

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 6th JANUARY 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/210717/0008135

COMPLAINANTS.....

**MRS. MONALI RAMAKANT GAIKWAD &
MR.AUXILIUS NAITIVIDADE TYRONE
ALMEIDA
44, SBI COLONY, GOPAL NAGAR
NEAR NAGPUR
PINCODE: 440022.
DISTRICT: NANDURBAR
STATE: MAHARASHTRA**

(BY MRS.H.V. SHARADA, ADVOCATE)

Vs

RESPONDENT.....

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

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

*** * * * ***

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 complainants had purchased an apartment in the project of the
respondent under PEMI/Subvention scheme by making a payment of
Rs.1,00,000/- on 15/5/2015 and Rs.12,52,905/- on 24/11/2015 and

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entered into an agreement of sale on 13/04/2016 and Tripartite Agreement for Housing Loan from HDFC. The complainants have paid an amount of Rs.91,09,883/- (Rupees Ninety One Lakh Nine Thousand Eight Hundred and Eighty Three only) (including Housing Loan from HDFC) 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. As per the Tripartite Agreement entered into with HDFC and Ozone, 10% will be the own contribution, the Bank to disburse the loan instalments to the respondent directly, respondent to bear the interest till the possession is handed over to the complainant. The complainant also entered into Buyback Agreement that the complainant will have option to surrender his rights to the respondent and get refund of the deposited amount with interest/profit. Accordingly, the complainants exercised the option to surrender their rights on the flat. The respondent was supposed to discharge the balance loan amount and execute modified loan agreement between the HDFC and themselves. But the respondent failed to execute fresh bipartite agreement with the HDFC and continued to transfer the PEMI amount from the bank account of the complainants. The complainants submits that the PEMI amount has since been reimbursed by the respondent after several follow up. The respondent vide email dated 23/9/2021 had undertaken to close the loan; continue to pay PEMI till the loan is closed completely and that the complainants will not be burdened with any further financial liability. The respondent has not honoured their commitment. Due to this enormous delay by the respondent, the complainants have suffered monetary losses. Thus, the complainants have approached this Authority and prays for refund of the entire amount with interest, closure of loan. Hence, this complaint.

4/1/21

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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 their memo of calculation as on 20/6/2022, 31/8/2022 and 30/11/2022.
4. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Construction Agreement, Tripartite Agreement, Buyback Agreement, Payment receipts, Cancellation form sent by the Respondent, Buyback Option Form, Payment receipts and memo of calculation for refund with interest dated 12/10/2022.
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 complainant till date. The builder has also failed to pay PEMIs as agreed. Hence, the builder has failed to abide by the terms of the agreement for sale and construction dated

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21/3/2016. 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 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 to the respondent. Having accepted the said amount and failure to keep up promise to return the deposited amount with profit, not closing the loan account by entering into fresh bipartite agreement with HDFC, not paying PEMIs as agreed certainly entitles the complainants herein for refund with interest. The complainants have filed their memo of calculation as on 12/10/2022 claiming an amount of Rs.95,95,843/- as refund with interest. The complainants have also admitted in their memo of calculation that the respondent has reimbursed an amount of Rs.42,73,192/- to them on various dates. The respondent in their calculation sheet as on 31/8/2022 submitted that the refund amount to be paid to the complainants is Rs.94,56,050/-. During the process of the hearing, as there was some difference in the amount to be refunded, the Authority directed the respondents to reconcile and file a fresh calculation



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sheet. Accordingly, during the hearing on 13/12/2022, the respondent filed its fresh calculation sheet as on 30/11/2022 submitting that they have to pay the complainant an amount of Rs.95,19,080/- as refund with interest. There is no dispute over the principle amount between both the parties. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted by the respondent vide its memo of calculation.

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	14-05-2015	1,00,000	717	30-04-2017	17,679
2	27-11-2015	12,52,905	520	30-04-2017	1,60,646
3	27-03-2016	13,689	399	30-04-2017	1,346
4	31-03-2016	52,33,850	395	30-04-2017	5,09,762
5	22-06-2016	11,40,489	312	30-04-2017	87,739
6				TOTAL INTEREST (I1)	7,77,172

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	77,40,933	716	17-04-2019	8.15	10.15 as on 01-05-2017	15,41,272
2	23-08-2017	13,68,950	602	17-04-2019	8.15	10.15 as on 01-08-2017	2,29,169
3	TOTAL AMOUNT	91,09,883				TOTAL INTEREST (I2)	17,70,441

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

S.NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTER EST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	91,09,883	17-04-2019	25,98,649	65,11,234	887	20-09-2021	8.7	10.7 as on 10-04-2019	16,93,081
2	65,11,234	20-09-2021	70,948	64,40,286	10	30-09-2021	7.3	9.3 as on 15-09-2021	16,409
3	64,40,286	30-09-2021	70,948	63,69,338	37	06-11-2021	7.3	9.3 as on 15-09-2021	60,046
4	63,69,338	06-11-2021	10,00,000	53,69,338	55	31-12-2021	7.3	9.3 as on 15-10-2021	75,244
5	53,69,338	31-12-2021	2,40,603	51,28,735	59	28-02-2022	7.3	9.3 as on 15-12-2021	77,099
6	51,28,735	28-02-2022	57,686	50,71,049	22	22-03-2022	7.3	9.3 as on 15-02-2022	28,425
7	50,71,049	22-03-2022	58,657	50,12,392	53	14-05-2022	7.3	9.3 as on 15-03-2022	67,687
8	50,12,392	14-05-2022	58,567	49,53,825	20	03-06-2022	7.4	9.4 as on 15-04-2022	25,515
9	49,53,825	03-06-2022	58,567	48,95,258	31	04-07-2022	7.5	9.5 as on 15-05-2022	39,497
10	48,95,258	04-07-2022	58,567	48,36,691	100	12-10-2022	7.7	9.7 as on 15-06-2022	1,28,536
11								TOTAL INTEREST (13)	22,11,539

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 12-10-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
91,09,883	47,59,152	42,73,192	95,95,843

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/210717/0008135** is hereby allowed. Respondent is directed to pay a sum of **Rs.95,95,843/- (Rupees Ninety Five Lakh Ninety Five Thousand Eight Hundred and Forty Three only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 14/5/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 12/10/2022. The interest due from 13/10/2022 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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