

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/220316/0009142**

**COMPLAINANT.....**

**MR. SHIRAZ KUNNUMMALE  
PURAYIL  
KP HOUSE, NEAR MADAYI PALLI  
PO  
PAYANGADI PS  
PIN CODE: 670358  
DISTRICT: KANNUR  
STATE: KERALA**

**(BY MR. M. KRISHNAPPA,  
ADVOCATE)**

**V/S**

**RESPONDENT.....**

**M/S. OZONE URBANA INFRA  
DEVELOPERS PRIVATE LIMITED  
NO.51/7-1, RATHNA AVENUE  
OFF RICHMOND ROAD  
CIVIL STATION  
BANGALORE-560025.**

**(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 Urbana Prime NH-7, Kannamangala Village, Devanahalli, Bangalore North for the relief of refund with interest.

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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.

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

3. The Complainant submits that he is an NRI and booked an apartment in the project of the respondent for a total sale consideration of Rs.67,61,202/- and entered into agreement for sale, construction agreement on 31/05/2016 and paid an amount of Rs.8,27,206/- to the respondents. The complainant also entered into tripartite agreement on 23/07/2016 with the respondent and HDFC for housing loan with an agreement that the complainant will pay EMIs which commence subsequent to the completion of construction and handing over possession.
4. The complainant submits that he has paid an amount of Rs.61,85,357/- (Rupees Sixty One Lakh Eighty Five Thousand Three Hundred and Fifty Seven only) on various dates to the respondent including housing loan and PEMIs. As per the agreement, the respondent was supposed to handover the unit to the complainant on 31/03/2019 with a grace period of six months i.e. latest by 30/09/2019 and to pay PEMIs to the Bank until handover of the unit, but has failed to handover the apartment even after the lapse of three years and to pay PEMIs as agreed.
5. The complainant also submits that during June 2019 the respondents requesting the complainant to pay the PEMIs to the HDFC stating that the participating Banks for the subvention scheme are not allowing further extension of the scheme and forcing to stop paying PEMI on behalf of the customers and that the respective Banks and financial institutions will get in touch with the complainant towards collection of PEMIs directly from the complainant.

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6. The complainant agreed to pay PEEMs upon the assurance of the respondents that the PEEMs paid by the complainant on behalf of the respondent will be deducted at the time of handing over possession of the apartment. The complainant paid PEEMs for 19 months from June 2019 till December 2020 and later on the complainant refused to pay the PEMI for further period as there was no progress in the construction work.
7. The complainant approached the respondent and sought for cancellation of allotment of apartment and refund the amount paid by him. At this juncture, the respondent convinced the complainant showing another apartment in the same project which was in the stage of ready to occupy instead of initially allotted apartment and assured to deliver the apartment immediately. With no other option left, the complainant agreed, but the respondent did not execute fresh agreement of sale.
8. The complainant further submits that the Bank has declared his loan account as NPA and has initiated legal action against him. The complainant submits that the respondent has abandoned the project thereby causing mental agony and financial loss. Thus the complainant has approached this Authority seeking direction to the respondent to refund the amount with interest and compensation for mental agony. Hence, this complaint.
9. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and representatives. The respondents have filed their written submission as under:
10. The respondent submits that their company is a prestigious and renowned developers having developed a variety of projects to the customer's satisfaction and welfare and denies all the averments raised in the complaint by the complainant. The respondent submits that the complainants have made own contribution of Rs.6,75,999/- out of total sale consideration of Rs.54,86,529/- towards the unit and

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Rs.51,91,830/- being housing loan from HDFC under subvention scheme.

11. The respondents submit that the complainant sought for an alternative apartment in the same project and that the parties have entered into an agreement of sale on 27/11/2019.
12. The complainant sought for cancellation of the allotment and refund of amount with interest, payment of PEMIs paid and other reliefs. The respondent further submits that there is a mis-match in the principle amount submitted by the complainants in their memo of calculation. The respondent also submits that the complainants have not submitted proof of the PEMI payments made in favour of the financial institution for reconciliation of differences. The respondent submits that they have made PEMI payment of Rs.3,32,412/- in favour of the complainant which has not been taken into consideration by the complainant in his memo of calculation. The respondent also submits that the complainants have also not taken into consideration delay interest amounting to Rs.47,669/- on account of delayed payments.
13. The respondents contend that the complainant is 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 complainant is not entitled to receive the refund amount payable to the lending institution in their favour.
14. The respondents have prayed the Authority to direct them (respondents) to first make payments in favour of the lending institution to facilitate closure of housing loan account and subsequently to the complainant.
15. The respondents have requested the Authority to consider the following as per the revised calculation sheet submitted by them:
  - a) Rs.6,75,999/- Own contribution by the complainant.



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- b) Rs.4,17,055/- Interest payable on the principal amount.
- c) Rs.10,45,385/- Total amount payable to the complainants after deduction of Rs.47,669/- (delay interest on delayed payments).
- d) Rs.48,10,530/- (+ interest) Total amount payable to the lending financial institution.
- e) Rs.3,32,412/- PEMI paid by the respondents.

16. 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.

17. In support of their defence, the respondents have produced copies of agreement of sale, construction agreement, tripartite agreement, sale agreement dated 27/11/2019 and revised calculation sheet as on 31/03/2023 submitted along with written submission dated 13/4/2023.

18. In support of his claim, the complainant has produced copies of documents such as agreement of sale, construction agreement, tripartite agreement, payment receipts, customer statement dated 13/10/2020 issued by respondents, email dated 15/6/2022, statement of accounts issued by AXIS Bank, legal notice issued by HDFC, Reply given by the complainant to legal notice and memo of calculation as on 01/12/2022.

19. Heard arguments of both sides.

20. On the above averments, the following points would arise for my consideration:

- a. Whether the complainant is entitled for the relief claimed?
- b. What order?

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

- a. In the Affirmative.
- b. As per final order for the following

22. **My answer to Point No.1:-** From the materials placed on record, it is apparent that in spite of entering into an agreement of



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sale and construction agreements and having received a substantial sale consideration amount, the respondents have neither handed over the possession of the unit nor refunded the amount with interest as per agreement and have delayed the project till date. There seems to be no possibility of completing the project or handing over the possession of the apartment in the near future.

23. 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.
24. 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.
25. 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 towards the apartment. Having accepted the said amount and failure to keep up promise to handover possession of the apartment and not paying PEMI as agreed certainly entitles the complainant herein for refund with interest.
26. During the process of the hearing, the Authority found discrepancies in the calculation submitted by both the parties and directed them to file fresh memo of calculation. In the fresh calculation submitted by the respondents, it was found that the calculation statement given by them earlier to the complainant, contradicts their own statement and that PEMI payment not taken into consideration. The respondents in their written submission have submitted that the complainant has not provided proof for having made PEMI payment and that they have made PEMI payment of

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Rs.3,32,412/- in favour of the complainant, which is not substantiated. Whereas, the complainant has contended that the calculation sheet submitted by the respondents is totally incorrect and contrary to the material documents and that the respondents have not taken into consideration the PEMI amount paid by him. The complainant also submits that he has produced documentary proof in support of his claim to the Authority.

27. 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.

28. The complainant has filed his memo of calculation as on 01/12/2022 claiming an amount of Rs.95,33,207/- (Rupees Ninety Five Lakh Thirty Three Thousand Two Hundred and Seven only) as refund with interest. A thorough verification of the documentary proof submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as claimed by him vide his memo of calculation as on 01/12/2022.

29. Further, the complainants have claimed compensation for mental agony which does not come under the jurisdiction of this Authority, as such, it is not considered.

30. 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	30/04/2016	100,000	365	30/04/2017	9,000

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2	23/05/2016	575,999	342	30/04/2017	48,573
3	30/07/2016	257,821	274	30/04/2017	17,418
4	31/07/2016	1,771,387	273	30/04/2017	119,241
5	23/03/2017	939,958	38	30/04/2017	8,807
6	23/03/2017	74,041	38	30/04/2017	693
7		3,719,206		TOTAL INTEREST ( I1 )	203,732

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	3,719,206	2040	01/12/2022	8.15	10.15 as on 01-05-2017	2,109,859
2	30/12/2017	1,059,844	1797	01/12/2022	8.1	10.1 as on 01-12-2017	527,009
3	30/12/2017	550	1797	01/12/2022	8.1	10.1 as on 01-12-2017	273
4	27/06/2018	706,929	1618	01/12/2022	8.45	10.45 as on 01-06-2018	327,474
5	04/10/2019	80,000	1154	01/12/2022	8.35	10.35 as on 10-09-2019	26,178
6	02/11/2019	39,280	1125	01/12/2022	8.25	10.25 as on 10-10-2019	12,409
7	29/11/2019	83,246	1098	01/12/2022	8.2	10.2 as on 10-11-2019	25,543
8	10/01/2020	39,595	1056	01/12/2022	8.2	10.2 as on 10-01-2020	11,684
9	06/02/2020	39,677	1029	01/12/2022	8.2	10.2 as on 10-01-2020	11,409
10	07/03/2020	38,000	999	01/12/2022	8.15	10.15 as on 10-02-2020	10,556
11	20/03/2020	1,524	986	01/12/2022	8.05	10.05 as on 10-03-2020	413
12	24/04/2020	39,080	951	01/12/2022	7.7	9.7 as on 10-04-2020	9,876
13	01/05/2020	39,080	944	01/12/2022	7.7	9.7 as on 10-04-2020	9,804
14	04/06/2020	38,278	910	01/12/2022	7.55	9.55 as on 10-05-2020	9,113
15	04/07/2020	38,278	880	01/12/2022	7.3	9.3 as on 10-06-2020	8,582
16	31/07/2020	38,278	853	01/12/2022	7.3	9.3 as on 10-07-2020	8,319



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17	03/09/2020	38,278	819	01/12/2022	7.3	9.3 as on 10-08-2020	7,987
18	07/10/2020	37,473	785	01/12/2022	7.3	9.3 as on 10-09-2020	7,495
19	13/11/2020	37,476	748	01/12/2022	7.3	9.3 as on 10-11-2020	7,142
20	03/12/2020	33,809	728	01/12/2022	7.3	9.3 as on 10-11-2020	6,271
21	27/12/2020	37,476	704	01/12/2022	7.3	9.3 as on 10-12-2020	6,722
22	TOTAL AMOUNT	6,185,357				TOTAL INTEREST ( I2 )	3,144,118

MEMO OF CALCULATION			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 01-12-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
6,185,357	3,347,850	0	9,533,207

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

32. **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/220316/0009142** is hereby allowed.

Respondent is directed to pay the amount of **Rs.95,33,207/-** (Rupees Ninety Five Lakh Thirty Three Thousand Two Hundred and Seven only) towards refund with interest calculated at 9% from 30/04/2016 till 30/04/2017 and MCLR + 2% from 01/05/2017 till 01/12/2022 to the complainant within 60 days from the date of this order. The

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interest due from 02/12/2022 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.

  
(Neelmani N Raju)  
Member, K-RERA

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