

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 14th SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220725/0009806

COMPLAINANTS.....

**JAYWANT CHANDRASHEKAR PRABHU
& URMILA CHANDRASHEKAR PRABHU
24, AARAM COOP HOUSING SOCIETY
VAKOLA PIPELINE
SANTA CRUZ (EAST)
MUMBAI-400055
DISTRICT: MUMBAI CITY
STATE: MAHARASHTRA**

**(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.

Handwritten signature

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

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 submit that they had booked a flat bearing No. F-602, 6th Floor, Block F in the project of the respondent and entered into buyback/subvention scheme on 11/1/2017 with the respondent and paid 10% down payment of the total sale consideration i.e. Rs.7,53,822/- According to the buyback/subvention agreement the respondent was supposed to refund the initial deposit with a fixed profit after two years. The complainants submit that they executed agreement of sale dated 27/12/2016, construction agreement dated 24/12/2016 and tripartite agreement dated 28/12/2016 with IHFL for housing loan.
4. The complainants have paid an amount of Rs.58,69,275/- (Rupees Fifty eight Lakh Sixty Nine Thousand Two Hundred and Seventy Five only) to the respondent on various dates. As per agreement of sale and construction agreement the respondent was under obligation to handover possession by August 2018 with a grace period of six months i.e. latest by the end of February 2019. Though more than four years have been lapsed, the respondent is reluctant to complete the construction and to handover the possession of the flat to the complainants.
5. The respondent made the complainants to take housing loan from Indiabulls Housing Finance Ltd. The respondent was supposed to take care of the loan EMIs in accordance with the tripartite and buyback agreements. However, the respondent did not honour it and legal notice was issued by the IHFL to the complainants causing irreparable

damages, mental pressure and harassment. The complainants also submit that they have received the buyback amount on completion of two years but the loan still remain in their names, which needs to be cancelled.

6. The complainants submit that on several follow ups, the respondent said that they are in financial crunch and could not close the loan and executed another agreement of extension of subvention scheme vide supplemental agreement dated 10th May 2019 and paid Rs.5,00,000/-. The complainants also submit that even after the expiry of the term of the extended agreement, the respondent has failed to close the loan and also discontinued paying PEMIs to IHFL. Thus the complainants have approached this Hon'ble Authority and pray for directions to the respondent for cancellation of loan and compensation. Hence, this complaint.
7. 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:
8. The respondent denies all the allegations made against them by the complainants as false. The respondent submits that the complainants have prayed for cancellation of loan and compensation. The complainants are investors and had no genuine interest in purchasing the flat. In order to assist the complainants, they facilitated loan from Indiabulls Housing Finance Limited. The respondent contends that as per tripartite agreement entered between both the parties the complainants have the liability to pay PEMI to the IHFL and EMI after possession.

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

9. The respondent further submits that the complainant and respondent have entered into a Buyback agreement on 11/1/2017 which enables the complainants to receive the equivalent sum of their own contribution as profit after two years. The respondent submits that as there was a significant financial hardship in the respondent's revenue due to the pandemic related restrictions, limitations in execution of construction, the respondent was constrained to execute another supplemental agreement with the complainants and extend the buyback period.
10. The respondent contends that they have already refunded the initial booking advance amount of Rs.7,54,003/- along with assured profit of Rs.6,78,494/- after deduction of TDS in all Rs.14,32,497/- to the complainants. The respondent has submitted copy of the bank statement reflecting the above transaction.
11. The respondent submits that the complainants are liable to pay respondent an amount to the tune of Rs.2,65,678/- as interest for the delay in making scheduled payments.
12. The respondent further submits that the relief sought by the complainants is "payment of outstanding loan dues and compensation". The respondent contends that as the complainants have opted for cancellation before the Hon'ble Authority, they are constrained to invoke Clause 17 of the tripartite agreement which deals with the obligation of parties in the event of cancellation request initiated which reads as under:
- "In case of cancellation of the residential unit, as mentioned in the above mentioned clauses of this agreement, the builder hereby agrees to refund the total amount due to IHFL at the earliest."

[Handwritten signature]

13. In view of the above, the respondent is liable to close the pending disbursed loan of Rs.58,65,175/- due to IHFL. Hence, the respondent prays that they may be allowed to settle the disbursed loan instalments with IHFL as agreed between the parties. The respondent submits that they have paid instalments amounting to Rs.21,21,125/- towards Subvention and PEMI, proof of which has been enclosed.
14. The respondent contends that the complainants are entitled to receive Rs.1,49,995/- as delay interest payable to them only after the respondent has made payments in favour of the lending institution to facilitate the closure of the loan sanctioned and that the complainants do not have any right to receive refund amount payable to the lending institution in their favour or to their bank accounts. The respondent also submits that the complainants have already received 100% refund on the own contribution with assured profits.
15. The respondent submits that the Hon'ble Authority may please take on record the revised MOC put forth by the respondent as shown below:-
1. Customer's own contribution – Nil (already refunded)
 2. Interest payable to the customer – Rs.1,49,995/-
 3. Housing Loan due to IHFL – Rs.58,65,175/-
 4. Interest payable by the complainants for delayed payments – Rs.2,65,678/-
16. The respondent prays the Hon'ble Authority that they may be allowed to close the loan with the bank in accordance with the tripartite agreement executed between the parties and refund the amount payable to the complainants as above.
17. In support of their defence, the respondent has filed copies of documents such as agreement of sale, construction agreement, tripartite

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

agreement, Buyback agreement, supplemental agreement, bank statements reflecting transactions made by the respondent in favour of the complainants, delay payment schedule, proof of payment towards subvention and PEMI made by the respondent and revised calculation sheet as on 28/02/2023.

18. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, buyback agreement, supplemental agreement and Memo of calculation for refund with interest as on 17/9/2022.

19. This case was heard on 16/11/2022, 25/1/2023, 9/3/2023, 30/5/2023, 5/7/2023 and 3/8/2023. Heard arguments of both sides.

20. **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?

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

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

REASONS

22. **My answer to Point No.1:-** It is undisputed that the respondent though has refunded the money initially deposited with guaranteed profits to the complainants herein has failed to close the loan account and making payments towards PEMI as agreed.

23. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants were supposed to get

Handwritten signature

back their amount invested from the respondent under buyback agreement and additional buyback agreement. Having accepted to return the amount deposited with guaranteed profits, though the respondent has refunded the deposited amount to the complainants, has failed to pay pre-EMIs and close loan account as agreed, certainly entitles the complainants herein for refund of entire amount with interest.

24. The Hon'ble Authority has perused the written submissions submitted by the respondent and 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 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 complainants are 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.

25. 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

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

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."

26. 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."

27. 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

Handwritten signature

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

prescribed in this behalf including compensation in the manner as provided under this Act.

28. 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.
29. The complainants have claimed Rs.87,90,513/- (Rupees Eighty Seven Lakh Ninety Thousand Five Hundred and Thirteen only) vide their memo of calculation as on 17/9/2022 towards refund with interest. The respondent in their revised calculation sheet as on 28/02/2023 claim that the they have already refunded 100% on the own contribution and profit payable to the complainants and are suppose to pay Rs.58,65,175/- to the IHFL towards housing loan account.
30. The Hon'ble Authority has not agreed with the claim made by the respondent as they had failed close the loan account and also failed to pay PEMIs though they had agreed to pay PEMIs for a period of 48 months in the buyback agreements.
31. 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 17/9/2022.
32. 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	30-12-2016	26,16,807	121	30-04-2017	78,074
2		26,16,807		TOTAL INTEREST (I1)	78,074



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

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	26,16,807	1965	17-09-2022	8.15	10.15 as on 01-05-2017	14,29,905
2	03-01-2018	11,35,105	1718	17-09-2022	8.1	10.1 as on 01-01-2018	5,39,619
3	31-01-2018	7,54,003	1690	17-09-2022	8.1	10.1 as on 01-01-2018	3,52,604
4	31-08-2018	11,31,004	1478	17-09-2022	8.45	10.45 as on 01-08-2018	4,78,588
5	30-09-2020	2,32,356	717	17-09-2022	7.3	9.3 as on 10-09-2020	42,448
6	TOTAL AMOUNT	58,69,275				TOTAL INTEREST (I2)	28,43,164

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 17-09-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
58,69,275	29,21,238	0	87,90,513

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

34. 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/220725/0009806** is hereby allowed.

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

The respondent is directed to pay the amount of **Rs.87,90,513/- (Rupees Eighty Seven Lakh Ninety Thousand Five Hundred and Thirteen only) towards refund with interest** calculated at 9% from 30/12/2016 till 30/04/2017 and MCLR + 2% from 01/05/2017 till 17/09/2022 to the complainants within 60 days from the date of this order.

The interest due from 18/09/2022 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

NOT AN OFFICIAL COPY