

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 7TH SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221115/0010329

COMPLAINANT.....

**SUNNY SHENDE
B-302, AURA, OZONE URBANA
KANNAMANGALA
BANGALORE-562110
BANGALORE RURAL DIST**

**(BY MR. AKASH R BANTIA,
ADVOCATE)**

Vs

RESPONDENT.....

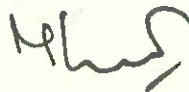
**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
BANGALORE-560042.**

**(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 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.



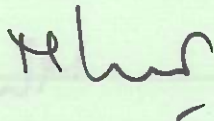
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Brief facts of the complaint are as under:-

3. The complainant submits that he had booked a flat F-G02 in Ozone Urbana Belvedere project of the respondent and entered into agreement of sale dated 23/12/2015 with a tripartite subvention scheme wherein 10% was due initially, 80% was to be funded by bank/financial institution and 10% due at the time of registration and handover of the flat. Vide their letter dated 31/12/2015 the terms of the subvention scheme laid-out is that the respondent will bear PEMI costs till intimation of possession and handover of the flat. The complainant submits that the Ozone Group paid PEMIs till June 2019. The respondent stopped paying PEMIs and passed on the burden to the complainant. The respondent was supposed to handover the flat by December 2017 with a grace period of six months i.e. latest by the end of June 2018, but has not handed over the flat till date. The complainant submits that there is a huge delay in handing over of the flat.
4. The complainant submits that the CEO Ozone notified PEMIs burden will have to be borne by the complainant till handover of the flat which would be six months from the date of the email and the payments made by the complainant will be adjusted during registration citing government regulations and issued credit notes to the complainant along with an undertaking that the project would be handed over within six months but the respondent has neither paid the PEMI nor handed over possession of the flat. The complainant submits that this is not in compliance with the provisions of the subvention scheme and the letter. The complainant also submits that there is a huge delay in handing over the flat as promised. The respondent has received his money whereas the work is incomplete. The complainant also submits that the bank is recovering the housing loan from the complainant instead of from the



respondent. The complainant further submits that due to exorbitant interest rates, he moved his loan to Axis Bank. The complainant also submits that he has complied with the terms of the agreement. Thus, the complainant has approached this Authority, praying for directions to the respondent to refund the entire amount with interest and closure of loan. Hence, this complaint.

5. The complainant submits that the respondent has not paid pre-EMIs to the Bank and neither the buyback amount nor the deposited amount. The complainant further submits that the Bank has initiated action against him for not paying EMIs and has classified the loan as NPA. The complainant had to approach the Hon'ble High Court of Karnataka for relief in this regard.
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 complainant as false. The respondent submits that the complainant has prayed for refund of the amount paid by him. In order to assist the complainant, they facilitated loan from Indiabulls Housing Finance Limited.
8. The respondent contends that as the complainant has opted for cancellation before the Hon'ble Authority, they are constrained to invoke Clause 13 of the tripartite agreement which deals with the obligation of parties in the event of cancellation request initiated which reads as under:

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“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 IHFL.”

9. In view of the above, the respondent submits that they are liable to close the pending disbursed loan of Rs.81,70,000/- to the financial institution and that the prayer of the complainant may be limited to own contribution of Rs.11,42,748/- and that the respondent may be allowed to close the loan.
10. The respondent further submits that the complainant is liable to pay interest to the tune of Rs.3,05,238/- for delay in making scheduled payments to the respondent.
11. The respondent submits that the Hon'ble Authority may please take on record the MOC put forth by the respondent as shown below:-
1. Customer's own contribution – Rs.11,42,748/-
 2. Housing Loan due to IHFL – Rs.81,70,000/-
 3. Subvention and PEMI paid by Ozone to Bank – Rs.15,40,389/-
 4. Interest payable by the complainant for delayed payments – Rs.3,05,238/-
 5. Total amount payable to the complainant – Rs.16,95,638/- (after deduction of interest payable by the complainant for delayed payments)
12. The complainant in his rejoinder to the written submissions and MOC by the respondent submits that the subvention scheme on the basis of which the tripartite agreement was executed, the respondent had promised to pay PEMI until handing over of the Unit. The complainant

contends that due to non-payment of PEMIs by the respondent and not handing over the flat on time, the CIBIL score of the complainant has been severely affected. The complainant also contends that there is no delay in making payments to the respondent as scheduled. The complainant also submits that the respondent has not taken into account PEMI component in their calculation sheet. The complainant submits that contractually PEMI was supposed to be paid by the respondent. As the respondent has failed to pay PEMI, the payment made towards PEMI by the complainant has to be taken into consideration. The complainant further submits that he has furnished relevant receipts and bank statements in support of his claim.

13. In support of their defence, the respondent has filed copies of documents such as agreement of sale, construction agreement, tripartite agreement, delay payment schedule with demand notes and revised calculation sheet as on date not mentioned.

14. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, Statement of Account issued by IHFL/Axis Bank pertaining to payment of PEMIs by the complainant, Payment receipts, Subvention Scheme letter dated 31/12/2015 and Memo of calculation for refund with interest as on 20/02/2023.

15. This case was heard on 21/2/2023, 09/03/2023, 30/05/2023 05/07/2023 and 3/8/2023. Heard arguments of both sides.

16. **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?

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

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

REASONS

18. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale and construction agreement to handover the possession of the flat, the respondent has not completed the project as per agreement and has delayed the project. The respondent has failed to handover the flat in favour of the complainant till date and to refund the amount with closure of loan account. The respondent has also failed to pay PEMIs as agreed. Hence, the respondent has failed to abide by the terms of the agreement for sale and construction agreement dated 23/12/2015. There seems to be no possibility of completing the project or handing over the possession of the flat in near future.
19. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to handover the possession of the flat and not paying PEMIs as agreed certainly entitles the complainant herein for refund with interest.
20. The Hon'ble Authority has perused the written submissions submitted by the respondent and the complainant. The Hon'ble Authority has disagreed with the contentions of the respondent that the complainant is 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.

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21. The complainant further submits that he has obtained interim stay from the Hon'ble High Court of Karnataka against the Bank regarding payment of PEMIs etc., in W.P.No.23046/2022/2021 (GM-RES) between Harmanjit Singh Gill v/s Union of India wherein an Interim Order is granted on 23/1/2023 that till the next date of hearing, the respondents shall not precipitate the issue against the petitioner.

22. The complainant has submitted proof of evidence in the form of statement of accounts issued by IHFL/Axis Bank for having paid PEMIs to the financial institutions.

23. 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."

24. 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

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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."

25. 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.
26. 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.
27. The complainant has claimed Rs.1,90,52,481/- (Rupees One Crore Ninety Lakh Fifty Two Thousand Four Hundred and Eighty One only) vide his memo of calculation as on 20/02/2023 towards refund with interest. The respondent in their revised calculation sheet as on dated

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Nil submitted on 05/07/2023 claim that the refund amount with interest payable to the complainant is Rs.98,65,638/- including housing loan. The Hon'ble Authority has not agreed with the calculation of the respondent.

28. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 20/02/2023.
29. 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	02-11-2015	1,00,000	545	30-04-2017	13,438
2	19-12-2015	10,74,583	498	30-04-2017	1,31,952
3	31-12-2015	58,75,344	486	30-04-2017	7,04,075
4	18-03-2016	11,40,000	408	30-04-2017	1,14,687
5	11-05-2016	6,21,874	354	30-04-2017	54,281
6	09-08-2016	5,32,782	264	30-04-2017	34,681
7		93,44,583		TOTAL INTEREST (I1)	10,53,114

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	93,44,583	2121	20-02-2023	8.15	10.15 as on 01-05-2017	55,11,550
2	25-06-2018	45,669	1700	19-02-2023	8.45	10.45 as on 01-06-2018	22,227
3	10-07-2019	70,126	1320	19-02-2023	8.6	10.6 as on 10-07-2019	26,882

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4	07-08-2019	30,394	1292	19-02-2023	8.6	10.6 as on 10-07-2019	11,404
5	07-08-2019	44,683	1293	20-02-2023	8.6	10.6 as on 10-07-2019	16,778
6	13-08-2019	18,052	1286	19-02-2023	8.45	10.45 as on 10-08-2019	6,646
7	11-09-2019	62,179	1258	20-02-2023	8.35	10.35 as on 10-09-2019	22,180
8	10-10-2019	59,349	1229	20-02-2023	8.25	10.25 as on 10-10-2019	20,483
9	10-11-2019	61,327	1197	19-02-2023	8.2	10.2 as on 10-11-2019	20,514
10	10-12-2019	59,349	1167	19-02-2023	8.2	10.2 as on 10-12-2019	19,354
11	10-01-2020	61,327	1136	19-02-2023	8.2	10.2 as on 10-01-2020	19,468
12	10-02-2020	61,327	1105	19-02-2023	8.15	10.15 as on 10-02-2020	18,844
13	11-03-2020	55,007	1075	19-02-2023	8.05	10.05 as on 10-03-2020	16,281
14	13-04-2020	57,839	1042	19-02-2023	7.7	9.7 as on 10-04-2020	16,016
15	10-05-2020	55,973	1015	19-02-2023	7.55	9.55 as on 10-05-2020	14,864
16	10-06-2020	57,839	984	19-02-2023	7.3	9.3 as on 10-06-2020	14,501
17	10-07-2020	55,973	954	19-02-2023	7.3	9.3 as on 10-07-2020	13,605
18	10-08-2020	57,839	923	19-02-2023	7.3	9.3 as on 10-08-2020	13,602
19	10-09-2020	54,733	892	19-02-2023	7.3	9.3 as on 10-09-2020	12,439
20	10-10-2020	51,922	862	19-02-2023	7.3	9.3 as on 10-10-2020	11,403
21	10-11-2020	53,653	831	19-02-2023	7.3	9.3 as on 10-11-2020	11,360
22	10-12-2020	51,922	801	19-02-2023	7.3	9.3 as on 10-12-2020	10,596
23	10-01-2021	53,653	771	20-02-2023	7.3	9.3 as on 10-01-2021	10,539

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24	10-02-2021	53,653	740	20-02-2023	7.3	9.3 as on 10-02-2021	10,116
25	10-03-2021	47,785	712	20-02-2023	7.3	9.3 as on 10-03-2021	8,668
26	10-04-2021	52,606	681	20-02-2023	7.3	9.3 as on 10-04-2021	9,127
27	10-05-2021	50,909	651	20-02-2023	7.3	9.3 as on 10-04-2021	8,444
28	10-06-2021	52,606	620	20-02-2023	7.3	9.3 as on 15-05-2021	8,310
29	10-07-2021	50,909	590	20-02-2023	7.3	9.3 as on 15-06-2021	7,653
30	10-08-2021	52,606	559	20-02-2023	7.3	9.3 as on 15-07-2021	7,492
31	10-09-2021	52,347	528	20-02-2023	7.3	9.3 as on 15-08-2021	7,042
32	10-10-2021	50,571	498	20-02-2023	7.3	9.3 as on 15-09-2021	6,416
33	10-11-2021	52,257	467	20-02-2023	7.3	9.3 as on 15-10-2021	6,218
34	10-12-2021	50,571	437	20-02-2023	7.3	9.3 as on 15-11-2021	5,630
35	10-01-2022	52,257	406	20-02-2023	7.3	9.3 as on 15-12-2021	5,405
36	10-02-2022	66,137	375	20-02-2023	7.3	9.3 as on 15-01-2022	6,319
37	10-03-2022	66,137	347	20-02-2023	7.3	9.3 as on 15-02-2022	5,847
38	10-04-2022	66,137	316	20-02-2023	7.3	9.3 as on 15-03-2022	5,325
39	10-05-2022	66,137	286	20-02-2023	7.4	9.4 as on 15-04-2022	4,871
40	10-06-2022	66,137	255	20-02-2023	7.5	9.5 as on 15-05-2022	4,389
41	10-07-2022	66,137	225	20-02-2023	7.7	9.7 as on 15-06-2022	3,954
42	10-08-2022	66,137	194	20-02-2023	7.8	9.8 as on 15-07-2022	3,444
43	10-09-2022	66,137	163	20-02-2023	8	10.0 as on 15-08-2022	2,953

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44	10-10-2022	66,137	133	20-02-2023	8	10.0 as on 15-09-2022	2,409
45	10-11-2022	66,137	102	20-02-2023	8.25	10.25 as on 15-10-2022	1,894
46	10-12-2022	66,137	72	20-02-2023	8.35	10.35 as on 15-11-2022	1,350
47	10-01-2023	66,137	41	20-02-2023	8.6	10.6 as on 15-12-2022	787
48	10-02-2023	66,137	10	20-02-2023	8.6	10.6 as on 15-01-2023	192
49	TOTAL AMOUNT	1,20,03,576				TOTAL INTEREST (I2)	59,95,791

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 20-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
1,20,03,576	70,48,905	0	1,90,52,481

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

31. 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/221115/0010329** is hereby allowed.

The respondent is directed to pay the amount of **Rs.1,90,52,481/- (Rupees One Crore Ninety Lakh Fifty Two Thousand Four Hundred and Eighty One only)** towards refund with interest calculated at 9% from

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02/11/2015 to 30/04/2017 and MCLR + 2% from
01/05/2017 till 20/02/2023 to the complainant within 60
days from the date of this order.

The interest due from 21/02/2023 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

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