

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/220714/0009752

COMPLAINANT...

**MR. TOVINAKERE DWARAKANATH VIVEK
F4-001, SNN RAJ GREENBAY APARTMENTS
1ST MAIN, EAST LANE
ELECTRONICS CITY PHASE-2
BENGALURU-560100**

(BY MR. AKASH R BANTIA, ADVOCATE)

Vs

RESPONDENT.....

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

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

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1. This complaint is filed under section 31 of the RERA Act against the project "OZONE URBANA" developed by M/s Ozone Urbana Infra Developers Private Limited for the relief of refund with interest.

Brief facts of the complaint are as under:-

2. The complainant had initially booked an apartment in the project of the respondent under PEMI/Subvention scheme and entered into an agreement of sale and construction agreement on 23/12/2015. The complainant also entered into Tripartite Agreement with the respondent and HDFC for



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Housing Loan on 28/12/2015. The complainant has paid an amount of Rs.70,08,770/- (Rupees Seventy Lakh Eight Thousand Seven Hundred and Seventy only) (including Housing Loan from HDFC) on various dates to the respondent. The respondent was supposed to handover the apartment to the complainant 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 23/12/2015. As per Tripartite Agreement, the respondent had agreed to pay the Pre-EMIs until handing over possession of the apartment to the complainant. But the respondent paid PEMI only till July 2019. The respondent through an email informed the complainant that the Banks have refused to take any further PEMI from the respondent and the complainant has to bear the burden of PEMI. As such, the complainant has paid PEMI to the Bank. The complainant submits that the respondent has also not provided certain amenities as promised. As there is delay in the delivery of the apartment, the complainant seeks to exit from the project and has approached this Authority for refund of entire amount paid to the respondent 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 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 sheet as on 30/11/2022.
4. In support of his claim, the complainant has produced documents such as copies of Agreement of Sale, Construction Agreement, Tripartite Agreement, HDFC Statement of Account pertaining to disbursal of loan amount to the



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respondent, customer statement of account from Ozone Payment receipts and memo of calculation as on 5/11/2022.

5. Heard arguments of both sides.

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

1. Whether the complainant is 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 of sale and construction agreement on 23/12/2015 to handover the possession of the apartment to the complainant by the end of December 2017 with a grace period of six months i.e. latest by June 2018, 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 complainant till date and also has stopped paying PEMIs to HDFC citing the reason that the Banks are refusing to collect PEMIs from the respondent. The PEMIs have been paid by the complainant adding more financial burden. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 23/12/2015. 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

Relu

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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 complainant has 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 complainant herein for refund with interest. The complainant has filed his memo of calculation as on 5/11/2022 claiming an amount of Rs.1,16,50,536/- as refund with interest. There was difference in the principal amount paid by the complainant to the respondent in the calculation sheet as on 30/11/2022 submitted by the respondent to the Authority on 13/12/2022.
12. The complainant filed objection to the calculation sheet submitted by the respondent Authority contending that the respondent has not considered the PEMI component of loan disbursed by the HDFC and that as per the subvention it was the obligation of the respondent to pay PEMI which was passed on to complainant. Hence, the respondent should consider the PEMI component paid by the complainant. The complainant prays this Authority to consider the calculation submitted by him which is true in the interest of justice and equity.
13. The respondent submitted fresh calculation sheet as on 30/11/2022 to the Authority on 22/11/2022 in which the principal amount almost

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tallied but there was difference in the calculation of interest. The respondent also claimed in his calculation sheet that an amount of Rs.9,72,586/- has been paid to the complainant on different dates, to which the complainant denied having received any amount from the respondent. A thorough verification of the documentary evidence submitted by the complainant reveal that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted vide his memo of calculation as on 5/11/2022.

14. 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	16-10-2015	50,000	562	30-04-2017	6,928
2	09-12-2015	7,74,392	508	30-04-2017	97,000
3	30-12-2015	24,74,614	487	30-04-2017	2,97,157
4	28-01-2016	12,36,588	458	30-04-2017	1,39,649
5	23-05-2016	12,36,588	342	30-04-2017	1,04,279
6	19-08-2016	8,16,148	254	30-04-2017	51,115
7	24-08-2016	8,244	249	30-04-2017	506
8	17-10-2016	4,08,074	195	30-04-2017	19,621
9	18-10-2016	4,122	194	30-04-2017	197
10				TOTAL INTEREST (I1)	7,16,452

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	70,08,770	2014	05-11-2022	8.15	10.15 as on 01-05-2017	39,25,314

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2	TOTAL AMOUNT	70,08,770				TOTAL INTEREST (I2)	39,25,314
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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 05-11-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
70,08,770	46,41,766	0	1,16,50,536

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

16. **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/220714/0009752** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,16,50,536/- (Rupees One Crore Sixteen Lakh Fifty Thousand Five Hundred and Thirty Six only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 16/10/2015 to 30/4/2017 and at MCLR + 2% from 01/05/2017 till 05/11/2022. The interest due from 06/11/2022 up to the date of final payment will be calculated likewise and paid to the complainant. The complainant is 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