

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/221021/0010128

COMPLAINANT.....

**MR. PURAVOOR SANJEEV
UNNIKRISHNA PANICKER
A 402, THE BLISS CHS
PLOT NO. 2, 4 & 5
SECTOR 8B
CBD BELAPUR - 400614
DISTRICT: MUMBAI SUB URBAN
STATE: MAHARASHTRA**

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

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

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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.E 304, 3rd Floor, in the project of respondent and entered into agreement of sale and construction agreement on 28/07/2016 for a total sale consideration of Rs.69,19,814/-. The complainant had also entered into Tripartite Agreement with the respondent and HDFC was disbursed to the respondent directly from the Bank. As per the tripartite agreement the respondent is liable to bear the cost of paying PEMIs till the handover of the property to the complainant. The complainant has entered into buyback agreement on 02/09/2016 and made payment to the tune of Rs.6,91,860/- as initial booking advance amount. As per the buyback agreement, the respondent was supposed to pay the profit amount to the complainant. The complainant further agreed to reinvest in the apartment by way of buyback agreement dated 9/12/2017 wherein the respondent/developer had agreed to bear the PEMI for a period of 48 months from the first disbursement date i.e. 31/08/2016.
4. The complainant has paid an amount of Rs.66,26,360/- (Rupees Sixty Six Lakh Twenty Six Thousand Three Hundred and Sixty only) to the respondent on various dates. As per agreement of sale and construction agreement the respondent was under obligation to handover possession by August 2018 with a grace period of six months i.e. latest by the end of February 2019. Though more than four years have been lapsed, the respondent is reluctant to complete the construction and to handover the possession of the apartment to the complainant. The complainant submits that the respondent has not paid pre-EMIs to the Bank and neither the buyback amount nor the deposited amount. The complainant further submits that the

Bank has initiated action against him for not paying EMIs and has classified the loan as NPA. The complainant had to approach the Hon'ble High Court of Karnataka for relief in this regard. Thus, the complainant has approached this Authority, praying for directions to the respondent to refund the entire amount with interest. Hence, this complaint.

5. 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 statement of objections as under:
6. The respondent denies all the allegations made in the complaint by the complainant as false. The respondent submits that the complainant has prayed for refund of the amount paid by him. In order to assist the complainant, they facilitated loan 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.
7. The respondent further submits that the complainant and respondent have entered into a Buyback agreement on 2/9/2016 and as the complainant agreed to reinvest in the apartment, an additional buyback agreement was entered into on 9/12/2017. The respondent admits that they had agreed to bear the PEMIs for a period of 48 months from the first disbursement date i.e. 31/08/2016.
8. 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:



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"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."

9. 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.
10. The respondent further submits that the complainant has to pay interest to the tune of Rs.1,35,019/- 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 Rs.6,91,860/- i.e. the own contribution made by the complainant and dispose the complaint in accordance with the tripartite agreement executed between the parties.
11. 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.6,91,860/-
 2. Interest payable to the customer - Rs.4,49,599/-
 3. Housing Loan due to HDFC - Rs.52,59,180/-
 4. Interest payable by the complainant for delayed payments - Rs.1,35,019/-
 5. Total amount payable to the complainant - Rs.10,07,242/- (after deduction of interest payable by the complainant for delayed payments)
12. In support of their defence, the respondent has filed copies of documents such as agreement of sale, construction agreement, tripartite agreement, Buyback agreement dated 2/9/2016 and



9/12/2017, delay payment schedule with demand notes and revised calculation sheet as on 20/02/2023.

13. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, allotment letter, buyback agreement, additional buyback agreement, Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainant, Payment receipts and Memo of calculation for refund with interest as on 20/02/2023.

14. This case was heard on 21/2/2023, 09/03/2023, 30/05/2023 and 05/07/2023. 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 refund the money deposited with guaranteed profits to the complainant herein within agreed time even after receiving substantial sale consideration amount. The respondent has also failed to pay PEMIs to the Bank as agreed.

18. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant was supposed to get back the amount invested from the respondent under buyback agreement and additional buyback agreement. Having accepted to return the amount

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deposited with guaranteed profits, the respondent failed to keep up promise to refund the money and not paid pre-EMIs to the Bank as agreed, 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 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 in the form of statement of accounts issued by HDFC for having paid PEMIs to the HDFC.

21. The complainant has claimed Rs.1,03,16,227/- (Rupees One Crore Three Lakh Sixteen Thousand Two Hundred and Twenty Seven only) vide his memo of calculation as on 20/02/2023 towards refund with interest. The respondent in their revised calculation sheet as on 20/02/2023 submitted on 10/07/2023 claim that the refund amount with interest payable to the complainant is Rs.10,07,242/- after deducting the interest payable by the complainant for the delayed payments. The Hon'ble Authority has not agreed to the claim made by the respondent as they had failed to refund the money to the complainant as agreed in the buyback agreements dated 2/9/2016 and 9/12/2017 and also failed to pay PEMIs though they had agreed to pay PEMIs for a period of 48 months.

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 20/02/2023.

23. Therefore, it is incumbent upon the respondent to pay refund 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	31-03-2016	69,198	395	30-04-2017	6,739
2	18-06-2016	1,00,000	316	30-04-2017	7,791
3	11-08-2016	5,22,662	262	30-04-2017	33,765
4	13-08-2016	69,199	260	30-04-2017	4,436
5	31-08-2016	18,27,238	242	30-04-2017	1,09,033
6	31-08-2016	2,48,706	242	30-04-2017	14,840
7		28,37,003		TOTAL INTEREST (I1)	1,76,604

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	28,37,003	2121	20-02-2023	8.15	10.15 as on 01-05-2017	16,73,299
2	21-06-2017	9,86,833	2070	20-02-2023	8.15	10.15 as on 01-06-2017	5,68,050
3	21-06-2017	51,139	2070	20-02-2023	8.15	10.15 as on 01-06-2017	29,437
4	31-10-2017	10,21,411	1938	20-02-2023	8.15	10.15 as on 01-10-2017	5,50,462
5	31-10-2017	16,561	1938	20-02-2023	8.15	10.15 as on 01-10-2017	8,925
6	22-01-2018	6,91,981	1855	20-02-2023	8.1	10.1 as on 01-01-2018	3,55,194
7	20-08-2018	4,15,311	1645	20-02-2023	8.45	10.45 as on 01-08-2018	1,95,597
8	14-02-2020	1,28,170	1102	20-02-2023	8.15	10.15 as on 10-02-2020	39,277

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9	30-03-2020	49,614	1057	20-02-2023	8.05	10.05 as on 10-03-2020	14,439
10	10-04-2020	43,114	1046	20-02-2023	7.7	9.7 as on 10-04-2020	11,984
11	12-05-2020	42,232	1014	20-02-2023	7.55	9.55 as on 10-05-2020	11,204
12	06-07-2020	42,833	959	20-02-2023	7.3	9.3 as on 10-06-2020	10,466
13	05-08-2020	42,883	929	20-02-2023	7.3	9.3 as on 10-07-2020	10,150
14	14-06-2021	42,913	616	20-02-2023	7.3	9.3 as on 15-05-2021	6,735
15	14-08-2021	85,479	555	20-02-2023	7.3	9.3 as on 15-07-2021	12,087
16	14-09-2021	42,887	524	20-02-2023	7.3	9.3 as on 15-08-2021	5,725
17	10-11-2021	85,996	467	20-02-2023	7.3	9.3 as on 15-10-2021	10,232
18	TOTAL AMOUNT	66,26,360				TOTAL INTEREST (I2)	35,13,263

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 20-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
66,26,360	36,89,867	0	1,03,16,227

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

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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/221021/0010128** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,03,16,227/- (Rupees One Crore Three Lakh Sixteen Thousand Two Hundred and Twenty Seven only)** towards refund with interest calculated at 9% from 31/03/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 20/02/2023 to the complainant within 60 days from the date of this order. The interest due from 21/02/2023 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

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