

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 10th MARCH 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220702/0009711

COMPLAINANT.....

**MRS. SANGEETA JAISWAL
88/89, MILL ROAD
GANDHIPURAM FIRST STREET
ERODE-638003
STATE: TAMILNADU**

**(BY MR. AKASH R BANTIA,
ADVOCATE)**

V/S

RESPONDENT.....

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

**(By MR. 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 Pvt Ltd at Ozone Urbana NH-7, Kannamangala Village, Devanahalli, Bengaluru Rural for the relief of refund with interest and closure of bank loan account without liability.

Brief facts of the complaint are as under:-

2. The complainant had purchased an apartment in the project of respondent under subvention scheme by entering into an agreement of sale

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and construction agreement on 03/09/2015 and Tripartite Agreement with the respondent for housing loan from HDFC with the obligation on the respondent to pay the PEMI until the date of handover of the apartment to the complainant. The complainant has paid an amount of Rs.42,78,015/- (Rupees Forty Two Lakh Seventy Eight Thousand and Fifteen only) to the respondent. As per sale and construction agreement the respondent was under obligation to handover possession before end of 31/12/2017 with a grace period of six months i.e. latest by 30/06/2018. Though more than four years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the apartment to the complainant. As per the Tripartite agreement entered into, the respondent was supposed to pay pre-EMIs to the Bank till the possession of the apartment is handed over to the complainant. But, the respondent has not paid pre-EMIs to the Bank. The respondent is not replying to their calls. The complainant submit that the respondent is cheating her and has failed to give proper date of delivery. The PEMI burden has been passed over to the complainant. Due to the enormous delay by the respondent in handing over the possession of the apartment and not paying pre-EMIs as agreed, the complainant has approached this Authority, praying directions to the respondent to refund the entire amount with interest and close the bank loan account without any liability. 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 has not contested the matter by filing objections and producing documents on its behalf. The respondent has filed their calculation sheet as on 30/11/2022.

4. In support of her claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainant, Payment receipts and Memo of calculation for refund with interest as on 07/10/2022.

Handwritten signature

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5. Heard arguments of both sides.

6. The complainant in her statement of objection to the calculation sheet submitted by the respondent has stated that the respondent has not considered the PEMI component of loan disbursed by the Bank and that as per the terms of the subvention scheme it was the obligation on the part of the respondent to pay PEMI until handover of the apartment to the complainant. However, the burden of the PEMI has been passed on to the complainant and is fulfilling the obligations of the respondent. As such, there is a mismatch in the calculation of the respondent. The complainant prays the Authority to consider the memo of calculation with supporting documents submitted by her in the interest of justice and equity.

7. 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?

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

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

REASONS

9. My answer to point No.1:- It is undisputed that the respondent has failed to handover possession of the apartment to the complainant 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 December 2017 with a grace period of six months i.e. latest by 30/6/2018. As per the tripartite agreement, the respondent had agreed to pay pre-EMIs to the Bank till the handover of the apartment to the complainant. The respondent has not paid pre-EMIs to the Bank. Due to the enormous delay caused by the respondent in completing the project, the complainant has

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approached this Authority for direction to the respondent to refund the entire amount with interest & close the loan account.

10. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid total 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 three years and not paying pre-EMIs to the Bank as agreed, certainly entitles the complainant herein for refund of entire amount with interest. The complainant has claimed Rs.65,75,813/- (Rupees Sixty Five Lakh Seventy Five Thousand Eight Hundred and Thirteen only) vide their memo of calculation as on 07/10/2022 calculated from 19/08/2015 to 07/10/2022. The respondent in their calculation sheet as on 30/9/2022 submitted that the refund amount with interest payable to the complainant is Rs.54,00,218/-. The complainant did not agree with the calculation submitted by the respondent pertaining to refund with interest.

11. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide their memo of calculation as on 07/10/2022.

12. Therefore, it is incumbent upon the respondent to pay refund 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	19-08-2015	7,03,628	620	30-04-2017	1,07,568
2	29-12-2015	17,37,307	488	30-04-2017	2,09,048
3	30-12-2015	3,74,790	487	30-04-2017	45,005
4				TOTAL INTEREST (11)	3,61,621

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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	28,15,725	1985	07-10-2022	8.15	10.15 as on 01-05-2017	15,54,260
2	11-10-2019	10,55,443	1092	07-10-2022	8.25	10.25 as on 10-10-2019	3,23,659
3	24-03-2021	4,06,847	562	07-10-2022	7.3	9.3 as on 10-03-2021	58,258
4	TOTAL AMOUNT	42,78,015				TOTAL INTEREST (I2)	19,36,177

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 07-10-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
42,78,015	22,97,798	0	65,75,813

13. Accordingly 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.

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220702/0009711** is hereby allowed. Respondent is directed to pay the amount of **Rs.65,75,813/- (Rupees Sixty Five Lakh Seventy Five Thousand Eight Hundred and Thirteen only)** towards refund with interest calculated at 9%

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from 19/08/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 07/10/2022 to the complainant within 60 days from the date of this order. The interest due from 08/10/2022 up to the date of final payment will be calculated likewise and paid to the complainants. 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

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