

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/221115/0010331

COMPLAINANT.....

**MINI JOHN
VETTIKUNNEL
VELIYANNOOR PO AREEKARA
KOTTAYAM - 686634
DISTRICT: KOTTAYAM
STATE: KERALA**

**(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.
2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1250/303/PR/171019/000287 and was valid from



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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 complainant submits that she had purchased a flat bearing No.A 601, 6th Floor, Tower-A in the project of the respondent and entered into agreement of sale and construction agreement dated 06/06/2015 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 handover of the flat. The complainant has paid Rs.86,96,816/- (Rupees Eighty Six Lakh Ninety Six Thousand Eight Hundred and Sixteen only) to the respondent on various dates. The terms of the subvention scheme laid out that the respondent will bear PEMI costs till handover and registration of the flat. The complainant submits that the Ozone Group paid PEMIs till May 2019. The respondent stopped paying PEMIs and passed on the burden to the complainant. The complainant submits that the respondent was supposed to handover the flat in December 2017 with a grace period of six months i.e. latest by June 2018, but has not handed over the flat till date. The complainant submits that there is a huge delay in handing over the flat as promised by the respondent.
4. The complainant also submits that on inquiry she learnt that a few residents staying in different towers also do not have occupancy certificates. The complainant submits that the respondent has stopped paying PEMIs and has passed on the burden of paying PEMIs on the complainant with an undertaking that the flat will be handed over within six months, but the respondent has neither paid PEMIs nor handed over the flat, which is not in compliance with the terms of the subvention scheme. The complainant submits that the bank and the respondent

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have colluded and hence without proper diligence housing loan was disbursed. The complainant submits that the respondent has received his money but the work has not been completed, whereas the bank is recovering loan from the complainant. The complainant further submits that she has complied with the terms of the agreement.

5. The complainant also submits that due to failure on the part of the respondent in paying PEMI to the Bank for more than four years, she had approached the Hon'ble High Court of Karnataka and obtained an interim order directing the respondent to pay PEMI in Writ Petition No.6402/2023. Despite the interim order of the Hon'ble High Court of Karnataka, the respondent has not paid PEMI to the Bank. Thus, the complainant has approached this Authority, praying for directions to the respondent to refund the entire amount with interest and payment of PEMI by the respondent. 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 her. In order to assist the complainant, the respondent facilitated loan from HDFC by entering into tripartite agreement dated Nil September 2015. 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.

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8. 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 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."

9. The respondent further submits that the complainant has to pay interest to the tune of Rs.2,29,771/- for delay in making scheduled payments to the respondent. The respondent submits that the complainant may share the proof of PEMI payments made by her, in order to facilitate the refund in favour of the complainant.

10. The respondent prays that the Hon'ble Authority may be pleased to direct the respondent to refund Rs.19,35,718/- (after deducting Rs.2,29,771/- for delayed scheduled payments by the complainant) i.e. the own contribution made by the complainant and dispose the complaint in accordance with the tripartite agreement executed between the parties.

11. In view of the above, the respondent contends 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.

12. The respondent prays 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.12,57,609/-

[Handwritten signature]

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2. Interest payable to the customer – Rs.9,07,880/-
3. Housing Loan due to HDFC – Rs.61,94,159/-
4. Interest payable by the complainant for delayed payments – Rs.2,29,771/-
5. Subvention & PEMI paid by Ozone to Bank – Rs.10,25,064/-
6. Total amount payable to the complainant – Rs.19,35,718/- (after deduction of interest payable by the complainant for delayed payments)

13. The complainant in her rejoinder has submitted that according to the Subvention Scheme on the basis of which tripartite agreement was executed, the respondent had promised the complainant that the PEMI will be paid by them until handing over of the flat and it is not correct on the part of the respondent stating that the tripartite agreement was executed due to financial constraints. The complainant submits that due to the delay, the CIBIL score of the complainant has been severely affected and as such, the complainant had approached the Hon'ble High Court of Karnataka in Writ Petition No.6402/2023 and the Hon'ble High Court was pleased to pass an interim order directing the respondent to pay the PEMI, which they have not done till date.

14. The complainant in their rejoinder further submits that there has been no delay by her in making scheduled payments to the respondent and the contention of the respondent is not true. The complainant also submits that the burden of paying PEMI was passed on to her though it was the obligation of the respondent to pay PEMI until the date of handover of the flat and since then she is paying PEMI to HDFC, which should have been considered by the respondent in their calculation sheet and that is why there is mis-match in the calculation made by the respondent.

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15. The complainant submits that she has submitted relevant receipts and bank statements substantiating the claim of having made PEMI payments to the HDFC. The complainant prays the Hon'ble Authority to consider her memo of calculation which is as per RERA link and the calculation is a system generated.
16. 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 28/02/2023 submitted on 05/07/2023.
17. In support of her claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainant, customer statement of account issued by the respondent dated 30/6/2021, Payment receipts and Memo of calculation for refund with interest as on 08/03/2023.
18. This case was heard on 21/2/2023, 09/03/2023, 30/05/2023 05/07/2023 and 03/08/2023. Heard arguments of both sides.
19. **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?
20. **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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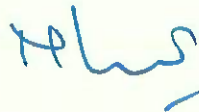
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REASONS

21. My answer to Point No.1:- It is undisputed that the respondent has failed to handover possession of the flat to the complainant and pay PEMI to the Bank as agreed in their Subvention letter dated Nil despite receiving total sale consideration amount from the complainant.

22. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant was supposed to get possession of the flat by December 2017 with a grace period of six months i.e. latest by June 2018. Having accepted the total sale consideration amount, the respondent has failed to keep up promise to handover possession of the flat to the complainant. The respondent has also failed to pay pre-EMIs to the Bank as agreed, certainly entitles the complainant herein for refund of entire amount with interest.

23. The Hon'ble Authority has perused the written submissions submitted by the respondent and written submission/statement of objections submitted by 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.



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24. The complainant has submitted proof of evidence in the form of statement of accounts issued by HDFC for having paid PEMIs to the Bank.

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 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

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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 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 complainant has claimed Rs.1,31,11,504/- (Rupees One Crore Thirty One Lakh Eleven Thousand Five Hundred and Four only) vide her memo of calculation as on 08/03/2023 towards refund with interest. The respondent in their revised calculation sheet as on 28/02/2023 submitted on 05/07/2023 claim that the refund amount with interest payable to the complainant is Rs.19,35,718/- after deducting the interest payable by the complainant for the delayed payments. The Hon'ble Authority has not agreed with the claim made by the respondent as they had failed to handover possession of the flat as agreed and also failed to pay PEMIs though they had agreed to pay PEMIs till

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intimation of the unit being ready for handover in their Subvention Scheme Letter dated Nil.

30. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide her memo of calculation as on 08/03/2023.

31. 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	10-04-2015	5,00,000	751	30-04-2017	92,589
2	11-05-2015	3,19,357	720	30-04-2017	56,696
3	07-11-2015	11,14,171	540	30-04-2017	1,48,352
4	12-11-2015	2,59,220	535	30-04-2017	34,195
5	23-11-2015	10,70,707	524	30-04-2017	1,38,341
6	24-11-2015	2,44,048	523	30-04-2017	31,472
7	25-05-2016	11,24,701	340	30-04-2017	94,290
8	25-05-2016	1,90,054	340	30-04-2017	15,933
9	25-08-2016	7,69,333	248	30-04-2017	47,045
10	31-08-2016	1,07,170	242	30-04-2017	6,394
11	04-01-2017	2,00,000	116	30-04-2017	5,720
12	01-02-2017	2,38,252	88	30-04-2017	5,169
13		61,37,013		TOTAL INTEREST (I1)	6,76,196

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	61,37,013	2137	08-03-2023	8.15	10.15 as on 01-05-2017	36,46,991
2	06-01-2021	12,45,048	791	08-03-2023	7.3	9.3 as on 10-12-2020	2,50,930

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3	30-04-2021	50,333	677	08-03-2023	7.3	9.3 as on 10-04-2021	8,682
4	07-05-2021	50,333	670	08-03-2023	7.3	9.3 as on 10-04-2021	8,592
5	28-05-2021	50,333	649	08-03-2023	7.3	9.3 as on 15-05-2021	8,323
6	12-10-2021	1,42,147	512	08-03-2023	7.3	9.3 as on 15-09-2021	18,543
7	06-06-2022	1,50,400	275	08-03-2023	7.5	9.5 as on 15-05-2022	10,764
8	08-06-2022	1,50,000	273	08-03-2023	7.5	9.5 as on 15-05-2022	10,658
9	30-09-2022	1,53,414	159	08-03-2023	8	10.0 as on 15-09-2022	6,682
10	30-09-2022	1,53,414	159	08-03-2023	8	10.0 as on 15-09-2022	6,682
11	05-01-2023	1,72,913	62	08-03-2023	8.6	10.6 as on 15-12-2022	3,113
12	TOTAL AMOUNT	84,55,348				TOTAL INTEREST (I2)	39,79,960

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 08-03-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
84,55,348	46,56,156	0	1,31,11,504

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

33. 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

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complaint bearing **No.CMP/221115/0010331** is hereby allowed.

The respondent is directed to pay the amount of **Rs.1,31,11,504/- (Rupees One Crore Thirty One Lakh Eleven Thousand Five Hundred and Four only) towards refund with interest** calculated at 9% from 10/04/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 08/03/2023 to the complainant within 60 days from the date of this order.

The interest due from 09/03/2023 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