

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 16th MARCH 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220725/0009801

COMPLAINANTS.....

**MR. DHARMENDRAKUMAR HARIHAR
DESAI &
MRS.RUPA DHARMENDRAKUMAR
DESAI
BRAHMIN STREET
AT & POST: ERU
NAVSARI-396450
DISTRICT: NAVSARI
STATE: GUJARAT**

**(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)**

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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 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 and was valid till

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31/12/2022. The Authority has given Covid Extension for 9 months
i.e. till 30/9/2023.

Brief facts of the complaint are as under:

3. The complainants had purchased an apartment in the project of the respondent and entered into agreement of sale on 07/05/2018 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.67,19,271/- (Rupees Sixty Seven Lakh Nineteen Thousand Two Hundred and Seventy One 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. 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 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 suffering. 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 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 not filed its memo of calculation despite several opportunities were given.
5. In support of their claim, the complainants have produced copies of documents such as agreement of sale, tripartite agreement, payment receipts and memo of calculation as on 11/10/2022.
6. Heard arguments of both sides.

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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 07/05/2018 and tripartite agreement dated 11/06/2018. 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.

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



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calculation as on 11/10/2022 claiming an amount of Rs.89,41,125/- (Rupees Eighty Nine Lakh Forty One Thousand One Hundred and Twenty Five only) as refund with interest. The complainants have also admitted that the respondent has refunded an amount of Rs.6,70,787/- to them on 06/12/2018. Despite several opportunities were given to the respondent, they have not filed their memo of calculation. 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 11/10/2022.

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	584	06/12/2018	8.15	10.15 as on 01-05-2017	0
2	26/03/2018	100,000	255	06/12/2018	8.35	10.35 as on 01-03-2018	7,230
3	27/04/2018	570,787	223	06/12/2018	8.35	10.35 as on 01-04-2018	36,093
4	12/07/2018	4,130,909	147	06/12/2018	8.45	10.45 as on 01-07-2018	173,854
5	12/07/2018	564,602	147	06/12/2018	8.45	10.45 as on 01-07-2018	23,762

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6	06/08/2018	295,891	122	06/12/2018	8.45	10.45 as on 01-08-2018	10,335
7	06/08/2018	39,503	122	06/12/2018	8.45	10.45 as on 01-08-2018	1,379
8	23/01/2020	36,894	992	11/10/2022	8.2	10.2 as on 10-01-2020	10,227
9	27/02/2020	36,684	957	11/10/2022	8.15	10.15 as on 10-02-2020	9,762
10	24/03/2020	33,684	931	11/10/2022	8.05	10.05 as on 10-03-2020	8,634
11	24/03/2020	3,000	931	11/10/2022	8.05	10.05 as on 10-03-2020	769
12	29/04/2020	36,684	895	11/10/2022	7.7	9.7 as on 10-04-2020	8,725
13	29/05/2020	36,684	865	11/10/2022	7.55	9.55 as on 10-05-2020	8,302
14	03/07/2020	35,008	830	11/10/2022	7.3	9.3 as on 10-06-2020	7,403
15	05/08/2020	35,846	797	11/10/2022	7.3	9.3 as on 10-07-2020	7,279
16	04/09/2020	20	767	11/10/2022	7.3	9.3 as on 10-08-2020	3
17	04/09/2020	35,007	767	11/10/2022	7.3	9.3 as on 10-08-2020	6,841
18	06/10/2020	35,007	735	11/10/2022	7.3	9.3 as on 10-09-2020	6,555
19	02/11/2020	263	708	11/10/2022	7.3	9.3 as on 10-10-2020	47
20	02/11/2020	35,007	708	11/10/2022	7.3	9.3 as on 10-10-2020	6,315
21	05/11/2020	4,051	705	11/10/2022	7.3	9.3 as on 10-10-2020	727
22	02/12/2020	30,956	678	11/10/2022	7.3	9.3 as on 10-11-2020	5,347

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23	04/01/2021	35,007	645	11/10/2022	7.3	9.3 as on 10-12-2020	5,753
24	02/02/2021	35,007	616	11/10/2022	7.3	9.3 as on 10-01-2021	5,494
25	05/03/2021	34,588	585	11/10/2022	7.3	9.3 as on 10-02-2021	5,155
26	07/04/2021	260	552	11/10/2022	7.3	9.3 as on 10-03-2021	36
27	07/04/2021	34,588	552	11/10/2022	7.3	9.3 as on 10-03-2021	4,864
28	06/05/2021	34,587	523	11/10/2022	7.3	9.3 as on 10-04-2021	4,608
29	06/05/2021	260	523	11/10/2022	7.3	9.3 as on 10-04-2021	34
30	05/06/2021	34,378	493	11/10/2022	7.3	9.3 as on 15-05-2021	4,318
31	08/07/2021	258	460	11/10/2022	7.3	9.3 as on 15-06-2021	30
32	08/07/2021	34,378	460	11/10/2022	7.3	9.3 as on 15-06-2021	4,029
33	04/08/2021	34,378	433	11/10/2022	7.3	9.3 as on 15-07-2021	3,792
34	03/09/2021	34,378	403	11/10/2022	7.3	9.3 as on 15-08-2021	3,530
35	04/10/2021	34,378	372	11/10/2022	7.3	9.3 as on 15-09-2021	3,258
36	25/11/2021	516	320	11/10/2022	7.3	9.3 as on 15-11-2021	42
37	25/11/2021	34,378	320	11/10/2022	7.3	9.3 as on 15-11-2021	2,802
38	25/11/2021	6	320	11/10/2022	7.3	9.3 as on 15-11-2021	0
39	02/12/2021	34,378	313	11/10/2022	7.3	9.3 as on 15-11-2021	2,741

M/S,

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40	02/12/2021	14	313	11/10/2022	7.3	9.3 as on 15-11-2021	1
41	22/01/2022	20	262	11/10/2022	7.3	9.3 as on 15-01-2022	1
42	22/01/2022	69,788	262	11/10/2022	7.3	9.3 as on 15-01-2022	4,658
43	22/01/2022	550	262	11/10/2022	7.3	9.3 as on 15-01-2022	36
44	11/02/2022	34,378	242	11/10/2022	7.3	9.3 as on 15-01-2022	2,119
45	16/03/2022	33,346	209	11/10/2022	7.3	9.3 as on 15-03-2022	1,775
46	25/04/2022	34,378	169	11/10/2022	7.4	9.4 as on 15-04-2022	1,496
47	25/05/2022	34,587	139	11/10/2022	7.5	9.5 as on 15-05-2022	1,251
48	TOTAL AMOUNT	6,719,271				TOTAL INTEREST (12)	4,01,412

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	6,719,271	06/12/2018	670,787	6,048,484	1405	11/10/2022	8.7	10.7 as on 01-11-2018	2,491,229
2								TOTAL INTEREST (13)	2,491,229

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 11-10-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
67,19,271	28,92,641	6,70,787	89,41,125

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

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15. **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/220725/0009801** is hereby allowed. Respondent is directed to pay the amount of **Rs.89,41,125/- (Rupees Eighty Nine Lakh Forty One Thousand One Hundred and Twenty Five only)** towards **refund with interest** calculated at MCLR + 2% from 26/03/2018 till 11/10/2022 to the complainants within 60 days from the date of this order. The interest due from 12/10/2022 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.


(Neelmani N Raju)
Member, K-RERA