

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/220725/0009804

COMPLAINANT.....

**MR. RAKESH AGARWAL
1C, KAILASH APARTMENT
1056, DAKSHINDARI RO
SHREEBHUMI - 700048
DISTRICT: KOLKATA
STATE: WEST BENGAL**

**(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 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.

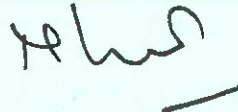
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Brief facts of the complaint are as under:-

3. The complainant had booked an apartment bearing No.C 404, C Block, 4th Floor, in the project of respondent under buyback agreement with guaranteed returns and entered into an agreement of sale on 15/12/2017 for a total sale consideration of Rs.86,89,343/-. The complainant has also entered into Tripartite Agreement on 15/12/2017 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 16/02/2018 and made payment to the tune of Rs.8,68,393/- as initial booking advance amount. As per the buyback agreement, the respondent was supposed to pay the profit amount to the complainant on expiry of 30 months from the date of execution of buyback agreement and bear the PEMI for a period of 30 months from the date of first disbursement of the loan.
4. The complainant has paid an amount of Rs.74,59,927/- (Rupees Seventy Four Lakh Fifty Nine Thousand Nine Hundred and Twenty Seven only) to the respondent on various dates. As per agreement of sale the respondent was under obligation to handover possession of the flat by December 2022. 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 paid back the buyback amount but has not terminated the loan as agreed. The complainant submits that the respondent has not paid pre-EMIs to the Bank as agreed and the Bank has initiated criminal case under the Negotiable Instruments Act 1881. Thus, the complainant has approached this Authority, praying for directions to the respondent to refund the entire amount with interest, cancellation of booking and closure of the loan. 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. In order to assist the complainant, the respondent facilitated loan from HDFC and admits that the bank has disbursed Rs.65,13,971/- being loan amount to the respondent. 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 16/2/2018 and the complainant as per this agreement will receive the equivalent sum of his own contribution as profit on the investment made upon expiry of 30 months from the date of execution of this agreement.
8. The respondent submits that the complainant has omitted the fact that the respondents have made payments to the tune of Rs.12,70,056/- towards subvention and PEMI scheme. The respondent also submits that the complainant is liable to pay the respondent interest for delayed payments to the tune of Rs.47,784/-.
9. The respondent further submits that the terms of the tripartite agreement executed between the parties and lending institution clearly stipulates that the borrower (i.e. the complainant) agrees to unconditionally and irrevocably subrogate its right to receive any amounts payable by the respondent to the complainant in the event of cancellation of the agreements and the payment shall be made in



favour of the lending institution first. As such, the respondent contends that the complainant is entitled to receive refund on payments made in respect of his own contribution and interest applicable on it only after the respondent has made payments in favour of the lending institution to facilitate the closure of the loan sanctioned.

10. 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 there of 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."

11. 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.

12. 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.

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



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1. Customer's own contribution – Rs.9,45,958/-
2. Interest payable to the customer – Rs.4,92,193/-
3. Housing Loan due to HDFC – Rs.65,13,971/-
4. Subvention & PEMI paid by Ozone to Bank – Rs.12,70,056/-
5. Interest payable by the complainant for delayed payments – Rs.47,784/-

14. In support of their defence, the respondent has filed copies of documents such as agreement of sale, tripartite agreement, Buyback agreement dated 16/2/2018, delay payment schedule, bank statement reflecting payment of PEMI and Subvention by the respondents and revised calculation sheet as on 08/03/2023.

15. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Tripartite Agreement, buyback agreement, Payment receipts and Memo of calculation for refund with interest as on 08/03/2023.

16. This case was heard on 16/11/2022, 25/01/2023, 09/03/2023, 30/05/2023 and 05/07/2023. Heard arguments of both sides.

17. **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?

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

1. In the Affirmative.
2. As per final order for the following -

REASONS

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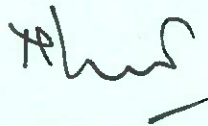
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19. My answer to point No.1:- It is undisputed that the respondent has failed to refund the money deposited with guaranteed profits to the complainant herein within agreed time even after receiving substantial sale consideration amount. The respondent has also failed to pay PEMIs to the Bank as agreed in the buyback agreement due to which the lending institution is recovering PEMIs from the complainant and has initiated action against him.

20. 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 on completion of 30 months as per buyback agreement executed between the parties. But even after expiry of the term of buyback agreement, the respondent has failed to close the loan and also stopped paying PEMIs, due to which the lending institution is recovering the loan from the complainant and also initiated criminal case against him. Having accepted to return the amount 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.

21. 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.

22. The complainant has claimed Rs.1,12,70,511/- (Rupees One Crore Twelve Lakh Seventy Thousand Five Hundred and Eleven only) vide his memo of calculation as on 08/03/2023 towards refund with interest. Though the respondent has submitted their revised calculation sheet



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(enclosing statement of HDFC) as on 08/03/2023 submitted on 03/06/2023, there is no specific mention to the effect that to whom the money is paid. 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 agreement dated 16/2/2018 and also failed to pay PEMIs as agreed. The Hon'ble Authority has also noticed that the respondent in their letter dated 19/8/2020 have confirmed the buyback maturity date and agreed to repay the principal amount along with the assured returns by end of April 2021 and to compensate @ 8% per annum for the delay from the maturity date till the date of payment.

23. 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 08/03/2023.

24. 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	2137	08-03-2023	8.15	10.15 as on 01-05-2017	0
2	27-11-2017	50,000	1927	08-03-2023	8.1	10.1 as on 01-11-2017	26,661

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3	28-11-2017	50,000	1926	08-03-2023	8.1	10.1 as on 01-11-2017	26,647
4	17-01-2018	50,000	1876	08-03-2023	8.1	10.1 as on 01-01-2018	25,955
5	18-01-2018	4,90,830	1875	08-03-2023	8.1	10.1 as on 01-01-2018	2,54,660
6	18-01-2018	2,00,000	1875	08-03-2023	8.1	10.1 as on 01-01-2018	1,03,767
7	18-01-2018	27,563	1875	08-03-2023	8.1	10.1 as on 01-01-2018	14,300
8	20-01-2018	77,563	1873	08-03-2023	8.1	10.1 as on 01-01-2018	40,199
9	21-02-2018	63,07,529	1841	08-03-2023	8.1	10.1 as on 01-02-2018	32,13,228
10	21-02-2018	2,06,442	1841	08-03-2023	8.1	10.1 as on 01-02-2018	1,05,167
11	TOTAL AMOUNT	74,59,927				TOTAL INTEREST (I2)	38,10,584

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 08-03-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
74,59,927	38,10,584	0	1,12,70,511

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

26. 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,

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the complaint bearing **No.CMP/220725/0009804** is
hereby allowed.

Respondent is directed to pay the amount of
**Rs.1,12,70,511/- (Rupees One Crore Twelve Lakh
Seventy Thousand Five Hundred and Eleven only)**
towards refund with interest calculated at MCLR + 2%
from 01/05/2017 till 08/03/2023 to the complainant
within 60 days from the date of this order. The interest
due from 09/03/2023 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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