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 5TH SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220321/0009207

COMPLAINANTS.....

GOURVENDU SAXENA
& RISHU SRIVASTAVA
23, 24, TIRUPATHI VIHAR
BAREILLY, IZZAT NAGAR
BAREILLY – 243122
STATE: UTTAR PRADESH
DISTRICT BAREILLY

(BY MR. POORNACHANDRA B PATTAR & OTHERS, ADVOCATES)

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 Rural 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.

Brief facts of the complaint are as under:-

3. The complainants had booked a flat bearing No. W-304, 3rd Floor, Block W in the project of the respondent and entered into agreement for sale dated 25/09/2017. The complainants entered into Tripartite Agreement with the Bank/Respondent for housing loan. The complainants also entered into buyback agreement on 25/10/2017. The complainants submit that the respondent was liable to pay PEMIs to the Bank. The respondent was supposed to handover the possession of the flat by December 2022 with a grace period of six months i.e. by June 2023. But Ozone stopped paying PEMI and now the bank is initiating action against the complainants. The complainants submit that both the Bank and the respondent have colluded and hence without proper diligence the loan was disbursed. The complainants further submit that the respondent has received his money whereas the construction work is not completed and the loan is being recovered from the complainants instead of from the respondent as agreed. The complainants submit that they have complied with the terms of agreement. Thus the complainants have approached this Authority and pray for direction to the respondent to refund entire amount with interest, exit from project with closure of loan account. 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 written submission as under:

5. The respondent denies all the allegations made against them in the complaint by the complainants as false. In order to assist the complainants financially, the respondent undertook to be a part of Tripartite Agreement in 25/9/2017 and facilitated housing loan to the complainants 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.

6. The respondent submits that the complainants have entered into buyback agreement dated 25/10/2017 which enables the complainants to receive the equivalent sum of their own contribution as profit on the investments made upon expiry of 24 months from the date of execution of buyback agreement. The respondent further submits that the complainants have made an investment of Rs.9,51,658/- as initial booking advance amount and that the complainants have issued a notice to the respondent seeking exercise the option of buyback agreement. The respondent contends that they have made the payment of Rs.9,51,658/- plus profit of Rs.9,51,658/- in favour of the complainants.

7. The respondent submits that due to Covid-19 pandemic and lockdowns caused significant decline in their revenue and resulted in financial losses and therefore, the respondent was constrained to execute two supplemental agreements with the complainants and extend the buyback period.

8. The respondent also submits that they have made payments to the tune of Rs.9,51,658/- they have also paid delay compensation to the tune of Rs.4,75,000/- in favour of the complainants.

9. The respondent submits that the complainants have omitted the payments made by the respondent towards subvention and PEMI scheme. The respondent also submits that as per the terms of the tripartite agreement between the parties and lending institution, it is clearly stipulated that the borrower agrees to unconditionally and irrevocably subrogate its right to receive any amounts payable to the complainants in the event of cancellation of the agreements, the payment shall be made in favour of the lending institution first. Thus, the complainants are entitled to received refund of PEMIs, 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.

10. The respondent submits that the complainants have sought for refund of PEMIs paid by them. The respondent submits that the complainants should provide proof of payments.

11. The respondent also contends that the complainants have already received 100% refund and therefore not entitled to receive compensation.

12. The respondent submits that the Hon'ble Authority may please take on record the revised MOC put forth by the respondent in the interest of justice.

13. The complainants in their rejoinder to the written submission submitted by the respondent submits that the respondent has refunded Rs.8,60,040/- on 22/11/2019, however TDS was not refunded. The complainants contends that the respondent has refunded Rs.9,51,658/- on 28/1/2020 which was 100% profit under buyback agreement which

the respondent had undertook to pay and it cannot be considered as refund.

14. The complainants submit that the respondent has paid amount of Rs.1,00,000/- and Rs.1,25,000/- was part of the compensation towards two units, 2,50,000/-, Rs.1,43,070/- Rs.50,120/-, are part of PEMI reimbursement which cannot be considered as refund towards the principal amount.

15. The complainants pray this Hon'ble Authority to set aside the calculation of the respondent and issue directions on the basis of the memo of calculation submitted by them with documentary proof as they do not intend to proceed with the project and want to exit from the project.

16. In support of their defence, the respondent has filed copies of documents such as agreement of sale, tripartite agreement, buy back agreement, bank statement reflecting transactions made in favour of the complainants, supplemental agreements and revised calculation sheet as on 31/03/2023.

17. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, allotment letter, payment receipts, buyback agreement, supplement agreements, Housing Loan Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainants and Memo of calculation for refund with interest as on 27/11/2022.

18. This case was heard on 5/7/2022, 20/7/2022, 3/8/2022, 15/9/2022, 18/10/2022, 22/11/2022, 13/12/2022, 31/1/2023, 9/2/2023, 12/4/2023, 21/6/2023, 27/7/2023 and 16/8/2023. Heard arguments of both sides.

19. **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?

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

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

REASONS

21. My answer to point No.1:- It is undisputed that the respondent has failed to handover possession of the flat to the complainants herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over before the end of December 2022 with a grace period of six months i.e. latest by June 2023 and though the respondent had paid PEMIs initially, later stopped paying pre-EMIs to the Bank.

22. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant was supposed to get the flat delivered by December 2022 with a grace period of six months i.e. latest by June 2023, the respondent is nowhere near completion of the project and that the project is stalled for the past three years. Having agreed to pay PEMIs to the Bank, the respondent has failed to pay pre-EMIs to the Bank, certainly entitles the complainants herein for refund of entire amount with interest.

23. The Hon'ble Authority has perused the written submission submitted by the respondent and written submissions/rejoinder of 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 Hon'ble Authority has disagreed with the contentions of the respondent that the complainants are entitled to receive refund of 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.

24. The complainants have submitted proof of evidence to the Hon'ble Authority in the form of Housing Loan statement of accounts issued by HDFC for having paid PEMIs by the complainants to the HDFC.

25. During the process of the hearing, the complainants submitted a memo pleading for amendment of project name as "Ozone Urbana" which has been wrongly mentioned as "South End" in the complaint. The Authority accepted the same accordingly.

26. The complainants have also admitted that they have received refund of Rs.8,60,040/- from the respondent on 22/11/2019.

27. 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."

28. 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."*

29. 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.

30. 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.

31. The complainants have claimed Rs.1,13,55,975/- (Rupees One Crore Thirteen Lakh Fifty Five Thousand Nine Hundred and Seventy Five only) vide their memo of calculation as on 27/11/2022 towards refund with interest. Though the respondent has submitted their revised calculation sheet as on 31/03/2023, the Authority has not accepted the same.

32. 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 27/11/2022.

33. 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	935	22-11-2019	8.15	10.15 as on 01-05-2017	0

2	06-07-2017	1,00,000	869	22-11-2019	8.15	10.15 as on 01-07-2017	24,165
3	08-08-2017	88,114	836	22-11-2019	8.15	10.15 as on 01-08-2017	20,484
4	08-08-2017	7,63,554	836	22-11-2019	8.15	10.15 as on 01-08-2017	1,77,508
5	28-10-2017	56,32,281	755	22-11-2019	8.15	10.15 as on 01-10-2017	11,82,508
6	29-01-2018	9,38,714	662	22-11-2019	8.1	10.1 as on 01-01-2018	1,71,956
7	30-10-2018	4,69,357	388	22-11-2019	8.7	10.7 as on 01-10-2018	53,385
8	30-09-2021	47,690	423	27-11-2022	7.3	9.3 as on 15-09-2021	5,139
9	01-11-2021	47,690	391	27-11-2022	7.3	9.3 as on 15-10-2021	4,751
10	30-11-2021	47,690	379	27-11-2022	7.3	9.3 as on 15-10-2021	4,605
11	31-12-2021	47,690	331	27-11-2022	7.3	9.3 as on 15-12-2021	4,022
12	31-01-2022	47,690	300	27-11-2022	7.3	9.3 as on 15-01-2022	3,645
13	28-02-2022	47,690	272	27-11-2022	7.3	9.3 as on 15-02-2022	3,305
14	TOTAL AMOUNT	82,78,160				TOTAL INTEREST (I2)	16,55,473

Refund Interest Calculation From 01/05/2017 (After RERA)									
S. NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	82,78,160	22-11-2019	8,60,040	74,18,120	1101	27-11-2022	8.2	10.2 as on 10-11-2019	22,82,382
2								TOTAL INTEREST (I3)	22,82,382

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 27-11-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
82,78,160	39,37,855	8,60,040	1,13,55,975

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

35. 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/220321/0009207** is hereby allowed.

The respondent is directed to pay the amount of **Rs.1,13,55,975/- (Rupees One Crore Thirteen Lakh Fifty Five Thousand Nine Hundred and Seventy Five only) towards refund with interest** calculated at MCLR + 2% from 06/07/2017 till 27/11/2022 to the complainants within 60 days from the date of this order. The interest due from 28/11/2022 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