

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 4<sup>th</sup> SEPTEMBER, 2023**

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

**COMPLAINT NO.: CMP/221010/0010070**

**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)**

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

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

3. The complainants submit that they have purchased a flat bearing No.402, 4<sup>th</sup> Floor, Tower A in the project of the respondent and entered into an agreement of sale dated 02/11/2018. The complainants have paid Rs.40,19,479/- (Rupees Forty Lakh Nineteen Thousand Four Hundred and Seventy Nine only) to the respondent on various dates. The respondent was supposed to handover the flat in December 2021 but 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 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



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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.5,45,399/-. 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.30,40,129/- was disbursed by the bank out of which Rs.3,92,123/- was subtracted as part of PEMI paid by the respondent in accordance with the agreement. The respondent submits that in all Rs.4,67,494/- 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.

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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.4,33,951/-
  2. PEMI paid by the respondent – Rs.4,67,494/-
  3. Interest payable to the Complainants – Rs.2,05,242/-
  4. Total amount payable to the complainants – Rs.6,39,193/- (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 05/02/2023.
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?
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 the said agreement of sale. Therefore, the Authority has not accepted the contentions of the respondent 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.



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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*

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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."*

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.56,61,981/- (Rupees Fifty Six Lakh Sixty One Thousand Nine Hundred and Eighty One only) vide their memo of calculation as on 05/02/2023 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.36,79,322/-. The Hon'ble Authority did not agree with the claim submitted by the respondent as they 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.

*HLS*



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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 05/02/2023.

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 (11)	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	2106	05-02-2023	8.15	10.15 as on 01-05-2017	0
2	01-10-2018	50,000	1588	05-02-2023	8.7	10.7 as on 01-10-2018	23,276
3	09-10-2018	50,000	1580	05-02-2023	8.7	10.7 as on 01-10-2018	23,158
4	25-10-2018	4,500	1564	05-02-2023	8.7	10.7 as on 01-10-2018	2,063
5	02-11-2018	7,060	1556	05-02-2023	8.7	10.7 as on 01-11-2018	3,220
6	03-11-2018	3,33,951	1555	05-02-2023	8.7	10.7 as on 01-11-2018	1,52,231
7	21-11-2018	30,40,129	1537	05-02-2023	8.7	10.7 as on 01-11-2018	13,69,798
8	30-09-2020	21,478	858	05-02-2023	7.3	9.3 as on 10-09-2020	4,695



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9	31-10-2020	21,478	827	05-02-2023	7.3	9.3 as on 10-10-2020	4,525
10	30-11-2020	21,461	797	05-02-2023	7.3	9.3 as on 10-11-2020	4,358
11	31-12-2020	21,203	766	05-02-2023	7.3	9.3 as on 10-12-2020	4,138
12	01-02-2021	21,203	734	05-02-2023	7.3	9.3 as on 10-01-2021	3,965
13	01-03-2021	19,518	706	05-02-2023	7.3	9.3 as on 10-02-2021	3,510
14	31-03-2021	21,203	676	05-02-2023	7.3	9.3 as on 10-03-2021	3,652
15	31-03-2021	21,073	676	05-02-2023	7.3	9.3 as on 10-03-2021	3,629
16	30-04-2021	21,203	646	05-02-2023	7.3	9.3 as on 10-04-2021	3,489
17	31-05-2021	21,202	615	05-02-2023	7.3	9.3 as on 15-05-2021	3,322
18	30-06-2021	21,073	585	05-02-2023	7.3	9.3 as on 15-06-2021	3,141
19	31-07-2021	21,073	554	05-02-2023	7.3	9.3 as on 15-07-2021	2,974
20	31-08-2021	21,073	523	05-02-2023	7.3	9.3 as on 15-08-2021	2,808
21	30-09-2021	21,073	493	05-02-2023	7.3	9.3 as on 15-09-2021	2,647
22	31-10-2021	21,073	462	05-02-2023	7.3	9.3 as on 15-10-2021	2,480
23	30-11-2021	21,073	432	05-02-2023	7.3	9.3 as on 15-11-2021	2,319
24	31-12-2021	21,073	401	05-02-2023	7.3	9.3 as on 15-12-2021	2,153
25	31-01-2022	21,073	370	05-02-2023	7.3	9.3 as on 15-01-2022	1,986
26	28-02-2022	21,073	342	05-02-2023	7.3	9.3 as on 15-02-2022	1,836
27	30-04-2022	21,073	281	05-02-2023	7.4	9.4 as on 15-04-2022	1,524
28	31-05-2022	21,073	250	05-02-2023	7.5	9.5 as on 15-05-2022	1,371

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29	30-06-2022	22,107	220	05-02-2023	7.7	9.7 as on 15-06-2022	1,292
30	31-07-2022	22,107	189	05-02-2023	7.8	9.8 as on 15-07-2022	1,121
31	31-08-2022	22,107	158	05-02-2023	8	10.0 as on 15-08-2022	956
32	30-09-2022	24,693	128	05-02-2023	8	10.0 as on 15-09-2022	865
33	TOTAL AMOUNT	40,19,479				TOTAL INTEREST ( I2 )	16,42,502

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 05-02-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
40,19,479	16,42,502	0	56,61,981

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/221010/0010070** is hereby allowed.

Respondent is directed to pay the amount of **Rs.56,61,981/-** (Rupees Fifty Six Lakh Sixty One Thousand Nine Hundred and Eighty One only) towards refund with interest calculated at MCLR + 2% from 01/10/2018 till 05/02/2023 to the complainants within 60 days from the date of this order.

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The interest due from 06/02/2023 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

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