

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 4TH SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221007/0010054

COMPLAINANTS.....

**MUNNA SHARMA &
SHRADHA KUMARI
CHIRALI (KHIZERSARI) - 824233
DISTRICT: GAYA
STATE: BIHAR**

(BY MR. VIKAS M, ADVOCATE)

Vs

RESPONDENT.....

**OZONE REALTORS PRIVATE LIMITED
NO.51/7-1, RATHNA AVENUE
OFF. RICHMOND ROAD
CIVIL STATION
BANGALORE-560025.**

**(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 POLESTAR**" developed by **M/S. OZONE REALTORS PRIVATE LIMITED** situated at Sy.No.78/5, Nagavara Village, Kasaba Hobli, Bengaluru North Taluk, Bengaluru Urban District for the relief of refund with interest.
2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1251/309/PR/171015/000386 and was valid till

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

31/03/2021. The Authority gave covid extension for 9 months valid till 31/12/2021.

Brief facts of the complaint are as under:-

3. The complainants submit that they have purchased a flat bearing No.A-802, 8th Floor, Tower A in the project of the respondent for a total sale consideration of Rs.89,72,610/- (Rupees Eighty Nine Lakh Seventy Two Thousand Six Hundred and Ten only) and entered into an agreement of sale dated 02/11/2018. The complainants submit that they have paid Rs.41,63,855/- (Rupees Forty One Lakh Sixty Three Thousand Eight Hundred and Fifty Five only) to the respondent on various dates. The respondent was supposed to handover the flat to the complainants by December 2021. The respondent has not handed over the flat to the complainants till date.
4. The complainants submit that they had applied for loan from HDFC and entered into tripartite agreement dated 15/11/2018 with the respondent and bank. The complainants submit that in spite of making scheduled payments to the respondent, the construction of the flat belonging to the complainants has not started. The complainants submit that the respondent vide their letter dated 15/3/2019 was obligated to pay subvention interest till the intimation of the Unit being ready for handover as per terms and conditions of handing over and possession as reflected in agreement of sale. But the respondent stopped making the PEMI payment.
5. The complainants submit that through an email dated 12/9/2022 they had also intimated the Ozone that they are no more interested in getting the unit and sought for refund of amount. But so far the respondent has not reimbursed the money to the complainants. Thus, the complainants

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

have approached this Authority, praying for directions to the respondent to refund the entire amount with interest and Rs.1,00,000/- as compensation. Hence, this complaint.

6. 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:
7. The respondent denies all the allegations made against them by the complainants as false. The respondent submits that the complainants have prayed for refund of the amount paid by them. In order to assist the complainants, they facilitated loan from HDFC. The respondent contends that as per tripartite agreement entered between both the parties the complainants have the liability to pay PEMI to the Bank and EMI after possession.
8. The respondent further submits that there is a mismatch in the principal amount claimed by the complainants in their memo of calculation to the tune of Rs.4,30,604/-. The respondent submits that the complainants have not submitted any proof in respect of all PEMIs claimed to have been paid by them to the HDFC and have requested the complainants to produce documentary evidence in respect of PEMIs to reconcile with the difference amount.
9. The respondent contends that the sanctioned housing loan falls under the subvention scheme and accordingly Rs.31,40,160/- was disbursed by the bank out of which Rs.4,05,091/- was subtracted as part of PEMI paid by the respondent in accordance with the agreement. The

Handwritten signature

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

respondent submits that in all Rs.4,82,265/- has been paid towards PEMI which has not been taken into consideration by the complainants in their memo of calculation. The respondent submits that they have submitted proof of transaction of PEMIs before the Authority.

10. The respondent prays the Hon'ble Authority to take on record the MOC put forth by the respondent as shown below:-
 1. Complainants own contribution – Rs.4,48,265/-
 2. PEMI paid by the respondent – Rs.4,82,265/-
 3. Interest payable to the Complainants – Rs.2,11,985/-
 4. Total amount payable to the complainants – Rs.6,60,250/- (Own contribution + Interest)
11. In support of their defence, the respondent has filed copies of documents such as agreement of sale, tripartite agreement and revised calculation sheet as on 31/03/2023.
12. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Tripartite Agreement, Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainant and housing loan disbursement, Payment receipts, subvention scheme letter dated 15/3/2019 and Memo of calculation for refund with interest as on 04/02/2023.
13. This case was heard on 31/1/2023, 09/02/2023, 12/4/2023, 21/6/2023 and 27/07/2023. Heard arguments of both sides.
14. **On the above averments, the following points would arise for my consideration:-**
 - a. Whether the complainants are entitled for the relief claimed?
 - b. What order?

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

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

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

REASONS

16. My answer to Point No.1:- It is undisputed that the respondent has failed to refund the money deposited with guaranteed profits to the complainants herein within agreed time even after receiving substantial sale consideration amount. The respondent has also failed to handover the flat to the complainants by December 2021 and to pay PEMIs to the Bank as agreed.

17. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants were supposed to get back the amount invested from the respondent under buyback agreement. Having accepted to return the amount deposited with guaranteed profits, the respondent failed to refund the money even after the complainants informed them to cancel the unit and sought refund neither handed over the flat to the complainants as agreed 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 the respondent and the complainants. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced in accordance with law, and hence it is necessary that it shall be free from any ambiguity and vagueness. Here in this case, the respondent has not given possession of the said flat to the complainants as agreed and has not complied with the terms of said agreement of sale. Therefore, the Authority has not accepted the contentions of the respondent

Handwritten signature

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

made in their written submissions. As regards payment of PEMIs the complainants, the Authority noticed that the complainants have submitted proof of evidence in the form of statement of accounts issued by HDFC for having paid PEMIs by them to the HDFC.

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

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

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.58,45,540/- (Rupees Fifty Eight Lakh Forty Five Thousand Five Hundred and Forty only) vide their memo of calculation as on 04/02/2023 towards refund with interest. The respondent in their revised calculation sheet as on 31/3/2023 claim that the refund amount with interest payable to the complainants is Rs.38,00,860/-. The Hon'ble Authority did not agree with the claim submitted by the respondent as they

Handwritten signature

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

had failed to refund the money to the complainant as agreed in the buyback agreements and also failed to pay PEMIs though they had agreed to pay PEMIs till the handing over possession of the flat vide their letter dated 15/3/2019.

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 04/02/2023.

25. Further, the complainants have sought for Rs.1,00,000/- as compensation which does not come under the jurisdiction of this Hon'ble 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	30-04-2017	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	2105	04-02-2023	8.15	10.15 as on 01-05-2017	0
2	01-10-2018	50,000	1587	04-02-2023	8.7	10.7 as on 01-10-2018	23,261
3	09-10-2018	50,000	1579	04-02-2023	8.7	10.7 as on 01-10-2018	23,144
4	25-10-2018	4,500	1563	04-02-2023	8.7	10.7 as on 01-10-2018	2,061

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

5	02-11-2018	7,250	1555	04-02-2023	8.7	10.7 as on 01-11-2018	3,304
6	03-11-2018	3,48,265	1554	04-02-2023	8.7	10.7 as on 01-11-2018	1,58,654
7	21-11-2018	31,40,610	1536	04-02-2023	8.7	10.7 as on 01-11-2018	14,14,152
8	30-09-2020	22,188	857	04-02-2023	7.3	9.3 as on 10-09-2020	4,844
9	31-10-2020	22,188	826	04-02-2023	7.3	9.3 as on 10-10-2020	4,669
10	30-11-2020	22,171	796	04-02-2023	7.3	9.3 as on 10-11-2020	4,496
11	31-12-2020	21,904	765	04-02-2023	7.3	9.3 as on 10-12-2020	4,269
12	01-02-2021	21,904	733	04-02-2023	7.3	9.3 as on 10-01-2021	4,090
13	01-03-2021	20,163	705	04-02-2023	7.3	9.3 as on 10-02-2021	3,621
14	31-03-2021	21,904	675	04-02-2023	7.3	9.3 as on 10-03-2021	3,767
15	30-04-2021	21,904	645	04-02-2023	7.3	9.3 as on 10-04-2021	3,599
16	31-05-2021	21,903	614	04-02-2023	7.3	9.3 as on 15-05-2021	3,426
17	30-06-2021	21,769	584	04-02-2023	7.3	9.3 as on 15-06-2021	3,239
18	31-07-2021	21,769	553	04-02-2023	7.3	9.3 as on 15-07-2021	3,067
19	31-08-2021	21,769	522	04-02-2023	7.3	9.3 as on 15-08-2021	2,895
20	30-09-2021	21,769	492	04-02-2023	7.3	9.3 as on 15-09-2021	2,728
21	31-10-2021	21,769	461	04-02-2023	7.3	9.3 as on 15-10-2021	2,556
22	30-11-2021	21,769	431	04-02-2023	7.3	9.3 as on 15-11-2021	2,390
23	31-12-2021	21,769	400	04-02-2023	7.3	9.3 as on 15-12-2021	2,218
24	31-01-2022	21,769	369	04-02-2023	7.3	9.3 as on 15-01-2022	2,046

Handwritten signature

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

25	28-02-2022	21,769	341	04-02-2023	7.3	9.3 as on 15-02-2022	1,891
26	31-03-2022	21,769	310	04-02-2023	7.3	9.3 as on 15-03-2022	1,719
27	30-04-2022	21,769	280	04-02-2023	7.4	9.4 as on 15-04-2022	1,569
28	31-05-2022	21,769	249	04-02-2023	7.5	9.5 as on 15-05-2022	1,410
29	30-06-2022	22,838	219	04-02-2023	7.7	9.7 as on 15-06-2022	1,329
30	31-07-2022	22,838	188	04-02-2023	7.8	9.8 as on 15-07-2022	1,152
31	31-08-2022	22,838	157	04-02-2023	8	10.0 as on 15-08-2022	982
32	30-09-2022	25,509	127	04-02-2023	8	10.0 as on 15-09-2022	887
33	TOTAL AMOUNT	41,52,105				TOTAL INTEREST (I2)	16,93,435

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 04-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
41,52,105	16,93,435	0	58,45,540

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

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/221007/0010054** is hereby allowed.

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

Respondent is directed to pay the amount of **Rs.58,45,540/-**
(Rupees Fifty Eight Lakh Forty Five Thousand Five
Hundred and Forty only) towards refund with interest
calculated at MCLR + 2% from 01/10/2018 till 04/02/2023
to the complainants within 60 days from the date of this
order.

The interest due from 05/02/2023 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

NOT AN OFFICIAL COPY