

**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 15<sup>th</sup> MARCH 2023**

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

**COMPLAINT NO.: CMP/220721/0009789**

**COMPLAINANTS.....**

**MR. MOHAMMED NURAIN MEGOON  
& MRS. UMMA SARIYA  
MEGOON HOUSE, MAIN ROAD  
YEDTHERE  
BAINDOOR-576214  
DISTRICT: UDUPI**

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

**V/S**

**RESPONDENT.....**

**M/S. OZONE URBANA INFRA  
DEVELOPERS PRIVATE LIMITED  
NO.38, ULSOOR ROAD  
BANGALORE - 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 at Ozone Urbana NH-7, Kannamangala Village, Devanahalli, Bangalore for the relief of refund with interest.
2. This project is registered under RERA bearing registration No.PRM/KA/RERA/1250/303/PR/171019/000287 valid till 31/12/2022. The Authority has given Covid extension for a further period of 9 months i.e. till 30/09/2023.

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

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3. On 16/9/2018 the complainants had purchased an apartment in the project of the respondent and entered into an agreement of sale on 10/10/2018 and Tripartite agreement with the respondent with an obligation that the respondent will pay PEMIs till the handover and registration of the said apartment. The complainants have paid Rs.70,84,123/- (Rupees Seventy Lakh Eighty Four Thousand One Hundred and Twenty Three only) including Housing Loan to the respondent on various dates. As per the agreement the apartment was supposed to be handed-over by the respondent to the complainants by December 2022 with grace period of six months i.e. by June 2023. ***The complainants also submit that the respondent vide their communication dated 29/9/2018 have confirmed that the date of delivery of the apartment though mentioned as December 2022 in the agreement, they will be completing by the end of December 2020 with six months grace period i.e. by June 2021 subject to receipt of payments as scheduled.*** The complainants submit that the respondent made partial refund of the initial deposit amount and paid PEMIs till December 2019, but the loan continued in the name of the complainants. The complainants submit that the respondent made partial refund of the initial deposit amount and paid PEMIs till December 2019, but the loan continued in their names. The complainants further submit that the respondent has put the burden of paying PEMIs on the complainants and violated the terms of the agreement. Though the complainants have complied with the terms of the agreement for no fault of theirs, they are facing financial burden. Hence, the complainants have approached this Authority and pray for direction to the respondent to refund the entire amount with interest. Hence, this complaint.
4. 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 its calculation sheet as on 30/11/2022.

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5. In support of their claim, the complainants have produced copies of documents such as agreement of sale, tripartite agreement, customer statement of account issued by Ozone dated 16/9/2021, Handing over of apartment confirmation letter from Ozone dated 29/9/2018, payment receipts and memo of calculation as on 15/09/2022.
6. Heard arguments of both sides.
7. 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?
8. My answer to the above points are as under:-
  1. In the Affirmative.
  2. As per final order for the following:
9. My answer to Point No.1:- From the materials placed on record, it is apparent that inspite of entering into an agreement of sale 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 the complainants till date. Hence, the builder has failed to abide by the terms of the agreement for sale dated 10/10/2018 and tripartite agreement. The respondent 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.
10. 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.
11. 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.

*MWS*

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12. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainants have paid substantial total sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment certainly entitles the complainants herein for refund with interest. The complainants have filed their memo of calculation as on 15/09/2022 claiming an amount of Rs.97,55,149/- (Rupees Ninety Seven Lakh Fifty Five Thousand One Hundred and Forty Nine only) as refund with interest. The respondent in its calculation sheet as on 30/11/2022 claims that the refund with interest payable to the complainants is Rs.77,23,129/-. A thorough verification of the documentary proof furnished by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as claimed by them vide their memo of calculation as on 15/09/2022.
13. 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	30/04/2017	0	0	30/04/2017	0
2				TOTAL INTEREST ( I1 )	0

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	0	1963	15-09-2022	8.15	10.15 as on 01-05-2017	0
2	25-09-2018	1,00,000	1451	15-09-2022	8.65	10.65 as on 01-09-2018	42,337

M/S

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3	30-01-2019	1,34,771	1324	15-09-2022	8.75	10.75 as on 10-01-2019	52,553
4	30-01-2019	50,61,186	1324	15-09-2022	8.75	10.75 as on 10-01-2019	19,73,585
5	30-01-2019	12,38,814	1324	15-09-2022	8.75	10.75 as on 10-01-2019	4,83,069
6	30-01-2019	34,605	1324	15-09-2022	8.75	10.75 as on 10-01-2019	13,494
7	30-01-2019	8,470	1324	15-09-2022	8.75	10.75 as on 10-01-2019	3,302
8	27-05-2019	74,288	1207	15-09-2022	8.65	10.65 as on 10-05-2019	26,162
9	06-12-2019	74,288	1014	15-09-2022	8.2	10.2 as on 10-11-2019	21,050
10	13-05-2020	1,48,576	855	15-09-2022	7.55	9.55 as on 10-05-2020	33,237
11	28-06-2021	1,04,943	444	15-09-2022	7.3	9.3 as on 15-06-2021	11,872
12	05-08-2021	52,091	406	15-09-2022	7.3	9.3 as on 15-07-2021	5,388
13	05-09-2021	52,091	375	15-09-2022	7.3	9.3 as on 15-08-2021	4,977
14	TOTAL AMOUNT	70,84,123				TOTAL INTEREST ( I2 )	26,71,026

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 15-09-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
70,84,123	26,71,026	0	97,55,149

14. Accordingly, the point raised above is answered in the Affirmative.

15. **My answer to Point No.2:-** In view of the above discussion, I proceed to pass the following –

*whs*

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**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220721/0009789** is hereby allowed. Respondent is directed to pay the amount of **Rs.97,55,149/- (Rupees Ninety Seven Lakh Fifty Five Thousand One Hundred and Forty Nine only)** towards **refund with interest** calculated at MCLR + 2% from 25/09/2018 till 15/09/2022 to the complainants within 60 days from the date of this order. The interest due from 16/09/2022 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