

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 20TH DECEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210415/0007894

COMPLAINANTS.....

**MR.I. ANIL KUMAR &
MRS.I. VANDANA RAI
NO.503, SATYA GREEN APARTMENT
NORTH BLOCK, THINDLU MAIN ROAD
TJOMD;I
BANGALORE-560097.**

(By Mr. Sadanand Shastri, Advocate)

Vs

RESPONDENT.....

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

**(By Mr.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 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 interest on delay period.
2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1250/303/PR/171019/000287 and was valid from

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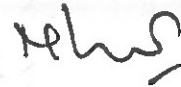
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30/7/2017 till 31/12/2022. The Authority has extended its registration till 30/09/2023.

Brief facts of the complaint are as under:

3. The complainants had purchased an apartment No.K 701 in the project of the respondent under PEMI/Subvention scheme and entered into an agreement of sale and construction agreement on 06/03/2015 and Tripartite Agreement for Housing Loan from HDFC. The complainant has paid an amount of Rs.90,37,076/- (Rupees Ninety Lakh Thirty Seven Thousand and Seventy Six only) (including Housing Loan from HDFC) on various dates to the respondent. The respondent was supposed to handover the apartment to the complainants October 2016 with a grace period of six months i.e. latest by the end of April 2017. Despite the 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 dated 6/3/2015. Though the respondent had agreed to pay the Pre-EMIs until handing over possession of the apartment to the complainants, the respondent has not paid pre-EMIs to the Bank. The complainant has paid the PEMIs to the Bank. The project is incomplete and 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. Due to this enormous delay by the respondent, the complainants have suffered monetary losses. Thus, the complainants have approached this Authority, to direct the respondent to speed up the construction, handover possession of the apartment immediately, and pay interest for the delay period. Hence, this complaint.



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4. 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. They have filed calculation sheet as on 20/6/2022; again on 15/9/2022 and reconciled calculation sheet as on 31/8/2022 on 28/9/2022.
5. In support of their claim, the complainants have produced documents such as agreement of sale, construction agreement, tripartite agreement, Home Loan Agreement, Payment receipts, HDFC Statement of Account pertaining to disbursement, HDFC Statement of Account pertaining to payment of pre-EMIs by the complainants, and memo of calculation as on 07/08/2022.
6. This case was heard on 22/6/2022, 2/8/2022, 15/9/2022, 20/9/2022, 28/9/2022 and 13/12/2022.
7. Heard arguments of both sides.
8. 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?
9. My answer to the above points are as under:-
 - a. In the Affirmative.
 - b. As per final order for the following:

REASONS

10. **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

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handover the unit in favour of the complainant till date and has not paid the PEMIs to the Bank as agreed. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 06/03/2015 resulting in monetary losses to the complainant. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.

11. 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.
12. 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.
13. 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 interest on delay period. The respondent has also failed to pay PEMIs as agreed by them. On perusal of the memo of calculation and calculation sheet submitted by the complainants and the respondent, the Authority noticed that there is a huge difference in the principal amount paid by the complainants to the respondent. The Authority directed both the parties to reconcile and submit fresh memo of calculation along with receipts. Accordingly, the complainants submitted reconciled details of principal amount paid to the respondent along with payment receipts, HDFC

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Statement of Account pertaining to disbursement of amount to the respondent and HDFC Statement of Account pertaining to pre-EMIs paid by the complainants to the Bank. There was no reconciliation regarding the difference, whereas the complainant submitted all the receipts in support of their claim.

14. The complainants vide their memo of calculation as on 7/8/2022 have claimed an amount of Rs.51,29,096/- as interest on delay period calculated from 28/04/2017 till 7/8/2022. The respondent in his calculation sheet as on 31/8/2022 submitted that an amount of Rs.38,30,893/- has to be paid to the complainants towards interest on delay period. A thorough verification of the documentary evidence submitted by the complainants revealed that their claims are genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for an amount of Rs.47,30,231/- towards interest on delay period calculated from 28/04/2017 to 07/08/2022.

15. 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			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	90,37,076	31-10-2016

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 90,37,076						
1	28-04-2017	28-05-2017	30		9	66,849
2	28-05-2017	28-06-2017	31	8.15	10.15 as on 01-05-2017	77,904
3	28-06-2017	28-07-2017	30	8.15	10.15 as on 01-06-2017	75,391
4	28-07-2017	28-08-2017	31	8.15	10.15 as on	77,904

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					01-07-2017	
5	28-08-2017	28-09-2017	31	8.15	10.15 as on 01-08-2017	77,904
6	28-09-2017	28-10-2017	30	8.15	10.15 as on 01-09-2017	75,391
7	28-10-2017	28-11-2017	31	8.15	10.15 as on 01-10-2017	77,904
8	28-11-2017	28-12-2017	30	8.1	10.1 as on 01-11-2017	75,020
9	28-12-2017	28-01-2018	31	8.1	10.1 as on 01-12-2017	77,520
10	28-01-2018	28-02-2018	31	8.1	10.1 as on 01-01-2018	77,520
11	28-02-2018	28-03-2018	28	8.1	10.1 as on 01-02-2018	70,018
12	28-03-2018	28-04-2018	31	8.35	10.35 as on 01-03-2018	79,439
13	28-04-2018	28-05-2018	30	8.35	10.35 as on 01-04-2018	76,877
14	28-05-2018	28-06-2018	31	8.35	10.35 as on 01-05-2018	79,439
15	28-06-2018	28-07-2018	30	8.45	10.45 as on 01-06-2018	77,619
16	28-07-2018	28-08-2018	31	8.45	10.45 as on 01-07-2018	80,207
17	28-08-2018	28-09-2018	31	8.45	10.45 as on 01-08-2018	80,207
18	28-09-2018	28-10-2018	30	8.65	10.65 as on 01-09-2018	79,105
19	28-10-2018	28-11-2018	31	8.7	10.7 as on 01-10-2018	82,125
20	28-11-2018	28-12-2018	30	8.7	10.7 as on 01-11-2018	79,476
21	28-12-2018	28-01-2019	31	8.75	10.75 as on 10-12-2018	82,509
22	28-01-2019	28-02-2019	31	8.75	10.75 as on 10-01-2019	82,509
23	28-02-2019	28-03-2019	28	8.75	10.75 as on 10-02-2019	74,524
24	28-03-2019	28-04-2019	31	8.75	10.75 as on	82,509

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					10-03-2019	
25	28-04-2019	28-05-2019	30	8.7	10.7 as on 10-04-2019	79,476
26	28-05-2019	28-06-2019	31	8.65	10.65 as on 10-05-2019	81,742
27	28-06-2019	28-07-2019	30	8.65	10.65 as on 10-06-2019	79,105
28	28-07-2019	28-08-2019	31	8.6	10.6 as on 10-07-2019	81,358
29	28-08-2019	28-09-2019	31	8.45	10.45 as on 10-08-2019	80,207
30	28-09-2019	28-10-2019	30	8.35	10.35 as on 10-09-2019	76,877
31	28-10-2019	28-11-2019	31	8.25	10.25 as on 10-10-2019	78,672
32	28-11-2019	28-12-2019	30	8.2	10.2 as on 10-11-2019	75,762
33	28-12-2019	28-01-2020	31	8.2	10.2 as on 10-12-2019	78,288
34	28-01-2020	28-02-2020	31	8.2	10.2 as on 10-01-2020	78,288
35	28-02-2020	28-03-2020	29	8.15	10.15 as on 10-02-2020	72,878
36	28-03-2020	28-04-2020	31	8.05	10.05 as on 10-03-2020	77,137
37	28-04-2020	28-05-2020	30	7.7	9.7 as on 10-04-2020	72,049
38	28-05-2020	28-06-2020	31	7.55	9.55 as on 10-05-2020	73,299
39	28-06-2020	28-07-2020	30	7.3	9.3 as on 10-06-2020	69,077
40	28-07-2020	28-08-2020	31	7.3	9.3 as on 10-07-2020	71,380
41	28-08-2020	28-09-2020	31	7.3	9.3 as on 10-08-2020	71,380
42	28-09-2020	28-10-2020	30	7.3	9.3 as on 10-09-2020	69,077
43	28-10-2020	28-11-2020	31	7.3	9.3 as on 10-10-2020	71,380

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44	28-11-2020	28-12-2020	30	7.3	9.3 as on 10-11-2020	69,077
45	28-12-2020	28-01-2021	31	7.3	9.3 as on 10-12-2020	71,380
46	28-01-2021	28-02-2021	31	7.3	9.3 as on 10-01-2021	71,380
47	28-02-2021	28-03-2021	28	7.3	9.3 as on 10-02-2021	64,472
48	28-03-2021	28-04-2021	31	7.3	9.3 as on 10-03-2021	71,380
49	28-04-2021	28-05-2021	30	7.3	9.3 as on 10-04-2021	69,077
50	28-05-2021	28-06-2021	31	7.3	9.3 as on 15-05-2021	71,380
51	28-06-2021	28-07-2021	30	7.3	9.3 as on 15-06-2021	69,077
52	28-07-2021	28-08-2021	31	7.3	9.3 as on 15-07-2021	71,380
53	28-08-2021	28-09-2021	31	7.3	9.3 as on 15-08-2021	71,380
54	28-09-2021	28-10-2021	30	7.3	9.3 as on 15-09-2021	69,077
55	28-10-2021	28-11-2021	31	7.3	9.3 as on 15-10-2021	71,380
56	28-11-2021	28-12-2021	30	7.3	9.3 as on 15-11-2021	69,077
57	28-12-2021	28-01-2022	31	7.3	9.3 as on 15-12-2021	71,380
58	28-01-2022	28-02-2022	31	7.3	9.3 as on 15-01-2022	71,380
59	28-02-2022	28-03-2022	28	7.3	9.3 as on 15-02-2022	64,472
60	28-03-2022	28-04-2022	31	7.3	9.3 as on 15-03-2022	71,380
61	28-04-2022	28-05-2022	30	7.4	9.4 as on 15-04-2022	69,820
62	28-05-2022	28-06-2022	31	7.5	9.5 as on 15-05-2022	72,915
63	28-06-2022	28-07-2022	30	7.7	9.7 as on 15-06-2022	72,049

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64	28-07-2022	07-08-2022	10	7.7	9.7 as on 15-06-2022	24,016
					TOTAL DELAYED INTEREST as on 07/08/2022	47,30,231

16. Accordingly the point raised above is answered in the Affirmative.
17. **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/210415/0007894** is hereby allowed. Respondent is directed to pay a sum of **Rs.47,30,231/- (Rupees Forty Seven Lakh Thirty Thousand Two Hundred and Thirty One only)** towards delay period interest to the complainants within 60 days from the date of this order, calculated MCLR + 2% from 28/04/2017 till 07/08/2022. The interest due from 08/08/2022 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

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