

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 26TH JULY, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220725/0009802

COMPLAINANT.....

**MR.G.Y. RAJASHEKAR
FLAT NO.308, A BLOCK, 3RD FLOOR
MITHUNA WHITE BELLS APARTMENT
2ND CROSS, SRI VENKATESHWARA NAGAR
JAKKUR
BANGALORE-560064.**

(IN PERSON)

Vs

RESPONDENT.....

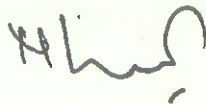
**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
BANGALORE-560042.**

**(BY MR. 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 situated at Ozone Urbana NH-7, Kannamangala Village, Devanahalli, Bengaluru for the relief of refund with interest.
2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1250/303/PR/171019/000287 and was valid from 30/7/2017 till 31/12/2022. The Authority has extended its registration for a further period of 9 months i.e. till 30/09/2023.



Brief facts of the complaint are as under:-

3. The complainant had booked an apartment bearing No.U-501, 5th Floor, in the project of respondent and entered into an agreement for sale on 15/03/2019 for a total sale consideration of Rs.62,31,645/- under the interest subvention scheme and has paid an amount of Rs.38,49,653/- (Rupees Thirty Eight Lakh Forty Nine Thousand Six Hundred and Fifty Three only) including housing loan from HDFC and PEMIs paid by the complainant to the Bank. The complainant submits that the respondent had agreed to pay PEMI to the Bank till the intimation of the unit being ready for handover (as per terms and conditions in their letter dated 15/3/2019), but the respondent has not paid PEMIs to the Bank. The complainant also submits that he is bearing the extra burden of paying PEMIs to the HDFC. The respondent was supposed to handover the possession of the said flat to the complainant by December 2022 with a grace period of six months i.e. latest by the end of June 2023, but the complainant submits that the respondent is nowhere near completing the project in the near future and that the project is stalled for the past 3 years. Thus, the complainant has approached this Authority, praying for directions 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/representative and has submitted their written submission as under:
5. The respondent denies all the allegations made against him in the complaint by the complainant as false. In order to assist the complainant financially, the respondent undertook to be a part of Tripartite Agreement in 2019 and facilitated housing loan to the



complainant from HDFC. The respondent contends that as per tripartite agreement entered between both the parties the complainant has the liability to pay PEMI to the Bank and EMI after possession. The respondent also submits that they have paid an amount of Rs.1,74,971/- towards subvention and PEMI which may be considered against the final amount due and payable to the complainant. The respondent further submits that the complainant is seeking refund of PEMIs to the tune of Rs.7,09,652/- paid by him to the HDFC and has not produced any receipts to substantiate his claim.

6. The respondent contends that as the complainant has opted for cancellation before the Hon'ble Authority, they are constrained to invoke Clause 16 of the tripartite agreement which deals with the obligation of parties in the event of cancellation request initiated which reads as under:

"In the event of occurrence of default under the loan agreement during the liability period, which would result in the cancellation of allotment as a consequence thereof for any reason whatsoever if the allotment is cancelled, any amount payable to the borrower on account of such cancellation shall be directly paid to HDFC."

7. In view of the above, the respondent prays that the refund of money to the complainant may be limited to own contribution made by the complainant as agreed and that the respondent may be allowed to close the loan. The respondent further contends that they are liable to refund only the own contribution made by the complainant along with interest.

8. The respondent further submits that the complainant has to pay interest to the tune of Rs.1,131/- for delay in making scheduled payments to the respondent. The respondent prays that the Hon'ble Authority may be pleased to direct the respondent to refund the own



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contribution made by the complainant and dispose the complaint in accordance with the tripartite agreement executed between the parties.

9. The respondent submits that the Hon'ble Authority may please take on record the MOC put forth by the respondent as shown below:-

1. Customer's own contribution – Rs.3,14,082/-
2. Interest payable to the customer – Rs.1,37,999/-
3. Housing Loan due to HDFC – Rs.28,25,919/-
4. Interest payable by the complainant for delayed payments – Rs.1,131/-
5. Subvention & PEMI paid by Ozone to Bank – Rs.1,74,971/-

10. The complainant in his rejoinder to the written submission submitted by the respondent contends that the respondent had promised to pay PEMIs to HDFC every month until the flat is ready for possession vide his subvention letter dated 15/3/2019 but failed to pay PEMIs as agreed and the burden of paying PEMIs has caused complainant mental distress. The complainant also agreed with the respondent's plea to close the mortgage loan and to settle with his own contribution with interest once the order is passed by this Hon'ble Authority.

11. The complainant submits that the respondent has made PEMI payment to the Bank only till December 2019 and did not make any further payment towards PEMIs and that he has paid Rs.7,09,919/- towards PEMI till January 2023 and that all the proof with bank receipts have been sent to the respondent and have been acknowledged by respondent's Legal and Accounts Department and contends that the respondent needs to refund the entire PEMI amount paid by the complainant.



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12. In support of their defence, the respondent has filed copies of documents such as agreement of sale, tripartite agreement, delay payment schedule and revised calculation sheet as on 30/04/2023.
13. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Housing Loan Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainant, Subvention Scheme letter dated 15/3/2019 and Memo of calculation for refund with interest as on 21/04/2023.
14. This case was heard on 16/11/2022, 25/01/2023, 9/3/2023, 30/5/2023 and 5/7/2023. Heard arguments of both sides.
15. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainant is entitled for the relief claimed?
 2. What order?
16. **My answer to the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following -

REASONS

17. **My answer to point No.1:-** It is undisputed that the respondent has failed to handover possession of the apartment to the complainant herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over before the end of December 2022 with a grace period of six months i.e. latest by June 2023. As per the terms and conditions of the subvention scheme letter dated 15/3/2019, the respondent had agreed to pay pre-EMIs to the Bank till the handover of the apartment to the complainant. Though the respondent had

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paid PEMIs initially till December 2019, later stopped paying pre-EMIs to the Bank.

18. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant was supposed to get the flat delivered by December 2022 with a grace period of six months i.e. latest by June 2023, the respondent is nowhere near completion of the project and that the project is stalled for the past three years. Having agreed to pay PEMIs to the Bank till the date of handover possession of the apartment to the complainant, the respondent has failed to pay pre-EMIs to the Bank, certainly entitles the complainant herein for refund of entire amount with interest.

19. The Hon'ble Authority has perused the written submissions submitted by the respondent and the complainant and has disagreed with the contentions of the respondent that the complainant is entitled to receive refund on only payments made in respect of own contribution and interest applicable only after the respondent has made payments in favour of the lending institution to facilitate the closure of the loan sanctioned.

20. The complainant has submitted proof of evidence to the Hon'ble Authority and sent copies of the same to the respondent duly acknowledged by the respondent's legal and accounts section in the form of Housing Loan statement of accounts issued by HDFC for having paid PEMIs by the complainant to the HDFC.

21. The complainant has claimed Rs.53,18,701/- (Rupees Fifty Three Lakh Eighteen Thousand Seven Hundred and One only) vide his memo of calculation as on 21/04/2023 towards refund with interest. Though the respondent have submitted their revised calculation sheet as on 30/04/2023 they have not mentioned the quantum of amount to be

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refunded to the complainant correctly. Hence, their calculation sheet is not accepted.

22. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 21/04/2023.

23. Therefore, it is incumbent upon the respondent to pay refund 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	2181	21-04-2023	8.15	10.15 as on 01-05-2017	0
2	04-03-2019	50,000	1509	21-04-2023	8.75	10.75 as on 10-02-2019	22,221
3	25-03-2019	2,64,082	1488	21-04-2023	8.75	10.75 as on 10-03-2019	1,15,733
4	30-03-2019	18,84,494	1483	21-04-2023	8.75	10.75 as on 10-03-2019	8,23,097
5	30-05-2019	9,41,425	1422	21-04-2023	8.65	10.65 as on 10-05-2019	3,90,608
6	10-02-2020	20,724	1166	21-04-2023	8.15	10.15 as on 10-02-2020	6,719
7	25-02-2020	20,274	1151	21-04-2023	8.15	10.15 as on 10-02-2020	6,489
8	01-04-2020	20,724	1115	21-04-2023	8.05	10.05 as on 10-03-2020	6,362
9	30-04-2020	20,639	1086	21-04-2023	7.7	9.7 as on 10-04-2020	5,956
10	31-05-2020	20,788	1055	21-04-2023	7.55	9.55 as on 10-05-2020	5,738

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11	30-06-2020	19,495	1025	21-04-2023	7.3	9.3 as on 10-06-2020	5,091
12	31-07-2020	19,627	994	21-04-2023	7.3	9.3 as on 10-07-2020	4,970
13	31-08-2020	19,759	963	21-04-2023	7.3	9.3 as on 10-08-2020	4,848
14	30-09-2020	19,401	933	21-04-2023	7.3	9.3 as on 10-09-2020	4,612
15	31-10-2020	19,401	902	21-04-2023	7.3	9.3 as on 10-10-2020	4,458
16	30-11-2020	19,386	872	21-04-2023	7.3	9.3 as on 10-11-2020	4,307
17	31-12-2020	19,141	841	21-04-2023	7.3	9.3 as on 10-12-2020	4,101
18	31-01-2021	19,141	810	21-04-2023	7.3	9.3 as on 10-01-2021	3,950
19	28-02-2021	19,141	782	21-04-2023	7.3	9.3 as on 10-02-2021	3,813
20	31-03-2021	19,141	751	21-04-2023	7.3	9.3 as on 10-03-2021	3,662
21	30-04-2021	19,141	730	21-04-2023	7.3	9.3 as on 10-04-2021	3,560
22	31-05-2021	19,140	690	21-04-2023	7.3	9.3 as on 15-05-2021	3,364
23	30-06-2021	19,018	660	21-04-2023	7.3	9.3 as on 15-06-2021	3,198
24	31-07-2021	19,018	629	21-04-2023	7.3	9.3 as on 15-07-2021	3,047
25	31-08-2021	19,018	598	21-04-2023	7.3	9.3 as on 15-08-2021	2,897
26	30-09-2021	19,018	568	21-04-2023	7.3	9.3 as on 15-09-2021	2,752
27	31-10-2021	19,018	537	21-04-2023	7.3	9.3 as on 15-10-2021	2,602
28	30-11-2021	19,018	507	21-04-2023	7.3	9.3 as on 15-11-2021	2,456
29	31-12-2021	19,018	476	21-04-2023	7.3	9.3 as on 15-12-2021	2,306
30	31-01-2022	16,564	445	21-04-2023	7.3	9.3 as on 15-01-2022	1,878
31	28-02-2022	16,564	417	21-04-2023	7.3	9.3 as on 15-02-2022	1,759

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32	31-03-2022	16,564	386	21-04-2023	7.3	9.3 as on 15-03-2022	1,629
33	30-04-2022	16,564	356	21-04-2023	7.4	9.4 as on 15-04-2022	1,518
34	31-05-2022	16,564	325	21-04-2023	7.5	9.5 as on 15-05-2022	1,401
35	30-06-2022	16,564	295	21-04-2023	7.7	9.7 as on 15-06-2022	1,298
36	31-07-2022	18,772	264	21-04-2023	7.8	9.8 as on 15-07-2022	1,330
37	31-08-2022	18,772	233	21-04-2023	8	10.0 as on 15-08-2022	1,198
38	30-09-2022	18,772	203	21-04-2023	8	10.0 as on 15-09-2022	1,044
39	31-10-2022	21,226	172	21-04-2023	8.25	10.25 as on 15-10-2022	1,025
40	30-11-2022	21,226	142	21-04-2023	8.35	10.35 as on 15-11-2022	854
41	31-12-2022	21,226	111	21-04-2023	8.6	10.6 as on 15-12-2022	684
42	31-01-2023	22,085	80	21-04-2023	8.6	10.6 as on 15-01-2023	513
43	TOTAL AMOUNT	38,49,653				TOTAL INTEREST (I2)	14,69,048

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 21-04-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
38,49,653	14,69,048	0	53,18,701

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:-

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.CMP/220725/0009802 is hereby allowed.

(Signature)

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Respondent is directed to pay the amount of **Rs.53,18,701/- (Rupees Fifty Three Lakh Eighteen Thousand Seven Hundred and One only)** towards **refund with interest** calculated at MCLR + 2% from 01/05/2017 till 21/04/2023 to the complainant within 60 days from the date of this order. The interest due from 22/04/2023 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