

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 13TH SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/220125/0008866

COMPLAINANT.....

**NIKUNJA KUMAR PARIDA
FLAT NO.301
RADIANT KATRIEL APARTMENT
SEETARAMPALYA
WHITEFIELD
BENGALURU-560048.**

**(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 AVENUE"** developed by **M/S. OZONE URBANA INFRA DEVELOPERS PRIVATE LIMITED** situated at Ozone Urbana NH-7, Yerthiganahalli, Kannamangala, Bengaluru Rural for the relief of refund with interest.
2. This project has not been registered under RERA.

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Brief facts of the complaint are as under:-

3. The complainant submits that he was allotted a flat bearing No.A-203, 2nd Floor, Block A in the project Urbana Avenue vide allotment letter dated 05/01/2016 and entered into agreement of sale and construction agreement on 05/01/2016. The complainant has paid Rs.73,48,086/- (Rupees Seventy Three Lakh Forty Eight Thousand and Eighty Six only) to the respondent till date. The complainant submits that the project is not completed as per agreement of sale and possession has not been given as assured by December 2017 with grace period of six months i.e. by June 2018.
4. The complainant submits that he entered into tripartite agreement dated 25/01/2016 with the respondent and HDFC for housing loan. According to the tripartite agreement the respondent was supposed to pay PEMIs till December 2017. But the respondent failed to pay PEMIs to the Bank as agreed. The complainant submits that the respondent vide their letter dated Nil signed by CEO Srinivasan Gopalan has informed that as the Banks for the subvention scheme are not allowing any further extension of the scheme forcing the respondent to stop paying PEMI on behalf of the complainant. It was also intimated that they are passing advance credit note with immediate effect to the complainant. It was also intimated in the letter that starting from 1st July 2019, the respective bank/financial institution will get in touch directly with the complainant for collection of PEMIs. The complainant submits that the respondent has failed to complete the construction and handover the possession of the flat as agreed and that there is no construction activity going on in the project since 2018.
5. Due to this enormous delay the complainant submits that he wants to exit from the project and wants refund of entire amount paid to the

respondent with interest, cancellation of agreement of sale and construction agreement, payment of outstanding dues to HDFC and closure of loan account, compensation for the loss of rental income and Rs.50,000/- for costs of this proceedings. Thus, the complainant has approached this Authority, praying for directions to the respondent as mentioned above. Hence, this complaint.

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, closure of loan account, cancellation of agreement of sale and construction agreement.
8. In order to assist the complainant, they facilitated loan from HDFC. The respondent contends that as per tripartite agreement entered between both the parties the complainant has the liability to pay PEMI to the Bank and EMI after possession.
9. The respondent further submits that the complainant and respondent have entered into a Buyback agreement on 2/9/2016 and as the complainant agreed to reinvest in the apartment, an additional buyback agreement was entered into on 9/12/2017. The respondent admits that they had agreed to bear the PEMIs for a period of 48 months from the first disbursement date i.e. 31/08/2016.

10. The respondent contends that as the complainant has opted for cancellation before the Hon'ble Authority, they are constrained to invoke Clause 16 of the tripartite agreement which deals with the obligation of parties in the event of cancellation request initiated which reads as under:

"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 and/or 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 HDFC."

11. In view of the above, the respondent prays that the refund of money to the complainant may be limited to own contribution made by the complainant as agreed and that the respondent may be allowed to close the loan.

12. The respondent further submits that the complainant has to pay interest to the tune of Rs.93,731/- for delay in making scheduled payments to the respondent. The respondent prays that the Hon'ble Authority may be pleased to direct the respondent to refund Rs.7,21,024/- i.e. the own contribution made by the complainant and dispose the complaint in accordance with the tripartite agreement executed between the parties. The respondent also submits that they have paid an amount of Rs.8,42,967/- towards subvention and PEMI to HDFC and prays that the same may be considered against the final amount due and payable to the complainant.

13. 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.7,21,024/-

2. Subvention and PEMI paid by Ozone to Bank – Rs.8,42,967/-
3. Housing Loan due to HDFC – Rs.54,08,040/-
4. Interest payable by the complainant for delayed payments – Rs.93,731/-
14. In support of their defence, the respondent has filed copies of documents such as agreement of sale, construction agreement, tripartite agreement, bank statement along with payment acknowledgement, delay payment schedule and revised calculation sheet as on 31/03/2023.
15. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, allotment letter, Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainant, Payment receipts, credit notes for PEMI amounts and Memo of calculation for refund with interest as on 10/02/2023.
16. This case was heard on 23/8/2022, 8/9/2022, 12/10/2022, 13/12/2022, 9/2/2023, 12/4/2023, 21/6/2023, 27/7/2023 and 16/8/2023. Heard arguments of both sides.
17. **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?
18. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -

REASONS

19. My answer to Point No.1:- It is undisputed that the respondent even after receiving substantial total sale consideration amount has failed to handover possession of the flat to the complainant and also did not pay PEMIs to the Bank as agreed.

20. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant was supposed to handover the possession of the flat to the complainant by December 2017 with the grace period of six months i.e. latest by June 2018 and pay PEMI to the Bank. The failure on the part of the respondent to adhere as agreed, certainly entitles the complainant herein for refund of entire amount with interest.

21. The Hon'ble Authority has perused the written submissions submitted by the respondent and the complainant. 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 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.

23. The complainant has submitted proof of evidence in the form of statement of accounts issued by Axis Bank for having made PEMI payments to HDFC.

24. 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."

25. 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."

26. 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.

27. 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.

28. The complainant has claimed Rs.1,18,88,912/- (Rupees One Crore Eighteen Lakh Eighty Eight Thousand Nine Hundred and Twelve only) vide his memo of calculation as on 10/02/2023 towards refund with interest. The respondent in their revised calculation sheet as on 31/03/2023 submitted on 27/07/2023 claim that the refund amount with interest payable to the complainant is Rs.11,46,265/-. The Hon'ble Authority has not agreed with the claim made by the respondent.

29. 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 10/02/2023.

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30. 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 | 05-01-2015 | 6,21,024 | 846 | 30-04-2017 | 1,29,547 |
| 2 | 24-11-2015 | 1,00,000 | 523 | 30-04-2017 | 12,895 |
| 3 | 29-01-2016 | 5,52,119 | 457 | 30-04-2017 | 62,215 |
| 4 | 29-01-2016 | 26,93,229 | 457 | 30-04-2017 | 3,03,486 |
| 5 | 31-05-2016 | 1,53,734 | 334 | 30-04-2017 | 12,660 |
| 6 | 31-05-2016 | 9,27,612 | 334 | 30-04-2017 | 76,394 |
| 7 | 22-08-2016 | 88,991 | 251 | 30-04-2017 | 5,507 |
| 8 | 22-08-2016 | 6,31,906 | 251 | 30-04-2017 | 39,108 |
| 9 | 18-10-2016 | 39,683 | 194 | 30-04-2017 | 1,898 |
| 10 | 18-10-2016 | 3,20,766 | 194 | 30-04-2017 | 15,344 |
| 11 | | 61,29,064 | | TOTAL INTEREST (I1) | 6,59,054 |

| 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 | 61,29,064 | 2111 | 10-02-2023 | 8.15 | 10.15 as on 01-05-2017 | 35,97,953 |
| 2 | 05-07-2019 | 45,518 | 1316 | 10-02-2023 | 8.65 | 10.65 as on 10-06-2019 | 17,478 |
| 3 | 05-08-2019 | 45,518 | 1285 | 10-02-2023 | 8.6 | 10.6 as on 10-07-2019 | 16,986 |
| 4 | 05-09-2019 | 45,067 | 1254 | 10-02-2023 | 8.45 | 10.45 as on 10-08-2019 | 16,180 |

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| | | | | | | | |
|----|------------|--------|------|------------|------|---------------------------|--------|
| 5 | 05-10-2019 | 45,067 | 1224 | 10-02-2023 | 8.35 | 10.35 as on 10-09-2019 | 15,641 |
| 6 | 05-11-2019 | 45,067 | 1193 | 10-02-2023 | 8.25 | 10.25 as on 10-10-2019 | 15,098 |
| 7 | 05-12-2019 | 45,067 | 1163 | 10-02-2023 | 8.2 | 10.2 as on 10-11-2019 | 14,646 |
| 8 | 05-01-2020 | 52,651 | 1132 | 10-02-2023 | 8.2 | 10.2 as on 10-12-2019 | 16,655 |
| 9 | 05-02-2020 | 52,651 | 1101 | 10-02-2023 | 8.2 | 10.2 as on 10-01-2020 | 16,199 |
| 10 | 05-03-2020 | 52,651 | 1072 | 10-02-2023 | 8.15 | 10.15 as on 10-02-2020 | 15,695 |
| 11 | 05-04-2020 | 52,651 | 1041 | 10-02-2023 | 8.05 | 10.05 as on 10-03-2020 | 15,091 |
| 12 | 05-05-2020 | 52,651 | 1011 | 10-02-2023 | 7.7 | 9.7 as on 10-04-2020 | 14,146 |
| 13 | 05-06-2020 | 52,651 | 980 | 10-02-2023 | 7.55 | 9.55 as on 10-05-2020 | 13,500 |
| 14 | 05-01-2021 | 52,651 | 766 | 10-02-2023 | 7.3 | 9.3 as on 10-12-2020 | 10,276 |
| 15 | 05-02-2021 | 52,651 | 735 | 10-02-2023 | 7.3 | 9.3 as on 10-01-2021 | 9,860 |
| 16 | 05-03-2021 | 52,651 | 707 | 10-02-2023 | 7.3 | 9.3 as on 10-02-2021 | 9,484 |
| 17 | 05-04-2021 | 52,651 | 676 | 10-02-2023 | 7.3 | 9.3 as on 10-03-2021 | 9,068 |
| 18 | 05-05-2021 | 52,651 | 646 | 10-02-2023 | 7.3 | 9.3 as on 10-04-2021 | 8,666 |
| 19 | 05-06-2021 | 52,651 | 615 | 10-02-2023 | 7.3 | 9.3 as on 15-05-2021 | 8,250 |

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| | | | | | | | |
|----|-----------------|-----------|-----|------------|-----|-----------------------------|-----------|
| 20 | 05-07-2021 | 52,651 | 585 | 10-02-2023 | 7.3 | 9.3 as on 15-06-2021 | 7,847 |
| 21 | 05-08-2021 | 52,651 | 554 | 10-02-2023 | 7.3 | 9.3 as on 15-07-2021 | 7,432 |
| 22 | 05-09-2021 | 52,651 | 523 | 10-02-2023 | 7.3 | 9.3 as on 15-08-2021 | 7,016 |
| 23 | 05-10-2021 | 52,651 | 493 | 10-02-2023 | 7.3 | 9.3 as on 15-09-2021 | 6,613 |
| 24 | 05-11-2021 | 52,651 | 462 | 10-02-2023 | 7.3 | 9.3 as on 15-10-2021 | 6,197 |
| 25 | 05-12-2021 | 52,651 | 432 | 10-02-2023 | 7.3 | 9.3 as on 15-11-2021 | 5,795 |
| 26 | TOTAL AMOUNT | 73,48,086 | | | | TOTAL INTEREST (I2) | 38,81,772 |

| Memo Calculation | | | |
|---------------------------|---|-------------------------------|---------------------------------------|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2) AS ON 10-02-2023 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 73,48,086 | 45,40,826 | 0 | 1,18,88,912 |

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

32. 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/UR/220125/0008866** is hereby allowed.

(Signature)

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Respondent is directed to pay the amount of **Rs.1,18,88,912/- (Rupees One Crore Eighteen Lakh Eighty Eight Thousand Nine Hundred and Twelve only) towards refund with interest** calculated at 9% from 05/01/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 10/02/2023 to the complainant within 60 days from the date of this order. The interest due from 11/02/2023 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