

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 23<sup>rd</sup> AUGUST, 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/UR/221102/0010154**

**COMPLAINANT.....**

**MS. RACHNA SUNDARARAJAN  
NO.1597, 21<sup>ST</sup> CROSS, 12<sup>TH</sup> MAIN ROAD  
SAHAKARA NAGAR  
BANGALORE-560092.**

**(By Mr.Siddappaji S & Ms.A. Yogasree  
Advocates)**

**Vs**

**RESPONDENTS.....**

**OZONE DEVELOPERS BANGALORE  
PRIVATE LIMITED  
&  
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 "**URBANA AVENUE**" developed by **M/S. OZONE DEVELOPERS BANGALORE PRIVATE LIMITED & 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 for the relief of refund with interest.

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2. This project is not registered under RERA.

**Brief facts of the complaint are as under:-**

3. The complainant had booked a flat bearing No.D 301, 3<sup>rd</sup> Floor, Block-D in the project of the respondents and has paid an advance amount of Rs.7,99,571/- (Rupees Seven Lakh Ninety Nine Thousand Five Hundred and Seventy One only). The complainant has entered into agreement of sale and construction agreement dated 19/11/2015. The complainant also entered into Tripartite Agreement with the respondent and HDFC and availed housing loan of Rs.59,98,171/- (Rupees Fifty Nine Lakh Ninety Eight Thousand One Hundred and Seventy One only) which was disbursed to the respondents 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.

4. The complainant has paid an amount of Rs.85,40,473/- (Rupees Eighty Five Lakh Forty Thousand Four Hundred and Seventy Three only) including PEMIs to the respondents on various dates. As per agreement of sale and construction agreement the respondents were under obligation to handover possession by December 2017 with a grace period of six months i.e. latest by the June 2018. Though more than five years have been lapsed, the respondents are reluctant to complete the construction and have failed to handover the possession of the flat to the complainant.

5. The complainant submits that though the respondents were obligated to pay PEMIs to the Bank till the handing over possession of the flat, paid paltry pre-EMIs to the Bank and stopped paying further PEMIs as agreed and the burden was passed on to the complainant. The complainant submits that an amount of Rs.17,42,731/- (Rupees Seventeen Lakh Forty Two Thousand Seven

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Hundred and Thirty One only) has been paid by her to HDFC towards PEML. Thus, the complainant has approached this Authority, praying for directions to the respondents to refund the entire amount with interest. Hence, this complaint.

6. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through their counsel/representative and have submitted their statement of objections as under:

7. The respondents deny all the allegations made in the complaint by the complainant as false. The respondents submit that the complainant has prayed for refund of the amount paid by her. In order to assist the complainant, they facilitated loan from HDFC whereby the respondents have liability to pay PEMIs to the Bank till December 2017 and the borrower is not absolved from making payments and the repayment liability is of the borrower herself. The respondents further submit that the acceptance of payment by HDFC from the Seller is based on the agreement of the builder paying PEMIs during the liability period.

8. The respondents contend 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."

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9. In view of the above, the respondents pray that the refund of money to the complainant may be limited to own contribution made by the complainant and that the respondents may be allowed to close the loan.

10. The respondents submit that they have made PEMI payments to the tune of Rs.9,44,191/- (Rupees Nine Lakh Forty Four Thousand One Hundred and Ninety One only) which may be taken on record by the Hon'ble Authority against the final amount due to the complainant. The respondents further contend that the complainant has not considered the delay interest to the tune of Rs.1,01,590/- (Rupees One Lakh One Thousand Five Hundred and Ninety only) payable on account of delayed payments made by her, to which the respondent is entitled. The respondent also submits that as per the terms of the Tripartite agreement, the complainant is entitled to receive refund on payments made in respect of PEMI, 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.

11. The respondent submits that the complainant has claimed that she has made PEMI payments to the tune of Rs.17,42,731/- to the HDFC but has not furnished details/receipts to the respondent to facilitate payment, if payable by the respondents and pray the Authority to take on record the memo of calculation put forth by the respondents as shown below:-

1. Customer's own contribution – Rs.7,99,571/-
2. Interest payable to the customer – Rs.5,87,404/-
3. Housing Loan due to HDFC – Rs.59,98,171/-
4. PEMIs paid by respondents to Bank – Rs.9,44,191/-
5. Interest payable by the complainant for delayed payments – Rs.1,01,590/-



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6. Total amount payable to the complainant – Rs.12,85,385/- (after deduction of interest payable by the complainant for delayed payments).

12. In support of their defence, the respondents have filed copies of documents such as tripartite agreement, payment schedule, demand note dated 30/10/2015, 12/11/2015, 18/01/2016, 03/06/2016, 17/10/2016, 20/08/2016 and calculation sheet as on 09/03/2023.

13. In support of her claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite 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 04/05/2023.

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 respondents have failed to handover possession of the flat to the complainant herein within agreed time even after receiving substantial sale consideration amount. As per

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the terms of agreement of sale and construction between the parties, the possession of the apartment had to be handed over before the end of December 2017 with a grace period of six months i.e. latest by June 2018. As per the tripartite agreement, the respondent had agreed to pay pre-EMIs to the Bank till the handover of the flat to the complainant. Though the respondent paid PEMIs initially 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 has already paid substantial sale consideration amount to the respondents. Having accepted the said amount and failure to keep up promise to handover possession of the flat even after five years and not paying 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 respondents and the complainant and has disagreed with the contentions of the respondents that the liability of paying PEMIs is only upto the liability period i.e. December 2017 and that the complainant is liable to pay PEMI/EMIs after the liability period.

20. The Hon'ble Authority also did not accept the contention of the respondents that the complainant is entitled to receive refund on payments made in respect of PEMIs, own contribution and interest applicable only after the respondents have made payments in favour of the lending institution to facilitate the closure of the loan sanctioned.

21. The complainant has submitted proof of evidence in the form of statement of accounts issued by the HDFC for having paid PEMIs.



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22. 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."*

23. 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*

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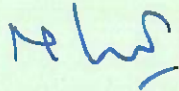
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*of delay till the handing over of the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himanshu Giri came under the later category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the project or claim return on his investment."*

24. 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.

25. 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.

26. The complainant has claimed Rs.1,09,45,128/- (Rupees One Crore Nine Lakh Forty Five Thousand One Hundred and Twenty Eight only) vide her memo of calculation as on 04/05/2023 towards refund with interest. The respondents in their revised calculation sheet as on 09/03/2023 submitted on 10/07/2023 claim that the refund amount with interest payable to the complainant is Rs.12,85,385/- after deducting the interest payable by the complainant for the delayed payments. The Hon'ble Authority has not agreed with the claim made by the respondents as they had failed to handover possession of the flat to the complainant within stipulated time and failed to pay PEMIs as agreed.

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27. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide her memo of calculation as on 04/05/2023.

28. 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	67,97,742	0	30-04-2017	0
2		67,97,742		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	67,97,742	2194	04-05-2023	8.15	10.15 as on 01-05-2017	41,47,386
2	TOTAL AMOUNT	67,97,742				TOTAL INTEREST ( I2 )	41,47,386

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 04-05-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
67,97,742	41,47,386	0	1,09,45,128

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

*(Signature)*

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

**ORDER**

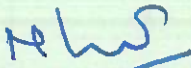
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/UR/221102/0010154** is hereby allowed.

The respondent is directed to pay the amount of **Rs.1,09,45,128/- (Rupees One Crore Nine Lakh Forty Five Thousand One Hundred and Twenty Eight only)** towards refund with interest calculated at MCLR + 2% from 01/05/2017 till 04/05/2023 to the complainant within 60 days from the date of this order.

The interest due from 05/05/2023 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