

**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 25<sup>th</sup> MAY 2023**

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

**COMPLAINT NO.: CMP/220725/0009800**

**COMPLAINANTS.....**

**MR. SRINIVASAN NATARAJAN &  
MRS. VIDYA NATARAJAN  
M-82/5, FIRST AVENUE  
BESANT NAGAR  
CHENNAI-600 090.  
STATE: TAMILNADU**

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

**V/S**

**RESPONDENTS.....**

**M/S 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 "**OZONE URBANA**" 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 complainants submit that they had booked a flat in the project off the respondent for a total sale consideration of Rs.94,58,450/- (Rupees Ninety Four Lakh Fifty Eight Thousand Four Hundred and Fifty only) and entered into agreement for sale on 30/01/2018 with the respondents and have paid an amount of Rs.79,45,844/- (Rupees Seventy Nine Lakh Forty Five Thousand Eight Hundred and Forty Four only) to the respondents on various dates. As per the tripartite agreement dated 01/02/2018, the respondents were supposed to bear the PEMIs till the handover of the property and registration. But the respondents paid PEMIs only upto March 2020 and later PEMIs burden has been passed on by the builder to the complainants. The respondent was supposed to handover the flat by 31/12/2022 but has not handed over possession of the apartment till date. The complainants further submit that they also came to know that in the same project the other apartments which were supposed to be delivered in 2017 also have not been delivered. The complainants submit that the status of the project has not been improved. The complainants further submit that they are in compliance with the terms of the agreement. Thus the complainants have approached this Authority and pray for directions to the respondents for refund of amount with interest. Hence, this complaint.
4. 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:
5. The respondent submits that the complainants have sought for cancellation of the allotment, refund of amount with interest and payment of remaining EMIs along with closure of loan account with HDFC which is under subvention scheme.

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6. The respondent submits that the complainants have made own contribution of Rs.10,15,845/- and Rs.69,30,000/- being housing loan from HDFC under subvention scheme. The total principle amount paid by the complainants is Rs.79,45,845/- and is acknowledged by the respondent.
7. The respondent submits that they have made PEMI payment of Rs.8,39,586/- in favour of the complainants which has not been taken into consideration by the complainant in his memo of calculation.
8. The respondents contend that the complainants are entitled to receive refund on payments made in respect of PEMI, own contribution and interest only after the respondents make payment to the lending institution to facilitate the closure of the loan sanctioned and thereby the complainants are not entitled to receive the refund amount payable to the lending institution in their favour.
9. The respondents have prayed the Authority to direct the respondents to first make payments in favour of the lending institution to facilitate closure of housing loan account and subsequently direct the balance payable to be made in favour of the complainant.
10. The respondents have requested the Authority to consider the following as per the revised calculation sheet submitted by them:
  - a) Rs.10,15,845/- Own contribution by the complainants.
  - b) Rs.5,20,692/- Interest payable on the principal amount.
  - c) Rs.15,36,537/- Total amount payable to the complainants.
  - d) Rs.69,30,000/- (+ interest) Total amount payable to the lending financial institution.
11. The respondent humbly prays the Hon'ble Authority to take on record the above calculation put forth by them in the interest of justice and equity.
12. In support of their defence, the respondents have produced copies of Ledger account for the period 1/4/2017 to 13/3/2023,




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statement of account issued by HDFC, Union Bank of India and payment vouchers dated 5/7/19 and 19/7/19 and revised calculation sheet as on 31/03/2023 submitted along with written submission dated 28/2/2023.

13. In support of their claim, the complainants have produced copies of documents such as agreement of sale, tripartite agreement, payment receipts, TDS receipt, email communication and memo of calculation as on 23/09/2022.
14. Heard arguments of both sides.
15. On the above averments, the following points would arise for my consideration:
  - a. Whether the complainants are entitled for the relief claimed?
  - b. What order?
16. My answer to the above points are as under:-
  - a. In the Affirmative.
  - b. As per final order for the following
17. **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 complainants, the respondent has neither handed over the possession of the apartment nor refunded the amount with interest as per agreement and have delayed the project till date. The respondent has also stopped paying PEMIs as agreed till the handover of the property. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.
18. 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





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interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

19. 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.

20. 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 towards the apartment and as the project is delayed wants refund of the amount with interest. Having accepted the said amount and failure to keep up promise to handover possession of the apartment as agreed certainly entitles the complainants herein for refund with interest.

21. During the process of the hearing, the Authority has noticed that the proof submitted by the respondent in respect of payment of PEMI/subvention amount of Rs.8,39,586/- is not substantiated as they have produced copy of their Ledger Account and are not forthcoming in the entries in the statement of account of Axis Bank and Union Bank of India. Hence, the claim of the respondent is not acceptable. The respondents' prayer to the Authority that the respondents may be directed to first make payment to the lending financial institution so as to facilitate closure of the housing loan account and subsequently direct to make balance payable to the complainant is not acceptable, as the fact is that the housing loan has been sanctioned in the name of the complainant, and the complainant was made to pay PEMIs to the Bank.

22. The complainants have filed their memo of calculation as on 23/09/2022 claiming an amount of Rs.1,16,70,009/- (Rupees One Crore Sixteen Lakh Seventy Thousand and Nine only) as refund with interest. A thorough verification of the documentary proof submitted by the complainants reveals that their claim is genuine. There is no dispute over the principal amount paid and received by both the

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parties. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as claimed by them in their memo of calculation as on 23/9/2022.

23. 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		0		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	1971	23/09/2022	8.15	10.15 as on 01-05-2017	0
2	15/01/2018	100,000	1712	23/09/2022	8.1	10.1 as on 01-01-2018	47,373
3	02/02/2018	6,195,998	1694	23/09/2022	8.1	10.1 as on 01-02-2018	2,904,378
4	02/02/2018	734,002	1694	23/09/2022	8.1	10.1 as on 01-02-2018	344,063
5	06/02/2018	836,386	1690	23/09/2022	8.1	10.1 as on 01-02-2018	391,130
6	16/03/2018	9,458	1652	23/09/2022	8.35	10.35 as on 01-03-2018	4,430
7	16/03/2018	70,000	1652	23/09/2022	8.35	10.35 as on 01-03-2018	32,791
8	TOTAL AMOUNT	7,945,844				TOTAL INTEREST ( I2 )	3,724,165

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 23/09/2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
79,45,844	37,24,165	0	1,16,70,009

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


25. **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/220725/0009800** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,16,70,009/- (Rupees One Crore Sixteen Lakh Seventy Thousand and Nine only)** towards refund with **interest** calculated at MCLR + 2% from 15/01/2018 till 23/9/2022 to the complainants within 60 days from the date of this order. The interest due from 24/9/2022 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



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