

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 19th DECEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/220207/0008975

COMPLAINANTS.....

**MR. SHESHAGIRI KOMMOJU &
MRS. SUJATHA KOMMOJU
G-107, 6TH FLOOR, WING 2
SARAVANA TRANQUIL HEIGHTS
HESARAGHATTA MAIN ROAD
VIDYARANYAPURA
BANGALORE-560097.**

(IN PERSON)

Vs

RESPONDENT.....

**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
BANGALORE-560042.**

**(By Sri. Deepak Bhaskar, Advocate &
Associates)**

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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 "URBANA PAVILLION" developed by M/s OZONE URBANA INFRA DEVELOPERS PRIVATE LIMITED on Sy.No.74, 86/1, 87/2 and 87/3 at Kannamangala Village, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural for the relief of refund with interest.



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Brief facts of the complaint are as under:-

2. On 8/2/2014 the complainants had purchased an apartment No.J403 in the project of respondent on an assurance from the Ozone office that the apartment with all its mandatory certification will be handed over to them by the end of 2015 and entered into an agreement of sale and construction agreement on 24/5/2014. The complainants have paid substantial sale consideration amount of Rs.63,66,185/- (Rupees Sixty Three Lakh Sixty Six Thousand One Hundred and Eighty Five only) to the respondent. The respondent was supposed to handover the apartment latest by 31/10/2016 with a grace period of six months. The complainants entered into Tripartite Agreement on 27/5/2014 and have taken loan from HDFC after obtaining NOC and permission to mortgage the apartment from Ozone under subvention scheme with an understanding that the Ozone will pay PEMIs to Bank till they complete the project. However, the project is delayed to such an extent that the bank stopped the subvention scheme and the PEMI was to be paid by the complainants along with principal amount. The complainants have made all the payments to the Ozone promptly. As on January 2022 the project is incomplete and there are no signs of completing the project. No one from Ozone is responding to the emails nor attending telephone calls. Thus the complainants have approached this Authority for entire refund 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 representative/counsel. But it has not contested the matter either by filing statement of objections or producing documents on its behalf. The respondent has filed its memo of calculation as on 31/8/2022 on 8/9/2022; and again on 15/9/2022 and 28/9/2022.

Handwritten signature

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4. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Construction Agreement, Tripartite Agreement, Buyback Agreement, Allotment letter and memo of calculation as on 02/08/2022.

5. Heard arguments of both sides.

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

1. Whether the complainants are 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:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale 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 24/05/2014. The respondent has also not paid PEMIs to the Bank as agreed. There seems to be no possibility of completing the project or handing over the possession in 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

M/S

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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 complainants have paid substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment and not paying PEMIs to the Bank certainly entitles the complainant herein for refund with interest. The complainants have filed their memo of calculation as on 02/08/2022 claiming an amount of Rs.1,11,16,961/- (Rupees One Crore Eleven Lakh Sixteen Thousand Nine Hundred and Sixty One only) as refund with interest. The respondent has filed its calculation sheet as on 31/8/2022 on 8/9/2022, 15/9/2022 and 28/9/2022. As there was difference in the principal amount paid by the complainants to the respondent, the Authority directed the respondent to reconcile the amount and to file calculation sheet afresh. During the process of the hearing, the respondent filed reconciled calculation sheet in which there was no difference in the principal amount received by them from the complainants, whereas there was difference in the calculation of the interest and the complainant did not agree with their calculation. A thorough verification of the documentary evidence furnished by the complainants reveals that their claim is genuine. Having regards to all these aspects, this Authority concludes that the complainants are entitled for an amount of



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Rs.1,11,16,961/- as refund with interest as calculated vide their memo of calculation as on 02/08/2022.

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	04/02/2014	500,000	1181	30/04/2017	1,45,602
2	08/02/2014	170,438	1177	30/04/2017	49,464
3	17/02/2014	670,440	1168	30/04/2017	1,93,086
4	24/05/2014	300,000	1072	30/04/2017	79,298
5	24/05/2014	30,000	1072	30/04/2017	7,929
6	26/05/2014	400,000	1070	30/04/2017	1,05,534
7	26/05/2014	32,000	1070	30/04/2017	8,442
8	31/05/2014	939,014	1065	30/04/2017	2,46,587
9	28/07/2014	268,752	1007	30/04/2017	66,731
10	28/01/2015	594,223	823	30/04/2017	1,20,586
11	28/01/2015	118,998	823	30/04/2017	24,148
12	26/08/2015	942,901	613	30/04/2017	1,42,520
13	26/08/2015	120,824	613	30/04/2017	18,262
14	25/01/2016	1,184,439	461	30/04/2017	1,34,636
15	25/01/2016	94,156	461	30/04/2017	10,702
16				TOTAL INTEREST (I1)	1,353,527

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	63,66,185	1919	02/08/2022	8.15	10.15 as on 01-05-2017	33,97,249
2	TOTAL AMOUNT	63,66,185				TOTAL INTEREST (I2)	33,97,249

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (I1 + I2) AS ON 02-08-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
63,66,185	47,50,776	0	1,11,16,961

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/UR/220207/ 0008975** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,11,16,961/- (Rupees One Crore Eleven Lakh Sixteen Thousand Nine Hundred and Sixty One only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 04/02/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 02/08/2022. The interest due from 03/08/2022 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