

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/220607/0009600

RECTIFICATION ORDER UNDER SECTION 39 RERA ACT

COMPLAINANTS.....

**MR. BIDDAPPA BOLANDANDA SUBBAIAH
& MRS.SAMYA BELLIAPPA NUCHIMANIYANDA
NELLIMANI, BADAGA VILLAGE
BETHRI POST, MURNAD
KODAGU-571252.**

(BY MR.M. VIKAS, ADVOCATE)

Vs

RESPONDENT.....

**OZONE REALTORS PRIVATE LIMITED
NO.51/7-1, RATHNA AVENUE
OFF RICHMOND ROAD
CIVIL STATION
BANGALORE-560025.**

**(Respondent's name & address
Amended vide order dated 21/06/2023)**

**(BY MR.DEEPAK BHASKAR & ASSOCIATES
ADVOCATES)**

*** * * * ***

1. This complaint is filed under section 31 of the RERA Act against the project
"OZONE POLESTAR" for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainants had purchased an apartment No.504, 5TH Floor, Tower 'A'
in the project of the respondent at Nagavara Village under PEMI/Subvention

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scheme and entered into an agreement of sale on 21/07/2018 and Tripartite Agreement on 30/7/2018 with Ozone and India Bulls for Housing Loan. The complainants have paid an amount of Rs.58,78,888/- (Rupees Fifty Eight Lakh Seventy Eight Thousand Eight Hundred and Eighty Eight only) (including Housing Loan from India Bulls and Rs.6,10,394/- being the PEMIs paid by the complainants from January 2021 to July 2022) on various dates to the respondent. The respondent was supposed to handover the apartment to the complainants by the end of December 2017 with a grace period of six months i.e. latest by the end of June 2018. Despite the substantial sale consideration amount has been paid to the respondent, the respondent has 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 dated 21/7/2018. Though the respondent had agreed to pay the Pre-EMIs until handing over possession of the apartment to the complainants, they did not pay PEMIs as agreed. The complainants have 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 mental agony and monetary losses. Thus, the complainants have approached this Authority, to direct the respondent to refund the entire amount with interest and compensation for mental agony. 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 it has not contested the matter either by filing statement of objections or producing documents on its behalf. The respondent has filed a calculation

4/5/20

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sheet as on 31/8/2022 on 20/9/2022; again on 28/9/2022 and 13/12/2022.

4. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Tripartite Agreement, Payment receipts, Statement of Account from India Bulls, email correspondence with the respondent and memo of calculation for refund with interest as on 19/07/2022.

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 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 complainants till date and not paying PEMIs. Hence, the builder has failed to abide by the terms of the agreement for sale and construction dated 21/07/2018. There seems to be no possibility of completing the project or handing over the possession in near future.

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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 complainants have already 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 certainly entitles the complainants herein for refund with interest. The complainants have filed their memo of calculation as on 19/7/2022 claiming an amount of Rs.81,14,724/- as refund with interest. There was huge difference in the principal amount paid by the complainants to the respondent in the calculation sheet as on 31/8/2022 submitted to the Authority on 20/9/2022 and 28/9/2022. The Authority directed the respondent to reconcile and submit fresh calculation sheet on its behalf. Accordingly, the respondent submitted its calculation sheet as on 30/11/2022 before the Authority during the hearing on 13/12/2022. Though the principal amount tallied, there was difference in the calculation of interest. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted vide their memo of calculation as on 19/7/2022.

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12. Further, the complainants have sought compensation for mental agony which does not come under the jurisdiction of this Authority and hence, same cannot be considered.

13. 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	30-04-2017	0	0	30-04-2017	0
2				TOTAL INTEREST (I1)	0

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	0	1905	19-07-2022	8.15	10.15 as on 01-05-2017	0
2	13-07-2018	1,180	1466	18-07-2022	8.45	10.45 as on 01-07-2018	495
3	17-07-2018	50,068	1478	18-07-2022	8.45	10.45 as on 01-07-2018	21,186
4	26-07-2018	8,71,604	1453	18-07-2022	8.45	10.45 as on 01-07-2018	3,62,583
5	26-07-2018	34,14,209	1453	18-07-2022	8.45	10.45 as on 01-07-2018	14,20,296
6	26-07-2018	6,28,800	1453	18-07-2022	8.45	10.45 as on 01-07-2018	2,61,578

plus

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7	28-07-2018	1,30,316	1451	18-07-2022	8.45	10.45 as on 01-07-2018	54,136
8	31-07-2018	17,078	1448	18-07-2022	8.45	10.45 as on 01-07-2018	7,079
9	04-08-2018	1,03,157	1444	18-07-2022	8.45	10.45 as on 01-08-2018	42,647
10	08-08-2018	25,991	1440	18-07-2022	8.45	10.45 as on 01-08-2018	10,715
11	08-08-2018	25,991	1440	18-07-2022	8.45	10.45 as on 01-08-2018	10,715
12	05-01-2021	32,126	559	18-07-2022	7.3	9.3 as on 10-12-2020	4,575
13	05-02-2021	32,126	528	18-07-2022	7.3	9.3 as on 10-01-2021	4,321
14	05-03-2021	32,126	500	18-07-2022	7.3	9.3 as on 10-02-2021	4,092
15	05-04-2021	32,126	469	18-07-2022	7.3	9.3 as on 10-03-2021	3,839
16	05-05-2021	32,126	439	18-07-2022	7.3	9.3 as on 10-04-2021	3,593
17	05-06-2021	32,126	408	18-07-2022	7.3	9.3 as on 15-05-2021	3,339
18	05-07-2021	32,126	378	18-07-2022	7.3	9.3 as on 15-06-2021	3,094
19	05-08-2021	32,126	347	18-07-2022	7.3	9.3 as on 15-07-2021	2,840
20	05-09-2021	32,126	316	18-07-2022	7.3	9.3 as on 15-08-2021	2,586
21	05-10-2021	32,126	286	18-07-2022	7.3	9.3 as on 15-09-2021	2,341

HWS

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22	05-11-2021	32,126	255	18-07-2022	7.3	9.3 as on 15-10-2021	2,087
23	05-12-2021	32,126	225	18-07-2022	7.3	9.3 as on 15-11-2021	1,841
24	05-01-2022	32,126	194	18-07-2022	7.3	9.3 as on 15-12-2021	1,587
25	05-02-2022	32,126	163	18-07-2022	7.3	9.3 as on 15-01-2022	1,334
26	05-03-2022	32,126	135	18-07-2022	7.3	9.3 as on 15-02-2022	1,105
27	05-04-2022	32,126	104	18-07-2022	7.3	9.3 as on 15-03-2022	851
28	05-05-2022	32,126	74	18-07-2022	7.4	9.4 as on 15-04-2022	612
29	05-06-2022	32,126	43	18-07-2022	7.5	9.5 as on 15-05-2022	359
30	05-07-2022	32,126	13	18-07-2022	7.7	9.7 as on 15-06-2022	110
31	TOTAL AMOUNT	58,78,788				TOTAL INTEREST (I2)	22,35,936

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 19-07-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
58,78,788	22,35,936	0	81,14,724

14. Accordingly the point raised above is answered in the Affirmative.

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15. **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/220607/0009600** is hereby allowed. Respondent is directed to pay a sum of **Rs.81,14,724/- (Rupees Eighty One Lakh Fourteen Thousand Seven Hundred and Twenty Four only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at MCLR + 2% from 13/07/2018 till 19/07/2022. The interest due from 20/07/2022 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