

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 16<sup>th</sup> FEBRUARY 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/210415/0007892**

**COMPLAINANTS.....**

**MRS. SUDHA V IYER &  
MR. VENKATESH G IYER  
PRIDE APARTMENTS  
E-607, 181/182  
BILEKAHALLI  
BANNERGHATTA ROAD  
BANGALORE-560076.**

**(BY MR. SADANAND SHASTRI,  
ADVOCATE)**

**V/S**

**RESPONDENT.....**

**Ozone Urbana Infra Developers  
Private Limited  
No.38, Ulsoor Road ,  
Bengaluru - 560042.**

**(By Sri.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" developed by M/s Ozone Urbana Infra Developers Private Limited for the relief of interest on delay in handing over the apartment.

**Brief facts of the complaint are as under:-**

2. The complainants had purchased an apartment in the project of respondent by entering into an agreement of sale and construction dated 28/10/2014 and have paid the respondent an amount of Rs.77,53,188/- (Rupees Seventy Seven Lakh Fifty Three Thousand One Hundred and Eighty Eight only) being the entire sale

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consideration amount including personal contribution, Housing Loan from HDFC and PEMIs deducted by the HDFC. As per sale and construction agreement the respondent was under obligation to handover possession before the end of October 2016 with a grace period of six months i.e. latest by the end of April 2017. Even after five years, the respondent has failed to complete the project as agreed and to handover the possession of the apartment to the complainants. The respondent has not paid pre-EMIs to the Bank, due to which the complainants have suffered monetary losses. Hence, the complainants have approached this Authority to direct the respondent to pay interest on delay period. Hence, this complaint.

3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and has contested the matter by filing objections as under:
4. The respondent submits that the complainants 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 by 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.13,58,749/-; PEMI paid by the customer to the Bank Rs.12,42,513/-; PEMI paid by Ozone to Bank - Rs.6,84,552/-; Interest on delay payment to be recovered from customer - Rs.2,68,905/- and Bank Loan outstanding Rs.63,79,439/-. Hence prayed to dismiss the complaint.

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5. In defence of their claim the respondent has filed memo of calculation as on 04/06/2022.

6. In support of their claim, the complainants have produced documents such as copies of Agreement of Sale, Construction agreement, Tripartite Agreement, Loan approval letter, Payment receipts, Customer statement issued by Ozone Urbana Infra Developers Pvt Ltd dated 8/4/2022, Statement of Account issued by HDFC regarding PEMIs paid by the complainants and Memo of calculation for interest on delay period as on 25/05/2022 and 21/07/2022.

7. Heard arguments of both sides.

**8. 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?

**9. My answer to the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following

**REASONS**

10. **My answer to point No.1:-** It is undisputed that the respondent has failed to handover possession of the apartment to the complainants herein within agreed time even after receiving entire sale consideration amount. As per the terms of agreement of sale and construction between the parties, the possession of the apartment had to be handed over before the end of October 2016 with a grace period of six months i.e. latest by the end of April 2017. The respondent also failed to pay pre-EMIs to the Bank. When the respondent has failed to handover possession and pay pre-EMIs to the Bank as agreed by them, the complainants have

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approached this forum for direction to the respondent to pay interest on delay period.

11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid entire sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of the apartment even after five years, certainly entitles the complainants herein for delay period interest.

12. 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, clearly mentions that ***the Annexure-3 Delivery Schedule 'C' apartment will be done on or before October 2016 (with an additional grace period of 6 months as stated supra)***. Hence, the respondent contention that there is no mention of delivery date of the apartment in the agreement is not accepted. 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 not paid pre-EMIs as agreed.

13. As the hearing was attended by Sri.Venkatesh G Iyer on behalf of his wife Mrs.Sudha V Iyer, the Authority directed him to submit Power of Attorney.

14. The complainants in their memo of calculation as on 25/5/2022 had claimed Rs.45,72,992/- as the delay period interest. The principal amount claimed to be paid to the respondent by the complainants was shown as Rs.83,44,622/-.

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The respondent vide their memo of calculation as on 4/6/2022 had claimed that the principal amount paid by the complainants is Rs.58,11,123/- and that the delay period interest to be paid is Rs.31,99,387/-. As there was considerable difference in both the principal amount and the delay period interest calculated by both the parties, this Authority directed both the complainants and the respondent to reconcile the amount and submit fresh memo of calculation with all relevant documents/receipts. Accordingly, the complainants submitted reconciled statement of accounts and power of attorney during the process of the hearing on 25/1/2023 whereas the Respondent submitted statement of objections and calculation sheet as on 30/11/2022 claiming that they are supposed to pay Rs.35,55,930/- as delay period interest to the complainants.

15. The complainants have claimed Rs.43,65,385/- (Rupees Forty Three Lakh Sixty Five Thousand Three Hundred and Eight Five only) as delay period interest vide their memo of calculation as on 21/07/2022 calculated from 31/10/2016 to 21/7/2022. Having regard to all these aspects, this Authority concludes that the complainants are entitled for delay period interest as on 21/7/2022 calculated from 01/05/2017 to 21/7/2022.

16. 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	7,753,188	01/05/2017
2	TOTAL DELAYED INTEREST as on 21/07/2022	3,762,732	

Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 7,753,188						

12/5

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1	01-05-2017	01-06-2017	31	8.15	10.15 as on 01-05-2017	66,836
2	01-06-2017	01-07-2017	30	8.15	10.15 as on 01-06-2017	64,680
3	01-11-2017	01-12-2017	30	8.1	10.1 as on 01-11-2017	64,362
4	01-12-2017	01-01-2018	31	8.1	10.1 as on 01-12-2017	66,507
5	01-01-2018	01-02-2018	31	8.1	10.1 as on 01-01-2018	66,507
6	01-02-2018	01-03-2018	28	8.1	10.1 as on 01-02-2018	60,071
7	01-03-2018	01-04-2018	31	8.35	10.35 as on 01-03-2018	68,153
8	01-04-2018	01-05-2018	30	8.35	10.35 as on 01-04-2018	65,955
9	01-05-2018	01-06-2018	31	8.35	10.35 as on 01-05-2018	68,153
10	01-06-2018	01-07-2018	30	8.45	10.45 as on 01-06-2018	66,592
11	01-07-2018	01-08-2018	31	8.45	10.45 as on 01-07-2018	68,812
12	01-08-2018	01-09-2018	31	8.45	10.45 as on 01-08-2018	68,812
13	01-09-2018	01-10-2018	30	8.65	10.65 as on 01-09-2018	67,866
14	01-10-2018	01-11-2018	31	8.7	10.7 as on 01-10-2018	70,458
15	01-11-2018	01-12-2018	30	8.7	10.7 as on 01-11-2018	68,185
16	01-12-2018	01-01-2019	31	8.7	10.7 as on 01-11-2018	70,458
17	01-01-2019	01-02-2019	31	8.75	10.75 as on 10-12-2018	70,787
18	01-02-2019	01-03-2019	28	8.75	10.75 as on 10-01-2019	63,937
19	01-03-2019	01-04-2019	31	8.75	10.75 as on 10-02-2019	70,787
20	01-04-2019	01-05-2019	30	8.75	10.75 as on 10-03-2019	68,504
21	01-05-2019	01-06-2019	31	8.7	10.7 as on 10-04-2019	70,458
22	01-06-2019	01-07-2019	30	8.65	10.65 as on 10-05-2019	67,866

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23	01-07-2019	01-08-2019	31	8.65	10.65 as on 10-06-2019	70,129
24	01-08-2019	01-09-2019	31	8.6	10.6 as on 10-07-2019	69,799
25	01-09-2019	01-10-2019	30	8.45	10.45 as on 10-08-2019	66,592
26	01-10-2019	01-11-2019	31	8.35	10.35 as on 10-09-2019	68,153
27	01-11-2019	01-12-2019	30	8.25	10.25 as on 10-10-2019	65,317
28	01-12-2019	01-01-2020	31	8.2	10.2 as on 10-11-2019	67,165
29	01-01-2020	01-02-2020	31	8.2	10.2 as on 10-12-2019	67,165
30	01-02-2020	01-03-2020	29	8.2	10.2 as on 10-01-2020	62,832
31	01-03-2020	01-04-2020	31	8.15	10.15 as on 10-02-2020	66,836
32	01-04-2020	01-05-2020	30	8.05	10.05 as on 10-03-2020	64,043
33	01-05-2020	01-06-2020	31	7.7	9.7 as on 10-04-2020	63,873
34	01-06-2020	01-07-2020	30	7.55	9.55 as on 10-05-2020	60,857
35	01-07-2020	01-08-2020	31	7.3	9.3 as on 10-06-2020	61,239
36	01-08-2020	01-09-2020	31	7.3	9.3 as on 10-07-2020	61,239
37	01-09-2020	01-10-2020	30	7.3	9.3 as on 10-08-2020	59,264
38	01-10-2020	01-11-2020	31	7.3	9.3 as on 10-09-2020	61,239
39	01-11-2020	01-12-2020	30	7.3	9.3 as on 10-10-2020	59,264
40	01-12-2020	01-01-2021	31	7.3	9.3 as on 10-11-2020	61,239
41	01-01-2021	01-02-2021	31	7.3	9.3 as on 10-12-2020	61,239
42	01-02-2021	01-03-2021	28	7.3	9.3 as on 10-01-2021	55,313
43	01-03-2021	01-04-2021	31	7.3	9.3 as on 10-02-2021	61,239
44	01-04-2021	01-05-2021	30	7.3	9.3 as on	59,264

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					10-03-2021	
45	01-05-2021	01-06-2021	31	7.3	9.3 as on 10-04-2021	61,239
46	01-06-2021	01-07-2021	30	7.3	9.3 as on 15-05-2021	59,264
47	01-07-2021	01-08-2021	31	7.3	9.3 as on 15-06-2021	61,239
48	01-08-2021	01-09-2021	31	7.3	9.3 as on 15-07-2021	61,239
49	01-09-2021	01-10-2021	30	7.3	9.3 as on 15-08-2021	59,264
50	01-10-2021	01-11-2021	31	7.3	9.3 as on 15-09-2021	61,239
51	01-11-2021	01-12-2021	30	7.3	9.3 as on 15-10-2021	59,264
52	01-12-2021	01-01-2022	31	7.3	9.3 as on 15-11-2021	61,239
53	01-01-2022	01-02-2022	31	7.3	9.3 as on 15-12-2021	61,239
54	01-02-2022	01-03-2022	28	7.3	9.3 as on 15-01-2022	55,313
55	01-03-2022	01-04-2022	31	7.3	9.3 as on 15-02-2022	61,239
56	01-04-2022	01-05-2022	30	7.3	9.3 as on 15-03-2022	59,264
57	01-05-2022	01-06-2022	31	7.4	9.4 as on 15-04-2022	61,898
58	01-06-2022	01-07-2022	30	7.5	9.5 as on 15-05-2022	60,538
59	01-07-2022	21-07-2022	20	7.7	9.7 as on 15-06-2022	41,208
TOTAL DELAYED INTEREST as on 21/07/2022						37,62,732

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

12. **My answer to point No. 2:-** In view of the above discussion, I proceed to pass the following order:-

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/210415/0007892**

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is hereby allowed. Respondent is directed to pay the amount of **Rs.37,62,732/- (Rupees Thirty Seven Lakh Sixty Two Thousand Seven Hundred and Thirty Two only) towards delay period interest** calculated at MCLR + 2% from 01/05/2017 till 21/07/2022 to the complainants within 60 days from the date of this order. The interest due from 22/07/2022 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.

No order as to the costs.

  
(Neelmani N Raju)  
Member, K-RERA

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