

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 7<sup>TH</sup> SEPTEMBER 2023**

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

**COMPLAINT NO.: CMP/220905/0009975**

**COMPLAINANTS.....**

**H.S. GILL &  
HARBAKSH KAUL GILL  
41, SIGNALS VIHAR, MHOW  
INDORE - 453441  
DISTRICT: INDORE  
STATE: MADHYA PRADESH**

**(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)**

**\* \* \* \* \***

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** at Sy.Nos.75, 77/1, 2, 3, 77/4, 78, 79, 80, 81/2, 83/2, 3, 5, 6, and 86/2, Ozone Urbana NH-7, Kannamangala Village, Devanahalli, Bengaluru - 560063 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 complainants had booked a flat bearing No.B 503, 5<sup>th</sup> Floor, Block B in the project of the respondent under Subvention scheme of 10:80:10 and entered into agreement of sale and construction agreement on 12/2/2016 with tripartite agreement wherein the respondent was supposed to bear the PEMI costs till handover of the flat and its registration. According to the agreement, the respondent was supposed to handover the possession of the flat to the complainants by August 2018 with a grace period of six months i.e. latest by February 2019. The complainants submit that even after lapse of four years, the respondent has not handed over the possession of the flat. The complainants also submit that the respondent has stopped paying PEMIs and the burden of paying PEMIs has been fallen on them. The complainants submit that in June 2019, the respondent stopped paying PEMIs citing government regulations and issued credit notes.
4. The complainants submit that due to high rate of interest, they changed the financial institution from Indiabulls to HDFC and converted PEMI to EMI to reduce the burden of interest. The complainants also submit that the respondent has failed to provide several amenities which were promised to the complainants. The complainants submit that the respondent and the bank have colluded, hence without proper due diligence loan has been disbursed to the respondent. The complainants further submit that the respondent has received his money, whereas work has not been completed. Thus, the complainants have approached this Authority and prays for refund with interest, closure of loan. Hence, this complaint.



5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative/counsel and have submitted their statement of objections as under:
6. The respondent submits that that the complainants had paid Rs.38,965/- and Rs.2,44,213/- as advance amount out of total sale consideration of Rs.75,30,750/-. The respondent submits that in order to assist the complainants financially, the respondent facilitated a loan agreement with HDFC whereby the borrower had the liability to pay PEMIs until possession and EMI after possession as per clause 3 of the Tripartite agreement.
7. The respondent contends that as per clause 9 of the tripartite agreement "borrower unconditionally and irrevocably subrogates its right to receive any amount payable by the builder to the borrower in the event of cancellation in favour of HDFC.
8. The respondent submits that the complainants have requested for cancellation, the respondent herein is constrained to invoke clause 9 of the tripartite agreement which is reproduced as below:

"Notwithstanding anything contained the provisional allotment/allotment letter/agreement to sale dated 12/2/2016, that in the event of occurrence of default under the loan agreement which would result in the cancellation of the allotment as a consequence thereof and/or for any reason whatsoever if the allotment is cancelled by the builder/promoter, any amount payable to the borrower on account of such cancellation shall be directly paid to HDFC first, for the payment of its dues for the loan amount including the principal and the interest, availed by the

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borrower from HDFC. However, it is further agreed between the parties that such payment made by the builder/promoter directly to HDFC shall not absolve the borrower from his/her liability to pay the residual amount, if any, from the outstanding under the loan agreement". Therefore, the respondent prays the Hon'ble Authority to limit the refund of amount to own contribution made by the complainants and that the respondent may be allowed to close the loan and refund the amount disbursed under the tripartite agreement to the Bank.

9. The respondent submits that the Hon'ble Authority may be pleased to direct the respondent to refund Rs.47,19,539/- (inclusive of own contribution + customer loan payment of Indiabulls loan account + PEMI paid by the complainants) and Rs.14,67,764/- interest payable to complainant.
10. The respondent contends that they have paid installments amounting to Rs.7,91,842/-. The respondent submits that the complainants have to pay an amount of Rs.7,45,981/- on account of delay in scheduled payments. The respondent submits that the complainants in their memo of calculation have claimed their own contribution as Rs.74,13,286/- for which the complainants may provide receipts/documentary proof to the respondent for making payments.
11. The respondent prays the Hon'ble Authority to take on record the revised memo of calculation as under:
  1. Complainant's own contribution to be paid by respondent- Rs.47,19,539/-
  2. Housing Loan due to HDFC on behalf of Ozone – Rs.28,14,340/-
  3. Subvention & PEMI paid by Ozone to Bank – Rs.7,91,842/-

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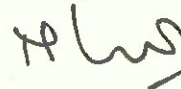


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4. Interest payable by the complainants to respondent due to delay in making scheduled payments – Rs.7,45,981/-
5. Interest payable to complainants – Rs.14,67,764/-
6. Total amount payable to complainants – Rs.54,41,322/- (after deducting Rs.7,45,981/- towards delay interest payable to the respondent by the complainants for delay in scheduled payments)
12. The complainants further submit that they have 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.
13. In support of their defence the respondent has produced copies of documents such as, agreement for sale, construction agreement, tripartite agreement and calculation sheet as on 31/3/2023.
14. In support of their claim, the complainants have produced documents such as copies of allotment letter, Agreement of Sale, construction agreement, tripartite agreement, Payment receipts, statement of account issued by HDFC pertaining to disbursement of loan amount and memo of calculation for refund with interest as on 20/12/2022.
15. This case was heard on 22/12/2022, 1/3/2023, 12/4/2023, 21/6/2023 and 27/7/2023. Heard arguments of both sides.
16. **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?



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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 builder 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 complainants till date and to refund the amount with committed profit, 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 dated 12/2/2016. There seems to be no possibility of completing the project or handing over the possession in near future.
19. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to return the deposited amount with profit, not closing the loan account and not paying PEMIs as agreed certainly entitles the complainants herein for refund with interest.
20. The Hon'ble Authority has perused the statement of objections filed by the respondent and the written submission filed by 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

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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.

21. 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."*

22. 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*



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*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."*

23. 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.
24. 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.
25. The complainants have filed their memo of calculation as on 20/12/2022 claiming an amount of Rs.1,05,95,184/- as refund with interest. The respondent in their calculation sheet as on 31/3/2023 submitted that the refund amount to be paid to the complainants is Rs.82,55,662/-. The Hon'ble did not accept the calculation sheet submitted by the respondent. A thorough verification of the

22/11/23 H/S



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documentary evidence furnished by the complainants reveal that their claim is genuine.

26. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted by them vide their memo of calculation as on 20/12/2022.

27. Therefore, it is incumbent upon the respondent to refund the amount 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	10-03-2016	10,469	416	30-04-2017	1,073
2	10-04-2016	31,843	385	30-04-2017	3,022
3	10-05-2016	31,843	355	30-04-2017	2,787
4	10-06-2016	31,843	324	30-04-2017	2,543
5	10-07-2016	31,843	294	30-04-2017	2,308
6	14-07-2016	1,47,814	290	30-04-2017	10,569
7	14-07-2016	8,47,878	290	30-04-2017	60,629
8	10-08-2016	38,877	263	30-04-2017	2,521
9	10-09-2016	39,767	232	30-04-2017	2,274
10	21-09-2016	57,948	221	30-04-2017	3,157
11	21-09-2016	3,86,752	221	30-04-2017	21,075
12	10-10-2016	41,396	202	30-04-2017	2,061
13	10-11-2016	43,306	171	30-04-2017	1,825
14	10-12-2016	43,306	141	30-04-2017	1,505
15	27-12-2016	5,95,164	124	30-04-2017	18,197
16	10-01-2017	43,306	110	30-04-2017	1,174
17	10-02-2017	43,306	79	30-04-2017	843
18	10-03-2017	43,306	51	30-04-2017	544
19	10-04-2017	42,626	20	30-04-2017	210
20		25,52,593		TOTAL INTEREST (I1)	1,38,317

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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	25,52,593	2059	20-12-2022	8.15	10.15 as on 01-05-2017	14,61,541
2	10-05-2017	42,626	2050	20-12-2022	8.15	10.15 as on 01-05-2017	24,299
3	10-06-2017	42,626	2019	20-12-2022	8.15	10.15 as on 01-06-2017	23,932
4	10-07-2017	42,626	1989	20-12-2022	8.15	10.15 as on 01-07-2017	23,576
5	10-08-2017	42,626	1958	20-12-2022	8.15	10.15 as on 01-08-2017	23,209
6	10-09-2017	42,626	1927	20-12-2022	8.15	10.15 as on 01-09-2017	22,841
7	10-10-2017	42,626	1897	20-12-2022	8.15	10.15 as on 01-10-2017	22,486
8	10-11-2017	42,626	1866	20-12-2022	8.1	10.1 as on 01-11-2017	22,009
9	10-12-2017	42,626	1836	20-12-2022	8.1	10.1 as on 01-12-2017	21,655
10	10-01-2018	42,626	1805	20-12-2022	8.1	10.1 as on 01-01-2018	21,290
11	10-02-2018	42,626	1774	20-12-2022	8.1	10.1 as on 01-02-2018	20,924
12	10-03-2018	42,626	1746	20-12-2022	8.35	10.35 as on 01-03-2018	21,104
13	10-04-2018	42,626	1715	20-12-2022	8.35	10.35 as on 01-04-2018	20,729
14	10-05-2018	43,533	1685	20-12-2022	8.35	10.35 as on 01-05-2018	20,800
15	10-06-2018	43,533	1654	20-12-2022	8.45	10.45 as on 01-06-2018	20,614
16	10-07-2018	43,986	1624	20-12-2022	8.45	10.45 as on 01-07-2018	20,451
17	10-08-2018	43,986	1593	20-12-2022	8.45	10.45 as on 01-08-2018	20,061
18	10-09-2018	44,893	1562	20-12-2022	8.65	10.65 as on 01-09-2018	20,460



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19	10-10-2018	44,893	1532	20-12-2022	8.7	10.7 as on 01-10-2018	20,161
20	10-11-2018	45,800	1501	20-12-2022	8.7	10.7 as on 01-11-2018	20,152
21	10-12-2018	46,707	1471	20-12-2022	8.75	10.75 as on 10-12-2018	20,235
22	10-01-2019	46,707	1440	20-12-2022	8.75	10.75 as on 10-01-2019	19,808
23	10-02-2019	46,707	1409	20-12-2022	8.75	10.75 as on 10-02-2019	19,382
24	10-03-2019	46,707	1381	20-12-2022	8.75	10.75 as on 10-03-2019	18,997
25	10-04-2019	46,707	1350	20-12-2022	8.7	10.7 as on 10-04-2019	18,484
26	10-05-2019	46,707	1320	20-12-2022	8.65	10.65 as on 10-05-2019	17,989
27	10-06-2019	46,707	1289	20-12-2022	8.65	10.65 as on 10-06-2019	17,566
28	10-07-2019	46,707	1259	20-12-2022	8.6	10.6 as on 10-07-2019	17,077
29	10-08-2019	46,707	1228	20-12-2022	8.45	10.45 as on 10-08-2019	16,421
30	10-09-2019	46,707	1197	20-12-2022	8.35	10.35 as on 10-09-2019	15,853
31	10-10-2019	53,599	1167	20-12-2022	8.25	10.25 as on 10-10-2019	17,565
32	08-11-2019	26,00,000	1138	20-12-2022	8.25	10.25 as on 10-10-2019	8,30,895
33	10-11-2019	53,599	1136	20-12-2022	8.2	10.2 as on 10-11-2019	17,015
34	02-12-2019	57,720	1114	20-12-2022	8.2	10.2 as on 10-11-2019	17,968
35	07-03-2020	3,104	1018	20-12-2022	8.15	10.15 as on 10-02-2020	878
36	07-03-2020	8,578	1018	20-12-2022	8.15	10.15 as on 10-02-2020	2,428
37	15-03-2020	23,628	1010	20-12-2022	8.05	10.05 as on 10-03-2020	6,570
38	15-04-2020	23,628	979	20-12-2022	7.7	9.7 as on 10-04-2020	6,147

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39	11-06-2020	38,678	922	20-12-2022	7.3	9.3 as on 10-06-2020	9,086
40	11-06-2020	113	922	20-12-2022	7.3	9.3 as on 10-06-2020	26
41	15-07-2020	23,628	888	20-12-2022	7.3	9.3 as on 10-07-2020	5,346
42	15-08-2020	23,628	857	20-12-2022	7.3	9.3 as on 10-08-2020	5,159
43	15-09-2020	23,628	826	20-12-2022	7.3	9.3 as on 10-09-2020	4,972
44	15-10-2020	23,628	796	20-12-2022	7.3	9.3 as on 10-10-2020	4,792
45	05-11-2020	1,919	775	20-12-2022	7.3	9.3 as on 10-10-2020	378
46	15-11-2020	21,709	765	20-12-2022	7.3	9.3 as on 10-11-2020	4,231
47	15-12-2020	23,628	735	20-12-2022	7.3	9.3 as on 10-12-2020	4,424
48	15-01-2021	23,628	704	20-12-2022	7.3	9.3 as on 10-01-2021	4,238
49	15-02-2021	23,628	673	20-12-2022	7.3	9.3 as on 10-02-2021	4,051
50	15-03-2021	23,628	645	20-12-2022	7.3	9.3 as on 10-03-2021	3,883
51	15-04-2021	23,628	614	20-12-2022	7.3	9.3 as on 10-04-2021	3,696
52	15-05-2021	23,628	584	20-12-2022	7.3	9.3 as on 15-05-2021	3,515
53	15-06-2021	23,628	553	20-12-2022	7.3	9.3 as on 15-06-2021	3,329
54	15-07-2021	23,628	523	20-12-2022	7.3	9.3 as on 15-07-2021	3,148
55	15-08-2021	23,628	492	20-12-2022	7.3	9.3 as on 15-08-2021	2,961
56	15-09-2021	23,628	461	20-12-2022	7.3	9.3 as on 15-09-2021	2,775
57	15-10-2021	23,628	431	20-12-2022	7.3	9.3 as on 15-10-2021	2,594
58	15-11-2021	23,628	400	20-12-2022	7.3	9.3 as on 15-11-2021	2,408



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59	15-12-2021	23,628	370	20-12-2022	7.3	9.3 as on 15-12-2021	2,227
60	15-01-2022	23,628	339	20-12-2022	7.3	9.3 as on 15-01-2022	2,040
61	15-02-2022	23,628	308	20-12-2022	7.3	9.3 as on 15-02-2022	1,854
62	15-03-2022	23,628	280	20-12-2022	7.3	9.3 as on 15-03-2022	1,685
63	15-04-2022	23,628	249	20-12-2022	7.4	9.4 as on 15-04-2022	1,515
64	15-05-2022	23,628	219	20-12-2022	7.5	9.5 as on 15-05-2022	1,346
65	15-06-2022	23,628	188	20-12-2022	7.7	9.7 as on 15-06-2022	1,180
66	15-07-2022	23,628	158	20-12-2022	7.8	9.8 as on 15-07-2022	1,002
67	15-08-2022	23,628	127	20-12-2022	8	10.0 as on 15-08-2022	822
68	15-09-2022	23,628	96	20-12-2022	8	10.0 as on 15-09-2022	621
69	15-10-2022	23,628	66	20-12-2022	8.25	10.25 as on 15-10-2022	437
70	15-11-2022	23,628	35	20-12-2022	8.35	10.35 as on 15-11-2022	234
71	15-12-2022	23,628	5	20-12-2022	8.6	10.6 as on 15-12-2022	34
72	TOTAL AMOUNT	74,13,286				TOTAL INTEREST (I2)	30,43,581

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 20-12-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
74,13,286	31,81,898	0	1,05,95,184

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

*Handwritten signature*

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Karnataka Real Estate Regulatory Authority,

# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,  
3rd Cross, Mission Road, Bengaluru-560027

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

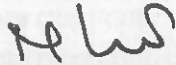
**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No.**CMP/220905/0009975** is hereby allowed.

The respondent is directed to pay a sum of **Rs.1,05,95,184/- (Rupees One Crore Five Lakh Ninety Five Thousand One Hundred and Eighty Four only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated at 9% from 10/3/2016 to 30/4/2017 and MCLR + 2% from 01/05/2017 to 20/12/2022. The interest due from 21/12/2022 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