

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 FEBRUARY 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220202/0008912

COMPLAINANT.....

**MRS. MALATI HARISH
94, NARMADA, 3RD FLOOR
NARAYAN GURU CHS
PL LOKHANDE MARG
CHEMBUR
MUMBAI-400089
MAHARASHTRA STATE**

(IN PERSON THROUGH SKYPE)

V/S

RESPONDENT.....

**Ozone Urbana Infra Developers Pvt Ltd.
No.38, Ulsoor Road ,
Bengaluru - 560042.**

**(By Sri.Deepak Bhaskar & Associates
Advocates)**

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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 "OZONE URBANA" developed by M/s Ozone Urbana Infra Developers Private Limited for the relief of refund with interest.

Brief facts of the complaint is as under:

2. The complainant had purchased an apartment in the project "OZONE URBANA" of the respondent under Buyback scheme with the respondent



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bearing the pre-EMIs cost till the possession of the apartment is handed over and registration is done and that if the complainant opts for buyback scheme the respondent will return the amount invested by the complainant with profits as also clear the loan amount and close the loan account. The complainant has entered into agreement of sale and construction agreement dated 25/11/2016. The complainant also entered into Tripartite Agreement on 25/11/2016 with Ozone and HDFC for Housing Loan. The complainant has paid an amount of Rs.68,60,446/- (Rupees Sixty Eight Lakh Sixty Thousand Four Hundred and Forty Six only) (including Housing Loan from HDFC) to the respondent as on 17/12/2020. The respondent was supposed to handover the possession of the apartment to the complainant by 31/08/2018 with a grace period of six months i.e. latest by the end of February 2019. Despite the substantial sale consideration amount has been paid to the respondent, the respondent failed to handover the possession of the apartment even after three years and thus failed to abide by the terms and conditions of the agreement. Though the complainant has invoked buyback scheme, the respondent vide supplement agreement dated 10/5/2019 renewed the buyback agreement for two more years and returned the amount as per buyback agreement dated 25/11/2016. The respondent has failed to abide by the terms and conditions of the agreement and has not closed the loan account. The respondent initially paid PEMIs for eighteen months and stopped paying pre-EMIs to HDFC. The respondent is nowhere close to handing over possession of the apartment to the complainant. Due to the enormous delay caused by the respondent, the complainant has suffered huge monetary losses. The complainant is requesting for full refund with interest, repay loan amount and close the loan. Hence, this complaint.

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3. After registration of the complaint, in pursuance of the notice, the respondent appeared before the Authority through its counsel and has filed their statement of objection as under:
4. The respondent submits that the complainant's claim that the respondent has delayed in completing the construction of the apartment is false. The respondent contends that a perusal of the agreement of sale entered into between both the parties goes to show that no date of possession/completion has been indicated therein. As such, any interest or compensation payable will accrue only in the event that a promoter fails to complete or is unable to give possession of an apartment, plot or building which terms do not exist in so far as the date of handover of possession is concerned in the agreement. The respondent prays that the Authority may take into consideration their computation, if the Authority inclined towards quantification of amount payable to the complainant i.e. Own contribution by Customer Rs.7,53,732/-; PEMI paid by Ozone to Bank - Rs.2,78,277/-; Principal amount refund to customer - Rs.7,48,752/-; Assured profit paid to customer (Buyback arrangement) Rs.7,48,752/-; Roll over assured return payable (Buyback arrangement) Rs.5,00,000/- (payable by 17/12/2020 as per supplementary agreement plus interest); recovery of interest on delay payment to be received from customer - Rs.5,542/-; and Bank Loan outstanding Rs.56,11,694/-. Hence, prayed to dismiss the complaint.
5. In support of their claim, the respondent has filed a calculation sheet as on 31/8/2022.
6. In support of her claim, the complainant has produced documents such as agreement of sale, construction agreement, buyback agreement, tripartite agreement, supplement agreement, payment receipts and memo of calculation as on 11/06/2022.
7. Heard arguments of both sides.

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8. 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?
9. My answer to the above points are as under:-
1. In the Affirmative.
 2. As per final order for the following
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, buyback agreement with an assurance to return the invested amount with profits, close the loan account, though the builder has returned the initial amount invested with profits, has not cleared and closed the loan account nor completed the project as per agreement and has delayed the project. The respondent has also failed to handover the Unit in favour of the complainant till date and has also stopped paying pre-EMIs as agreed. 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 complainant has paid full total

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sale consideration amount. The respondent in their statement of objections have prayed the Authority to take into consideration the computation as in Para 4 of this order. The contention of the respondent that there is no mention of date of possession/handover in the agreement of sale is not correct. ***The Construction Agreement entered into between both the parties, the Annexure-3 Delivery Schedule 'C' clearly mentions that the apartment will be done on or before October 2016 (with an additional grace period of 6 months as stated supra).*** Hence, the respondent contention is not accepted. Having accepted the said amount and failure to keep up promise to handover possession of the apartment certainly entitles the complainant herein for refund with interest. The respondent has also stopped paying pre-EMIs to the HDFC. From the PEMI details furnished by the complainant reveals that though the complainant paid the PEMIs from August 2019 to March 2020, October 2020 and December 2020, the respondent has subsequently repaid to the complainant. Further the Authority has also noticed that the PEMIs paid by the complainant for the months of November 2020 and January 2021 till June 2021 has not been reimbursed by the respondent. The complainant has filed her memo of calculation as on 11/06/2022 claiming an amount of Rs.94,81,186/- as refund with interest. The complainant has admitted that she has received a refund of Rs.7,41,264/- from the respondent on 25/4/2019. The respondent in their calculation sheet as on 31/8/2022 submit that the refund amount to be paid to the complainant is Rs.89,82,218/-. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as claimed by her in her memo of calculation.

14. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

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| 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 | 13/10/2016 | 100,000 | 199 | 30/04/2017 | 4,906 |
| 2 | 01/12/2016 | 648,752 | 150 | 30/04/2017 | 23,994 |
| 3 | 26/12/2016 | 200,083 | 125 | 30/04/2017 | 6,166 |
| 4 | 26/12/2016 | 2,046,538 | 125 | 30/04/2017 | 63,078 |
| 5 | 22/03/2017 | 78,194 | 39 | 30/04/2017 | 751 |
| 6 | 23/03/2017 | 1,045,116 | 38 | 30/04/2017 | 9,792 |
| 7 | | | | TOTAL INTEREST (I1) | 108,687 |

| 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 | 4,118,683 | 724 | 25/04/2019 | 8.15 | 10.15 as on 01-05-2017 | 829,220 |
| 2 | 12/09/2017 | 1,092,440 | 590 | 25/04/2019 | 8.15 | 10.15 as on 01-09-2017 | 179,234 |
| 3 | 12/09/2017 | 30,870 | 590 | 25/04/2019 | 8.15 | 10.15 as on 01-09-2017 | 5,064 |
| 4 | 23/01/2018 | 748,874 | 457 | 25/04/2019 | 8.1 | 10.1 as on 01-01-2018 | 94,700 |
| 5 | 24/08/2018 | 369,579 | 244 | 25/04/2019 | 8.45 | 10.45 as on 01-08-2018 | 25,817 |
| 6 | 17/12/2020 | 500,000 | 541 | 11/06/2022 | 7.3 | 9.3 as on 10-12-2020 | 68,921 |
| 7 | TOTAL AMOUNT | 6,860,446 | | | | TOTAL INTEREST (I2) | 1,202,956 |

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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 INTEREST X% | INTEREST RATE X+2% | INTEREST @X+2% |
| 1 | 6,860,446 | 25/04/2019 | 741,264 | 6,119,182 | 1143 | 11/06/2022 | 8.7 | 10.7 as on 10-04-2019 | 2,050,361 |
| 2 | | | | | | | | TOTAL INTEREST (I3) | 2,050,361 |

| Memo Calculation | | | |
|----------------------|--|----------------------------|------------------------------------|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2 + I3) AS ON 11-06-2022 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 6,860,446 | 3,362,004 | 741,264 | 9,481,186 |

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/220202/0008912** is hereby allowed. Respondent is directed to pay the amount of **Rs.94,81,186/- (Rupees Ninety Four Lakh Eighty One Thousand One Hundred and Eighty Six only)** towards refund with interest calculated at 9% from 13/10/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 11/06/2022 to the complainant within 60 days from the date of this order. The interest due from 12/06/2022 up


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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

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