

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 12TH SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220719/0009768

COMPLAINANTS.....

**REDDIPALLI ANIL KUMAR &
M SHANTI REDDY
D.NO.4/10C, REDDYPALLI VILLAGE
RODDAM MANDAL
SATYA SAI - 515123
DISTRICT: ANANTAPUR
STATE: ANDHRA PRADESH**

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

Vs

RESPONDENT.....

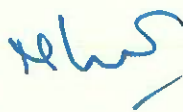
**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
BANGALORE-560042.**

**(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 Rural for the relief of refund with interest.



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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:-

1. The complainants submit that the flat bearing No. F-401, Tower-F, 4th Floor in the project of the respondent was allotted in December 2018 with a tripartite subvention agreement 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. The terms of the subvention laid-out that the respondent will bear PEMI costs till handover and registration of the flat. The complainants also submit that they entered into tripartite agreement with Piramal Capital & Housing Finance Limited and respondent for housing loan. The complainant submits that the Ozone Group paid PEMIs till January 2021. The complainants submit that the respondent vide their email dated 17/12/2020 cited government regulations for stopping PEMI payment and issued credit notes with an undertaking that the project would be handed over within six months, but the respondent has neither paid the PEMI nor handed over the apartment as agreed. The complainants submit that the financial institution started following up with the complainants for payment of PEMI as the respondent failed to pay PEMI as agreed. The respondent was supposed to handover the flat by December 2022 but there has been delay by the respondent. The complainants submit that due to the delay and for personal reasons, they requested for cancellation of the flat booked. Though the respondent agreed via email, they did not get the money refunded.

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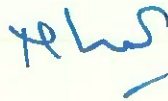
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Thus, the complainants have approached this Hon'ble Authority and pray for directions to the respondent for refund of full amount with interest. Hence, this complaint.

2. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative but has not submitted their statement of objections or produced any documents on their behalf.
3. In support of their defence, the respondent has filed calculation sheet as on 30/11/2022 and revised calculation sheet as on 31/03/2023.
4. In support of their claim, the complainant has produced documents such as copies of Booking Form, Tripartite Agreement, email correspondence, Statement of Account issued by Piramal Capital & Housing Finance Limited pertaining to disbursement of housing loan to the respondent, Payment receipts and Memo of calculation for refund with interest as on 04/04/2023.
5. This case was heard on 1/9/2022, 12/10/2022, 13/12/2022, 31/1/2023, 9/2/2023, 1/3/2023, 12/4/2023, 21/6/2023, 27/7/2023 and 16/8/2023. Heard arguments of both sides.
6. **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?
7. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -



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REASONS

8. My answer to Point No.1:- It is undisputed that the respondent has failed to handover the flat to the complainants despite having received substantial total sale consideration amount and have failed to pay PEMI to the financial institution as agreed.

9. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants were supposed to get possession of the flat by December 2022. Having agreed to handover possession of the flat to the complainants and to pay PEMIs to the financial institution, the respondent has failed to keep up their assurance, certainly entitles the complainants herein for refund of entire amount with interest.

10. The Hon'ble Authority has perused the written submissions submitted by the complainant. During the process of the hearing, the Hon'ble Authority instructed both the parties to come back with revised memo of calculations as the memo of calculation furnished by the complainants was not clear about the PEMI. Accordingly, the complainants have filed their revised memo of calculation as on 4/4/2023. The respondent has also filed their revised calculation sheet as on 31/3/2023. Despite several opportunities were given, the respondent failed to submit their written submissions/statement of objections.

11. The complainants have submitted proof of evidence in the form of statement of accounts issued by PCHFL for disbursement of housing loan to the respondent and having paid PEMIs.

12. The complainants have claimed Rs.88,89,207/- (Rupees Eighty Eight Lakh Eighty Nine Thousand Two Hundred and Seven only) vide their memo of



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calculation as on 04/04/2023 towards refund with interest. The respondent in their revised calculation sheet as on 31/03/2023 submitted on 16/08/2023 claim that the refund amount with interest payable to the complainants is Rs.57,78,841/-.

13. 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 complied with the terms of the said agreement of sale and buyback agreement. Therefore, the Hon'ble Authority has not agreed with the claim made by the respondent as their calculation was not correct.

14. 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."

15. 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:

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"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."

16. 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.

17. 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.

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18. 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 04/04/2023.

19. 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	03-04-2017	0	27	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	2164	04-04-2023	8.15	10.15 as on 01-05-2017	0
2	17-11-2018	25,000	1599	04-04-2023	8.7	10.7 as on 01-11-2018	11,718
3	30-11-2018	35,000	1586	04-04-2023	8.7	10.7 as on 01-11-2018	16,272
4	26-12-2018	7,956	1560	04-04-2023	8.75	10.75 as on 10-12-2018	3,655
5	31-12-2018	1,47,285	1555	04-04-2023	8.75	10.75 as on 10-12-2018	67,453
6	31-12-2018	45,49,922	1555	04-04-2023	8.75	10.75 as on 10-12-2018	20,83,770
7	31-12-2018	8,86,078	1555	04-04-2023	8.75	10.75 as on 10-12-2018	4,05,805
8	05-03-2019	1,080	1491	04-04-2023	8.75	10.75 as on 10-02-2019	474
9	05-04-2019	1,080	1460	04-04-2023	8.75	10.75 as on 10-03-2019	464

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10	06-05-2019	1,080	1429	04-04-2023	8.7	10.7 as on 10-04-2019	452
11	14-05-2019	67,956	1421	04-04-2023	8.65	10.65 as on 10-05-2019	28,175
12	06-06-2019	1,111	1398	04-04-2023	8.65	10.65 as on 10-05-2019	453
13	05-07-2019	1,111	1369	04-04-2023	8.65	10.65 as on 10-06-2019	443
14	05-08-2019	1,111	1338	04-04-2023	8.6	10.6 as on 10-07-2019	431
15	05-09-2019	1,111	1307	04-04-2023	8.45	10.45 as on 10-08-2019	415
16	05-10-2019	1,111	1277	04-04-2023	8.35	10.35 as on 10-09-2019	402
17	05-11-2019	1,111	1246	04-04-2023	8.25	10.25 as on 10-10-2019	388
18	05-12-2019	1,111	1216	04-04-2023	8.2	10.2 as on 10-11-2019	377
19	06-01-2020	1,111	1184	04-04-2023	8.2	10.2 as on 10-12-2019	367
20	05-02-2020	1,172	1154	04-04-2023	8.2	10.2 as on 10-01-2020	377
21	05-03-2020	1,172	1125	04-04-2023	8.15	10.15 as on 10-02-2020	366
22	06-04-2020	1,172	1093	04-04-2023	8.05	10.05 as on 10-03-2020	352
23	06-05-2020	1,172	1063	04-04-2023	7.7	9.7 as on 10-04-2020	331
24	05-06-2020	1,172	1033	04-04-2023	7.55	9.55 as on 10-05-2020	316
25	06-07-2020	1,172	1002	04-04-2023	7.3	9.3 as on 10-06-2020	299
26	05-08-2020	1,172	972	04-04-2023	7.3	9.3 as on 10-07-2020	290
27	05-09-2020	1,172	941	04-04-2023	7.3	9.3 as on 10-08-2020	281
28	05-10-2020	1,172	911	04-04-2023	7.3	9.3 as on 10-09-2020	272
29	05-11-2020	1,172	880	04-04-2023	7.3	9.3 as on 10-10-2020	262

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30	05-12-2020	1,172	850	04-04-2023	7.3	9.3 as on 10-11-2020	253
31	05-01-2021	1,172	819	04-04-2023	7.3	9.3 as on 10-12-2020	244
32	05-03-2021	54,312	760	04-04-2023	7.3	9.3 as on 10-02-2021	10,517
33	17-03-2021	10,000	748	04-04-2023	7.3	9.3 as on 10-03-2021	1,905
34	06-04-2021	54,312	728	04-04-2023	7.3	9.3 as on 10-03-2021	10,074
35	05-05-2021	54,312	699	04-04-2023	7.3	9.3 as on 10-04-2021	9,673
36	05-06-2021	54,312	668	04-04-2023	7.3	9.3 as on 15-05-2021	9,244
37	05-07-2021	54,312	638	04-04-2023	7.3	9.3 as on 15-06-2021	8,828
38	05-08-2021	54,312	607	04-04-2023	7.3	9.3 as on 15-07-2021	8,399
39	05-09-2021	54,312	576	04-04-2023	7.3	9.3 as on 15-08-2021	7,970
40	05-10-2021	54,312	546	04-04-2023	7.3	9.3 as on 15-09-2021	7,555
41	TOTAL AMOUNT	61,89,885				TOTAL INTEREST (I2)	26,99,322

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 04-04-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
61,89,885	26,99,322	0	88,89,207

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

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

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ORDER

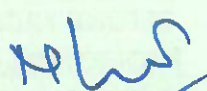
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220719/0009768** is hereby allowed.

The respondent is directed to pay the amount of **Rs.88,89,207/- (Rupees Eighty Eighty Lakh Eighty Nine Thousand Two Hundred and Seven only) towards refund with interest** calculated at MCLR + 2% from 17/11/2018 till 04/04/2023 to the complainants within 60 days from the date of this order.

The interest due from 05/04/2023 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