:-
- In the Affirmative.
 - 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 failed to handover 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 28/10/2014 and has not paid pre-EMIs as agreed resulting in financial burden on the complainants. There seems to be no



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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 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 not paid pre-EMIs to the Bank as agreed. As there was difference in the principal amount paid by the complainants to the respondent, the Authority directed the complainants to submit receipts for having paid the amount to the respondent, tripartite agreement and customer statement issued by Ozone Group to the complainant for having paid the amount. The complainants have furnished the required documents to the Authority. The complainants have filed their memo of calculation as on 20/07/2022 claiming an amount of Rs.1,25,16,902/- (including PEMIs paid by the complainants) as refund with interest. The respondent in their calculation sheet as on 31/8/2022 submitted that the refund amount to be paid to the complainants is Rs.1,00,07,490/- and that an amount of Rs.6,69,206/- was paid to the complainants. As there was discrepancy in

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the calculation, the Authority directed both the complainants and the respondent to reconcile and file fresh documents during the next hearing. On 13/11/2022 during the process of the hearing, the complainants submitted reconciliated documents to the Authority and stucked on to their claim of Rs.1,25,16,902/- and disagreed with the claim of the respondent submitted in its calculation sheet as on 31/8/2022. A thorough verification of the documents/payment receipts submitted by the complainants, has revealed that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for an amount of Rs.1,25,16,902/- 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	16-09-2014	154	957	30-04-2017	36
2	17-09-2014	1,00,000	956	30-04-2017	23,572
3	18-09-2014	1,50,000	955	30-04-2017	35,321
4	19-09-2014	1,00,000	954	30-04-2017	23,523
5	26-09-2014	2,30,000	947	30-04-2017	53,706
6	27-09-2014	1,13,602	946	30-04-2017	26,498
7	07-10-2014	2,50,000	936	30-04-2017	57,698
8	09-10-2014	2,30,000	934	30-04-2017	52,969
9	10-10-2014	2,50,000	933	30-04-2017	57,513
10	04-11-2014	12,50,414	908	30-04-2017	2,79,955
11	30-01-2015	12,11,413	821	30-04-2017	2,45,236
12	14-09-2015	12,53,754	594	30-04-2017	1,83,632
13	28-12-2015	6,96,530	489	30-04-2017	83,984
14	20-01-2016	6,26,877	466	30-04-2017	72,030
15				TOTAL INTEREST (I1)	11,95,673

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

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	64,62,744	1906	20-07-2022	8.15	10.15 as on 01-05-2017	34,25,413
2	05-07-2019	43,042	1110	19-07-2022	8.65	10.65 as on 10-06-2019	13,940
3	05-08-2019	43,042	1079	19-07-2022	8.6	10.6 as on 10-07-2019	13,487
4	05-09-2019	43,042	1048	19-07-2022	8.45	10.45 as on 10-08-2019	12,914
5	05-10-2019	36,953	1018	19-07-2022	8.35	10.35 as on 10-09-2019	10,667
6	05-11-2019	36,953	987	19-07-2022	8.25	10.25 as on 10-10-2019	10,242
7	05-12-2019	36,953	957	19-07-2022	8.2	10.2 as on 10-11-2019	9,882
8	05-01-2020	36,953	926	19-07-2022	8.2	10.2 as on 10-12-2019	9,562
9	05-02-2020	36,113	895	19-07-2022	8.2	10.2 as on 10-01-2020	9,032
10	05-03-2020	36,113	866	19-07-2022	8.15	10.15 as on 10-02-2020	8,696
11	05-04-2020	36,113	835	19-07-2022	8.05	10.05 as on 10-03-2020	8,302
12	05-05-2020	35,693	805	19-07-2022	7.7	9.7 as on 10-04-2020	7,635
13	05-06-2020	35,693	774	19-07-2022	7.55	9.55 as on 10-05-2020	7,228

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14	05-07-2020	35,693	744	19-07-2022	7.3	9.3 as on 10-06-2020	6,766
15	05-08-2020	34,224	713	19-07-2022	7.3	9.3 as on 10-07-2020	6,217
16	05-09-2020	34,224	682	19-07-2022	7.3	9.3 as on 10-08-2020	5,947
17	05-10-2020	34,224	652	19-07-2022	7.3	9.3 as on 10-09-2020	5,685
18	05-11-2020	34,224	621	19-07-2022	7.3	9.3 as on 10-10-2020	5,415
19	05-12-2020	34,224	591	19-07-2022	7.3	9.3 as on 10-11-2020	5,153
20	05-01-2021	29,605	560	19-07-2022	7.3	9.3 as on 10-12-2020	4,224
21	05-02-2021	29,605	529	19-07-2022	7.3	9.3 as on 10-01-2021	3,990
22	05-03-2021	29,185	501	19-07-2022	7.3	9.3 as on 10-02-2021	3,725
23	05-04-2021	29,185	470	19-07-2022	7.3	9.3 as on 10-03-2021	3,495
24	09-04-2021	15,000	466	19-07-2022	7.3	9.3 as on 10-03-2021	1,781
25	05-05-2021	29,185	440	19-07-2022	7.3	9.3 as on 10-04-2021	3,271
26	05-06-2021	29,185	409	19-07-2022	7.3	9.3 as on 15-05-2021	3,041
27	05-07-2021	29,185	379	19-07-2022	7.3	9.3 as on 15-06-2021	2,818
28	05-08-2021	29,185	348	19-07-2022	7.3	9.3 as on 15-07-2021	2,587

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29	05-09-2021	29,185	317	19-07-2022	7.3	9.3 as on 15-08-2021	2,357
30	05-10-2021	29,185	287	19-07-2022	7.3	9.3 as on 15-09-2021	2,134
31	05-11-2021	29,185	256	19-07-2022	7.3	9.3 as on 15-10-2021	1,903
32	05-12-2021	29,185	226	19-07-2022	7.3	9.3 as on 15-11-2021	1,680
33	05-01-2022	29,185	195	19-07-2022	7.3	9.3 as on 15-12-2021	1,450
34	05-02-2022	29,185	164	19-07-2022	7.3	9.3 as on 15-01-2022	1,219
35	05-03-2022	29,185	136	19-07-2022	7.3	9.3 as on 15-02-2022	1,011
36	05-04-2022	29,185	105	19-07-2022	7.3	9.3 as on 15-03-2022	780
37	05-05-2022	29,185	75	19-07-2022	7.4	9.4 as on 15-04-2022	563
38	05-06-2022	29,185	44	19-07-2022	7.5	9.5 as on 15-05-2022	334
39	05-07-2022	29,185	14	19-07-2022	7.7	9.7 as on 15-06-2022	108
40	TOTAL AMOUNT	76,96,575				TOTAL INTEREST (I2)	36,24,654

Memo of Calculation

PRINCIPLE AMOUNT (A)	INTEREST (I1 + I2 = B) AS ON 20-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
76,96,575	48,20,327	0	1,25,16,902

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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/210415/0007891** is hereby allowed. Respondent is directed to pay the amount of **Rs.1,25,16,902/- (Rupees One Crore Twenty Five Lakh Sixteen Thousand Nine Hundred and Two only) towards refund with interest** calculated at 9% from 16/09/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 20/07/2022 to the complainants within 60 days from the date of this order. The interest due from 21/07/2022 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, K-RERA

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