

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 24th MAY 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220719/0009769

COMPLAINANTS.....

**MR. NITIN SAMBYAL
ARMY CANTT.,
MISSAMARI, TEZPUR
ASSAM:784506
DISTRICT: SONITPUR**

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

V/S

RESPONDENTS.....

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

**(BY MR. DEEPAK BHASKAR
ADVOCATE & OTHERS)**

*** * * * ***

J U D G E M E N T

1. This complaint is filed under section 31 of the RERA Act against the project "**URBANA AVENUE**" developed by M/s Ozone Urbana Infra Developers Private Limited at Ozone Urbana NH-7, Kannamangala Village, Devanahalli, Bangalore Rural 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 granted covid extension to the project for a period of 9 months i.e. till 30/09/2023.

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Brief facts of the complaint are as under:

3. The complainant had purchased an apartment in the project of respondent on 11/02/2016 and entered into agreement of sale and construction agreement on the same day. The complainant also entered into Tripartite agreement with the respondent and IHFL, wherein it was agreed that the respondent will bear the PEMI payments till the handover of the property and its registration. The complainant has paid an amount of Rs.79,56,828/- (Rupees Seventy Nine Lakh Fifty Six Thousand Eight Hundred and Twenty Eight only) to the respondent on various dates including housing loan and PEMIs. The respondent was supposed to handover possession of the flat by the end of August 2018 with a grace period of six months i.e. latest by the end of February 2019. Though more than three years have been lapsed, the respondent has failed to handover possession of the flat as agreed. The respondent has also failed to pay pre-EMIs to the Bank as agreed.
4. The complainant further submits that the burden of paying PEMIs has been passed on to them by the respondents. Thus, the complainant has approached this Authority and prays for direction to the respondents to refund the amount with interest. Hence, this complaint.
5. After registration of the complaint, in pursuance of the notice, the respondents appeared before the Authority through its counsel/representatives. The respondents have filed their written submission as under:-
6. The respondent submits that the complainant has sought for cancellation of the allotment, refund of amount with interest and payment of remaining EMIs along with closure of loan account. The respondent further submits that there is a mis-match in the principle amount submitted by the complainant as there is a difference of Rs.37,300/- between the two parties and that the complainant has

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not submitted any proof for having paid PEMIs to the Bank to reconcile the difference amount.

7. The respondent further submits that the complainant has falsely contended that the respondent has not taken into consideration the PEMIs paid by the complainant, whereas the respondent submits that the PEMIs paid by the complainant to the tune of Rs.15,43,725/- has been taken into consideration. The respondent also submits that they have paid Rs.8,68,130/- (proof attached) towards payment of PEMIs made by the complainant which has not been taken into consideration.

8. The respondent further contends that the complainant has not considered the delay interest payable of Rs.4,68,541/- for the delayed payments on their part. The respondent also submits that the complainant has sought for refund of entire sale consideration amount with interest in their favour which is in contrary to the terms agreed in the Tripartite Agreement dated 3/3/2016 between the parties and the lending institution, the borrower (i.e. the complainant) agreed that the payment shall be made first in favour of the lending institution to facilitate closure of housing loan account and subsequently the complainant is entitled to receive refund on payments made in respect of PEMIs, own contribution and interest.

9. The respondent prays the Authority that the amount payable by them may be bifurcated between the complainant and the lending institution in accordance with the terms of the tripartite agreement.

10. The respondent have requested the Authority to consider the following:

a) Rs.3,96,577/- Own contribution by the complainant.

b) Rs.15,43,725/- PEMI paid by the complainant (to the extent of available proof)

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- c) Rs.5,13,808/- Interest payable on the principal amount as per section 18(a) of the RERA Act.
 - d) Rs.4,68,541/- Deduction of delay interest payable by the complainant for delayed payments.
 - e) Rs.19,85,569/- Total amount payable to the complainant.
 - f) Rs.60,53,826/- Total amount payable to the lending financial institution.
11. The respondent prays the Hon'ble Authority to take on record the above calculation in the interest of justice and equity.
 12. The complainant in his rejoinder to the calculation sheet submitted by the respondent has submitted that the respondent has not considered the PEMI component of loan disbursed by the Bank i.e. the PEMI were adjusted by the Bank as amounts due from the builder and were charged to the complainant as part of the total loan disbursement at various stages, to substantiate the same the complainant has attached statement of account issued by respondent.
 13. The complainant further submits that the respondent's claim that they have not received housing loan is far from truth, as the statement of account dated 31/5/2022 issued by HDFC clearly shows that housing loan to the tune of Rs.60,53,826/- has been disbursed to the respondent company and prays the Authority to consider the memo of calculation submitted by him for refund of amount with interest.
 14. In support of their defence, the respondent has submitted copies of documents such as, proof of payments received, proof of transaction of PEMI payment made by the respondent, demand not raised by the respondent, schedule providing delay interest payable on account of delayed payments made by the complainant and revised calculation statement as on 30/11/2022 (submitted along with written submission dated 16/3/2023).

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15. In support of his claim, the complainant has produced copies of documents such as agreement of sale, construction agreement, tripartite agreement, statement of account issued by HDFC pertaining to payment of PEMIs, payment receipts and memo of calculation as on 21/12/2022.
16. Heard arguments of both sides.
17. On the above averments, the following points would arise for my consideration:
- Whether the complainant is entitled for the relief claimed?
 - What order?
18. My answer to the above points are as under:-
- In the Affirmative.
 - As per final order for the following
19. **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 having received a substantial sale consideration amount from the complainant including housing, the respondent has neither handed over possession of the flat nor refunded the amount with interest till date as agreed. The respondent has also failed to pay PEMIs to the Bank as agreed. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.
20. 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.
21. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation

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only if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

22. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid substantial total sale consideration amount to the respondent towards the purchase of apartment. Having accepted the said amount and failure to keep up promise to handover possession of the apartment even after lapse of three years and not paying PEMLs to Bank as agreed, certainly entitles the complainant herein for refund of entire amount with interest.
23. During the process of the hearing, the Authority found that there is a huge difference in the calculation made by the respondent and directed them to reconcile and submit a fresh calculation sheet. Accordingly, the respondent submitted its fresh calculation sheet claiming that the refund amount payable to the complainant is Rs.80,39,395/-. The complainant did not accept the calculation made by the respondent.
24. As regards claim of the respondent that they have made payment of Rs.8,68,130/- towards PEML payment in favour of the complainant, the Authority did not find any entries in the proof submitted by the respondent.
25. The complainant has filed his memo of calculation as on 21/12/2022 claiming a refund of Rs.1,23,91,824/- (Rupees One Crore Twenty Three Lakh Ninety One Thousand Eight Hundred and Twenty Four only) including interest. A thorough verification of the documentary proof submitted by the complainant reveals that his claim is genuine.
26. Having regard to all the aspects as mentioned above, the Authority concludes that the complainant is entitled for refund with interest as claimed vide his memo of calculation dated 21/12/2022.
27. 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	31-12-2015	2,00,000	486	30-04-2017	23,967
2	31-01-2016	1,96,577	455	30-04-2017	22,054
3	29-02-2016	7,21,533	426	30-04-2017	75,790
4	29-02-2016	32,12,241	426	30-04-2017	3,37,417
5	08-06-2016	4,21,224	326	30-04-2017	33,859
6	09-06-2016	78,776	325	30-04-2017	6,312
7		48,30,351		TOTAL INTEREST (I1)	4,99,399

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	48,30,351	2059	20-12-2022	8.15	10.15 as on 01-05-2017	27,65,720
2	19-06-2017	43,750	2010	20-12-2022	8.15	10.15 as on 01-06-2017	24,453
3	31-07-2017	43,750	1969	21-12-2022	8.15	10.15 as on 01-07-2017	23,955
4	10-08-2017	43,750	1958	20-12-2022	8.15	10.15 as on 01-08-2017	23,821
5	10-09-2017	43,750	1927	20-12-2022	8.15	10.15 as on 01-09-2017	23,444
6	10-10-2017	5,52,221	1906	20-12-2022	8.15	10.15 as on 01-10-2017	2,92,690
7	23-10-2017	14,005	1884	20-12-2022	8.15	10.15 as on 01-10-2017	7,337
8	06-11-2017	10,00,000	1870	20-12-2022	8.1	10.1 as on 01-11-2017	5,17,452
9	30-09-2019	2,982	1177	20-12-2022	8.35	10.35 as on 10-09-2019	995

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10	04-10-2019	1,347	1173	20-12-2022	8.35	10.35 as on 10-09-2019	448
11	31-10-2019	43,497	1146	20-12-2022	8.25	10.25 as on 10-10-2019	13,998
12	30-11-2019	43,497	1116	20-12-2022	8.2	10.2 as on 10-11-2019	13,565
13	26-12-2019	43,497	1090	20-12-2022	8.2	10.2 as on 10-12-2019	13,249
14	27-01-2020	43,497	1423	20-12-2022	8.75	10.75 as on 10-01-2019	18,229
15	25-02-2020	43,497	1394	20-12-2022	8.75	10.75 as on 10-02-2019	17,858
16	25-03-2020	43,497	1366	20-12-2022	8.75	10.75 as on 10-03-2019	17,499
17	30-04-2020	42,055	964	20-12-2022	7.7	9.7 as on 10-04-2020	10,773
18	31-05-2020	42,055	933	20-12-2022	7.55	9.55 as on 10-05-2020	10,266
19	30-06-2020	42,055	903	20-12-2022	7.3	9.3 as on 10-06-2020	9,675
20	31-07-2020	42,055	872	20-12-2022	7.3	9.3 as on 10-07-2020	9,343
21	31-08-2020	42,055	841	20-12-2022	7.3	9.3 as on 10-08-2020	9,011
22	25-09-2020	42,055	816	20-12-2022	7.3	9.3 as on 10-09-2020	8,743
23	25-10-2020	42,055	786	20-12-2022	7.3	9.3 as on 10-10-2020	8,422
24	25-11-2020	42,055	755	20-12-2022	7.3	9.3 as on 10-11-2020	8,090
25	25-12-2020	42,055	725	20-12-2022	7.3	9.3 as on 10-12-2020	7,768
26	25-01-2021	42,055	694	20-12-2022	7.3	9.3 as on 10-01-2021	7,436
27	25-02-2021	42,055	663	20-12-2022	7.3	9.3 as on 10-02-2021	7,104
28	25-03-2021	42,055	635	20-12-2022	7.3	9.3 as on 10-03-2021	6,804
29	25-04-2021	36,825	604	20-12-2022	7.3	9.3 as on 10-04-2021	5,667
30	25-05-2021	36,825	574	20-12-2022	7.3	9.3 as on 15-05-2021	5,385

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31	25-06-2021	36,825	543	20-12-2022	7.3	9.3 as on 15-06-2021	5,094
32	25-07-2021	36,825	513	20-12-2022	7.3	9.3 as on 15-07-2021	4,813
33	25-08-2021	36,825	502	20-12-2022	7.3	9.3 as on 15-07-2021	4,710
34	25-09-2021	36,825	451	20-12-2022	7.3	9.3 as on 15-09-2021	4,231
35	25-10-2021	36,825	421	20-12-2022	7.3	9.3 as on 15-10-2021	3,950
36	25-11-2021	36,825	390	20-12-2022	7.3	9.3 as on 15-11-2021	3,659
37	25-12-2021	36,825	360	20-12-2022	7.3	9.3 as on 15-12-2021	3,377
38	25-01-2022	36,825	329	20-12-2022	7.3	9.3 as on 15-01-2022	3,086
39	25-02-2022	36,825	298	20-12-2022	7.3	9.3 as on 15-02-2022	2,796
40	25-03-2022	36,825	270	20-12-2022	7.3	9.3 as on 15-03-2022	2,533
41	25-04-2022	34,676	239	20-12-2022	7.4	9.4 as on 15-04-2022	2,134
42	25-05-2022	34,676	209	20-12-2022	7.5	9.5 as on 15-05-2022	1,886
43	25-06-2022	34,676	178	20-12-2022	7.7	9.7 as on 15-06-2022	1,640
44	25-07-2022	34,676	148	20-12-2022	7.8	9.8 as on 15-07-2022	1,377
45	25-08-2022	34,676	117	20-12-2022	8	10.0 as on 15-08-2022	1,111
46	TOTAL AMOUNT	79,56,828				TOTAL INTEREST (I2)	39,35,597

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 21/12/2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
79,56,828	44,34,996	0	1,23,91,824

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

29. **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/220719/0009769** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,23,91,824/- (Rupees One Crore Twenty Three Lakh Ninety One Thousand Eight Hundred and Twenty Four only)** towards refund with interest calculated at 9% from 31/12/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 21/12/2022 to the complainant within 60 days from the date of this order. The interest due from 22/12/2022 up 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.

No order as to the costs.



(Neelmani N Raju)
Member, K-RERA