

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 3rd AUGUST, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220706/0009721

COMPLAINANTS.....

**NRA PRASAD &
MRS. VASUMATHI PRASAD
RESIDING AT 226, NEW ROAD
STOKE GIFFORD, BRISTOL
BS 348 TQ, UNITED KINGDOM**

**ALSO AT
B 507, KOMARLA BRIGADE RESIDENCY
UTTARAHALLI MAIN ROAD
CHIKKALASANDRA
BENGALURU.**

**(BY MR. POORNACHANDRA B PATTAR,
ADVOCATE)**

Vs

RESPONDENTS.....

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

2.VASUDEVAN SATHYAMOORTHY

3.SATHYAMOORTHY SAI PRASAD

4.RAJEEV BHANDARI

5.SRINIVASAN GOPALAN

6.DURBHAKULA VAMSI SAI

SEEWOSAGAR NEMCHAND

DIRECTORS

OZONE URBANA INFRA DEVELOPERS

PRIVATE LIMITED

NO.38, ULSOOR ROAD

BANGALORE-560042.

**(By Mr.Deepak Bhaskar & Associates,
Advocates)**

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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 Survey Nos.75, 77/1, 77/2, 77/3, 77/4, 78, 79,80, 81/2, 83/2, 83/3 and 83/5, Kannamangala Village, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural District for the relief of exit from the project and 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 complainants had booked a duplex apartment bearing No.TG-04, Block T, Ground Floor in the project of respondent. The respondent vide their allotment letter dated 5/6/2016 allotted the above unit in favour of the complainants. Thereafter, the complainants entered into agreement of sale and construction agreement on 17/6/2016. Subsequently, the complainants also entered into Tripartite Agreement on the same day with respondents and HDFC for the purpose of housing loan *wherein the respondent was supposed to pay PEMs till December 2017/till the date of possession whichever is later.* The complainants submit that they have paid an amount of Rs.1,61,78,305/- (Rupees One Crore Sixty One Lakh Seventy Eight Thousand Three Hundred and Five only). The complainants further submit that as per the agreement, the respondent was supposed to handover the possession of the unit on or before 31st March 2019 with a grace period of six months i.e. latest by 30/09/2019 but till date the respondent has not handed over the

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possession. The complainants submit that the respondent looking at the present scenario will not complete the project in the near future and, as such, the complainants do not want to continue in the project and intend to exit from the project. Thus, the complainants have approached this Hon'ble Authority and pray for directions to the respondent to refund the entire amount with interest; pay balance and outstanding interest to HDFC from 1/7/2019 till the date of payment; compensation for mental agony and costs of the litigation. 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 statement of objections as under:
5. The respondent denies all the allegations made in the complaint by the complainant as false. The respondent submits that the complainants have prayed for cancellation of the allotment, refund of the amount with interest and payment of remaining EMIs along with closure of loan account with the financial institution.
6. The respondent submits that the housing loan availed by the complainants is under subvention scheme and, therefore, the respondent has made PEMI payment of Rs.6,98,184/- in favour of the complainants, which has not been taken into consideration by the complainants in their memo of calculation. As per Tripartite Agreement, the respondent was liable to pay PEMIs till December 2017/till the date of possession whichever is later.
7. The respondent submits that the complainants have not considered the delay interest payable to the respondent on account of delay in making scheduled payments to the tune of Rs.1,35,219/- for which the respondent is entitled.
8. The respondent contends that as the complainants have opted for cancellation before the Hon'ble Authority, they are constrained to



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invoke Clause 17 of the tripartite agreement which deals with the obligation of parties in the event of cancellation request initiated which reads as under:

"The borrower agrees that it unconditionally and irrevocably subrogates its right to receive any amount payable by seller to the borrower in the event of cancellation of the agreement for sale of undivided share and the agreement to build both dated 17/6/2016 in favour of HDFC and that the act of payment by the seller of its obligation to pay the borrower such cancellation amount and all the right, title and interest of the undivided share and the constructed area will vest with seller."

The respondent also submits that as per the terms of the Tripartite agreement, the complainants are 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. The respondent also contends that the complainants do not have any right to receive refund amounts payable to the lending institution in their favour or to their bank accounts.

9. In view of the above, the respondent prays the Hon'ble Authority to direct the respondent to make payments in favour of the lending institution first to facilitate the closure of housing loan account and subsequently direct the balance payable to be made in favour of the complainants.

10. The respondent prays Hon'ble Authority to take into consideration the calculations as per the revised memo of calculation (calculation sheet):

1. Customer's own contribution - Rs.21,26,018/-
2. Interest payable to the customer - Rs.13,71,737/-
3. Housing Loan due to HDFC - Rs.1,00,24,451/-

4. Interest payable by the complainant for delayed payments – Rs.1,35,129/-
5. Total amount payable to the complainant – Rs.33,62,626/- (after deduction of interest payable by the complainants for delayed payments of the scheduled payments)
11. In support of their defence, the respondent has filed copies of documents such as proof of payments received by the respondent, proof of transaction of PEMI payment made by the respondent, schedule providing delay interest payable on account of delayed payments made by the complainants, demand note raised by respondents in accordance with the payment schedule and revised calculation sheet as on 28/02/2023.
12. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, Allotment Letter, Statement of Account issued by HDFC pertaining to disbursement of loan amount to the respondent, Customer statement of account issued by Ozone and Memo of calculation for refund with interest as on 24/03/2023.
13. This case was heard on 01/09/2022, 12/10/2022, 25/01/2023, 09/03/2023 , 16/03/2023, 12/04/2023, 21/06/2023 and 27/07/2023. Heard arguments of both sides.
14. **On the above averments, the following points would arise for my consideration:-**
 1. Whether the complainants are entitled for the relief claimed?
 2. What order?
15. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -

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REASONS

16. **My answer to Point No.1:-** It is undisputed that the respondent has failed to handover possession of the apartment to the complainants herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale and agreement of construction between the parties, the possession of the apartment was supposed to be handed over by the respondent to the complainants on or before 31st March 2019 with a grace period of six months i.e. latest by September 2019. As per the tripartite agreement, the respondent had agreed to pay pre-EMIs to the Bank till December 2017/till the date of possession whichever is later.
17. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of the apartment even after three years and not paying pre-EMIs to the Bank as agreed, certainly entitles the complainants herein for refund of entire amount with interest.
18. The Hon'ble Authority has perused the written submissions submitted by both the parties and has disagreed with the contention of the respondent that they should be allowed to make payments to the lending institution first and subsequently make payments to the complainants. The Hon'ble Authority has also not agreed with the contention of the respondent that they have paid an amount of Rs.6,98,184/- towards PEMIs and the same has not been taken into consideration by the complainants in their memo of calculation, as the proof furnished by them does not indicate the name of the person for whom the amount has been paid.

19. At this juncture, my attention is drawn towards the decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s Newtech Promoters v/s The State of Uttar Pradesh it is held that:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is unable to give possession of an apartment, plot or building either in terms of the agreement for sale or to complete the project by the date specified therein or on account of discontinuance of his business as a developer either on account of suspension or revocation of the registration under the Act or for any other reason, the allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf."

20. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para No.23 between M/s Imperia Structures Ltd v/s Anil Patni and another by the Hon'ble Supreme Court it is held that:

"In terms of section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came under the later category. The RERA Act thus definitely provides a

remedy to an allottee who wishes to withdraw from the project or claim return on his investment."

21. 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, flat, 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.

22. Therefore, as per **section 18(1)** of the Act, the promoter is liable to return the amount received along with interest and compensation if the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

23. The complainants have claimed Rs.2,45,73,239/- (Rupees Two Crore Forty Five Lakh Seventy Three Thousand Two Hundred and Thirty Nine only) vide their memo of calculation as on 24/03/2023 towards refund with interest. The respondent in their revised calculation sheet as on 28/02/2023 submitted on 27/07/2023 claim that the refund amount with interest payable to the complainants is Rs.34,97,755/-. The Hon'ble Authority has not agreed to the claim of the respondent as they had failed to handover possession of the apartment to the complainant within stipulated time and failed to pay PEMIs as agreed. Besides the burden of repaying the bank loan is also on the complainant.

24. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest calculated vide their memo of calculation as on 24/03/2023.

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25. Further, the complainants have prayed for compensation for mental agony, which does not come under the jurisdiction of this Authority. Hence the same is not considered.

26. 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 | 30-05-2016 | 50,000 | 335 | 30-04-2017 | 4,130 |
| 2 | 23-09-2016 | 10,00,000 | 219 | 30-04-2017 | 54,000 |
| 3 | 07-10-2016 | 10,00,000 | 205 | 30-04-2017 | 50,547 |
| 4 | 10-10-2016 | 76,018 | 202 | 30-04-2017 | 3,786 |
| 5 | 20-10-2016 | 37,99,349 | 192 | 30-04-2017 | 1,79,870 |
| 6 | 20-10-2016 | 4,54,867 | 192 | 30-04-2017 | 21,534 |
| 7 | 13-04-2017 | 19,88,446 | 17 | 30-04-2017 | 8,335 |
| 8 | 17-04-2017 | 1,40,117 | 13 | 30-04-2017 | 449 |
| 9 | | 85,08,797 | | TOTAL INTEREST (11) | 3,22,651 |

| 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 | 85,08,797 | 2153 | 24-03-2023 | 8.15 | 10.15 as on 01-05-2017 | 50,94,310 |
| 2 | 22-06-2017 | 20,25,363 | 2101 | 24-03-2023 | 8.15 | 10.15 as on 01-06-2017 | 11,83,319 |
| 3 | 23-07-2017 | 1,03,200 | 2070 | 24-03-2023 | 8.15 | 10.15 as on 01-07-2017 | 59,405 |
| 4 | 23-01-2018 | 15,13,109 | 1886 | 24-03-2023 | 8.1 | 10.1 as on 01-01-2018 | 7,89,660 |
| 5 | 17-07-2019 | 20 | 1346 | 24-03-2023 | 8.6 | 10.6 as on 10-07-2019 | 7 |
| 6 | 17-07-2019 | 82,285 | 1346 | 24-03-2023 | 8.6 | 10.6 as on 10-07-2019 | 32,164 |
| 7 | 17-07-2019 | 618 | 1346 | 24-03-2023 | 8.6 | 10.6 as on 10-07-2019 | 241 |

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| | | | | | | | |
|----|------------|----------|------|------------|------|---------------------------|----------|
| 8 | 31-07-2019 | 82,285 | 1332 | 24-03-2023 | 8.6 | 10.6 as on 10-07-2019 | 31,830 |
| 9 | 27-08-2019 | 81,449 | 1316 | 24-03-2023 | 8.45 | 10.45 as on 10-08-2019 | 30,687 |
| 10 | 27-08-2019 | 180 | 1305 | 24-03-2023 | 8.45 | 10.45 as on 10-08-2019 | 67 |
| 11 | 07-10-2019 | 81,449 | 1264 | 24-03-2023 | 8.35 | 10.35 as on 10-09-2019 | 29,193 |
| 12 | 06-11-2019 | 81,449 | 1234 | 24-03-2023 | 8.25 | 10.25 as on 10-10-2019 | 28,224 |
| 13 | 06-11-2019 | 40 | 1234 | 24-03-2023 | 8.25 | 10.25 as on 10-10-2019 | 13 |
| 14 | 30-11-2019 | 80,640 | 1210 | 24-03-2023 | 8.2 | 10.2 as on 10-11-2019 | 27,267 |
| 15 | 31-12-2019 | 80,640 | 1179 | 24-03-2023 | 8.2 | 10.2 as on 10-12-2019 | 26,568 |
| 16 | 15-01-2020 | 71,842 | 1164 | 24-03-2023 | 8.2 | 10.2 as on 10-01-2020 | 23,368 |
| 17 | 15-02-2020 | 71,842 | 1133 | 24-03-2023 | 8.15 | 10.15 as on 10-02-2020 | 22,635 |
| 18 | 16-03-2020 | 71,425 | 1103 | 24-03-2023 | 8.05 | 10.05 as on 10-03-2020 | 21,691 |
| 19 | 15-04-2020 | 71,425 | 1073 | 24-03-2023 | 7.7 | 9.7 as on 10-04-2020 | 20,367 |
| 20 | 15-05-2020 | 71,425 | 1043 | 24-03-2023 | 7.55 | 9.55 as on 10-05-2020 | 19,491 |
| 21 | 15-06-2020 | 1,24,558 | 1012 | 24-03-2023 | 7.3 | 9.3 as on 10-06-2020 | 32,117 |
| 22 | 15-07-2020 | 1,24,558 | 1012 | 24-03-2023 | 7.3 | 9.3 as on 10-06-2020 | 32,117 |
| 23 | 17-08-2020 | 1,24,558 | 949 | 24-03-2023 | 7.3 | 9.3 as on 10-08-2020 | 30,118 |
| 24 | 15-09-2020 | 1,24,558 | 920 | 24-03-2023 | 7.3 | 9.3 as on 10-09-2020 | 29,197 |
| 25 | 24-09-2020 | 4,471 | 911 | 24-03-2023 | 7.3 | 9.3 as on 10-09-2020 | 1,037 |
| 26 | 24-09-2020 | 9,95,529 | 911 | 24-03-2023 | 7.3 | 9.3 as on 10-09-2020 | 2,31,080 |
| 27 | 15-10-2020 | 1,06,706 | 890 | 24-03-2023 | 7.3 | 9.3 as on 10-10-2020 | 24,197 |
| 28 | 05-11-2020 | 7,700 | 869 | 24-03-2023 | 7.3 | 9.3 as on 10-10-2020 | 1,704 |

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| | | | | | | | |
|----|-----------------|-------------|-----|------------|-----|-----------------------------|-----------|
| 29 | 16-11-2020 | 99,006 | 858 | 24-03-2023 | 7.3 | 9.3 as on 10-11-2020 | 21,644 |
| 30 | 15-12-2020 | 1,06,706 | 829 | 24-03-2023 | 7.3 | 9.3 as on 10-12-2020 | 22,538 |
| 31 | 15-01-2021 | 1,06,706 | 798 | 24-03-2023 | 7.3 | 9.3 as on 10-01-2021 | 21,696 |
| 32 | 15-02-2021 | 1,06,706 | 767 | 24-03-2023 | 7.3 | 9.3 as on 10-02-2021 | 20,853 |
| 33 | 15-03-2021 | 1,06,706 | 739 | 24-03-2023 | 7.3 | 9.3 as on 10-03-2021 | 20,092 |
| 34 | 15-04-2021 | 1,06,706 | 708 | 24-03-2023 | 7.3 | 9.3 as on 10-04-2021 | 19,249 |
| 35 | 15-05-2021 | 1,06,706 | 678 | 24-03-2023 | 7.3 | 9.3 as on 15-05-2021 | 18,433 |
| 36 | 15-06-2021 | 1,06,706 | 647 | 24-03-2023 | 7.3 | 9.3 as on 15-06-2021 | 17,590 |
| 37 | 15-07-2021 | 1,06,706 | 617 | 24-03-2023 | 7.3 | 9.3 as on 15-07-2021 | 16,775 |
| 38 | 15-08-2021 | 1,06,706 | 586 | 24-03-2023 | 7.3 | 9.3 as on 15-08-2021 | 15,932 |
| 39 | 15-09-2021 | 1,06,706 | 555 | 24-03-2023 | 7.3 | 9.3 as on 15-09-2021 | 15,089 |
| 40 | 15-10-2021 | 1,06,706 | 525 | 24-03-2023 | 7.3 | 9.3 as on 15-10-2021 | 14,273 |
| 41 | 15-11-2021 | 1,06,706 | 494 | 24-03-2023 | 7.3 | 9.3 as on 15-11-2021 | 13,430 |
| 42 | 15-12-2021 | 1,06,706 | 464 | 24-03-2023 | 7.3 | 9.3 as on 15-12-2021 | 12,615 |
| 43 | TOTAL AMOUNT | 1,61,78,305 | | | | TOTAL INTEREST (I2) | 80,72,283 |

| Memo Calculation | | | |
|---------------------------|----------------------------------------------------|-------------------------------|---------------------------------------|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2) AS ON 24-03-2023 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 1,61,78,305 | 83,94,934 | 0 | 2,45,73,239 |

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

(Signature)

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28. My answer to Point No. 2:- In view of the above discussion, I proceed to pass the following order:-

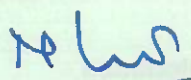
ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220706/0009721** is hereby allowed.

Respondent is directed to pay the amount of **Rs.2,45,73,239/- (Rupees Two Crore Forty Five Lakh Seventy Three Thousand Two Hundred and Thirty Nine only)** towards refund with interest calculated at 9% from 30/05/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 24/03/2023 to the complainants within 60 days from the date of this order. The interest due from 25/03/2023 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA