

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 17TH OCTOBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220517/0009472

COMPLAINANTS.....

**PAVAN KUMAR &
PREETHIKA PRIYA
70/16, GANGA VALLEY
1ST CROSS ROAD, 4TH MAIN ROAD
LIC COLONY, JAYANAGAR 3RD BLOCK
BENGALURU-560011.**

**(MR.POORNACHANDRA B PATTAR,
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 complainants had booked a flat bearing No.R-404, Block-R, 4th Floor in the project of the respondent for a total sale consideration of Rs.87,06,907/- (Rupees Eighty Seven Lakh Six Thousand Nine Hundred and Seven only). The respondent had confirmed the booking via email dated 6/4/2018. The complainants submit that in response to the allotment letter, they had entered into an agreement for sale dated 16/4/2018. The complainants also submit that in addition to the above, a tripartite agreement was executed between the complainants on the first part, respondent on the second part and HDFC being the third part for sanction of housing loan. The complainants submit that they have paid Rs.84,54,166/- (Rupees Eight Four Lakh Fifty Four Thousand One Hundred and Sixty Six only) to the respondent on various dates. The respondent was supposed to handover the flat to the complainants by December 2022, but the respondent has not handed-over the flat to the complainants. The complainants submit that there are no signs of progress ever since 2018 and it is impossible for the respondent to complete the project within stipulated time. The complainants submit that they want to withdraw from the project. The complainants submit that due to the enormous delay in handing over of the flat has caused mental agony to them. Thus, the complainants have approached this Hon'ble Authority and pray for direction to the respondent to refund the entire amount with interest, to pay all EMIs and close housing loan account, pay Rs.10.00 Lakh compensation for mental agony and Rs.50,000/- for the cost of this proceedings. Hence, this complaint.

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4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative and have submitted their statement of objections on their behalf as under:-
5. The respondent denies all the allegations made in the complaint by the complainants as false. The respondent submits that the complainant has prayed for refund of the amount with interest. In order to assist the complainants, they facilitated loan from HDFC whereby the borrower had the liability to pay PEMIs until possession and EMI after possession as per clause 3 of the Tripartite agreement.
6. The respondent submits that clause 9 of the tripartite agreement establishes the liability of the complainants which read as follows – “the obligation to repay under the loan agreement remains absolute as that of the borrower and irrespective of any dispute or differences or concerns arising between the borrower and the seller with regard to the arrangement and understanding between the borrower and the seller”.
7. 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 HDFC.”

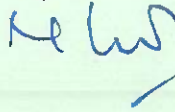
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Clause 16 of the tripartite agreement reiterate that "in the event of occurrence of default under the loan agreement during the liability period, which would result in the cancellation of the allotment as a consequence thereof and/or for any reason whatsoever if the allotment is cancelled, any amount payable to the borrower on account of such cancellation shall be directly paid to HDFC".

8. Therefore, the respondent submits that they are liable to close the disbursed loan of Rs.65,35,534/- to the HDFC. Hence, the respondent prays that they may be allowed to settle the disbursed loan instalments with HDFC as agreed between the parties and prays the Hon'ble Authority to refund only own contribution made by the complainants i.e. Rs.7,83,636/-.
9. The respondent submits that they have paid instalments amounting to Rs.8,77,950/- towards subvention and PEMIs which may be considered against the final amount due and payable to the complainants.
10. The respondent submits that the complainants are liable to pay respondent an amount of Rs.32,679/- as interest for the delay in making scheduled payments.
11. 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.7,86,636/-
 2. Housing Loan due to HDFC – Rs.65,35,534/-
 3. Interest payable by the complainants for delayed payments – Rs.32,679/-
 4. Subvention & PEMI paid by Ozone – Rs.8,77,950/-
12. The respondent prays the Hon'ble Authority that they may be allowed to close the loan with the financial institution in accordance with



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the tripartite agreement executed between the parties and refund the own contribution to the complainants as above.

13. In support of their defence, the respondent has produced documents such as copies of agreement for sale, tripartite agreement and revised calculation sheet as on 31/3/2023 .

14. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, tripartite agreement, payment receipts, email correspondence with the respondent, and Memo of calculation for refund with interest as on 07/02/2023.

15. This case was heard on 23/8/2022, 8/9/2022, 12/10/2022, 22/11/2022, 13/12/2022, 9/2/2023, 12/4/2023, 27/7/2023, 16/8/2023 and 5/10/2023. 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?

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:-** It is undisputed that the respondent has failed to handover possession of the flat to the complainants herein within agreed time even after receiving more than 90% of the sale consideration amount. As per the terms of agreement of sale between the parties, the possession of the flat had to be handed over before the end of December 2022. As per

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subvention scheme, the respondent had agreed to pay pre-EMIs to the Bank till the handover of the flat to the complainants. But the respondent has failed to pay PEMIs as agreed.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants were supposed to get the flat delivered by December 2022, but the respondent is nowhere near completion of the project and even after five years the project is not completed. Having agreed to pay PEMIs to the Bank till the date of handover possession of the flat to the complainants, the respondent has failed to pay pre-EMIs to the Bank, certainly entitles the complainants herein for refund of entire amount with interest.

15. The Hon'ble Authority has perused the statement of objections submitted by the respondent and written submission/statement of objection to the memo of calculation filed by the respondent submitted 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 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 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.

16. During the process of the hearing, the Hon'ble Authority has noticed that in the calculation sheet submitted by the respondent there was lot of difference in the principal amount between both the parties. The Hon'ble Authority directed both the parties to look into it and file revised memo of calculation.

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Accordingly, both the parties filed revised memo of calculation/calculation sheet.

17. In their rejoinder to the statement of objection and calculation sheet filed by the respondent, the complainants submit that as per the MOC as on 7/2/2023 filed by them, the respondent is supposed to pay Rs.1,22,13,970/- as refund with interest. In this regard, the complainants contend that there is no dispute regarding the amount paid by them to the respondent. The complainants also contend that as per clause 6 of the tripartite agreement, the respondent was liable to pay PEMIs to HDFC till liability period. However, from February 2020 the respondent stopped paying PEMI to HDFC and the complainants have paid the PEMIs from their own pocket. The complainants also contend that the respondent has not taken into account the PEMI paid by the complainants from 5/2/2020 till 5/5/2022 in their calculation.

18. The complainants also submit that the two refunds supposed to be made by the respondent is not substantiated by any documentary proof. The complainants contend that the calculation sheet submitted by the respondent is not as per RERA link and hence the same should not be accepted.

19. 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."

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20. 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."

21. 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.

22. 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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23. The complainants have claimed Rs.1,22,13,970/- (Rupees One Crore Twenty Two Lakh Thirteen Thousand Nine Hundred and Seventy only) vide their memo of calculation as on 07/02/2023 towards refund with interest.

24. The respondent vide their calculation sheet as on 31/3/2023 have claimed that the complainants are eligible to get Rs.76,44,850/-. The complainant has filed objections to respondent's calculation sheet and statements as in para 17 & 18 supra.

25. Having regard to all the above aspects, the Hon'ble Authority concludes that the complainants are entitled for refund with interest calculated vide their memo of calculation as on 07/02/2023.

26. Further the complainants have prayed for compensation for mental agony, which does not come under the jurisdiction of this Authority. Hence, the same is not considered.

27. 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	30-04-2017	0	1	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	2108	07-02-2023	8.15	10.15 as on	0

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						01-05-2017	
2	31-03-2018	50,000	1774	07-02-2023	8.35	10.35 as on 01-03-2018	25,151
3	17-04-2018	298,000	1757	07-02-2023	8.35	10.35 as on 01-04-2018	148,468
4	26-04-2018	826,565	1748	07-02-2023	8.35	10.35 as on 01-04-2018	409,699
5	26-04-2018	5,273,333	1748	07-02-2023	8.35	10.35 as on 01-04-2018	2,613,810
6	08-08-2018	51,385	1644	07-02-2023	8.45	10.45 as on 01-08-2018	24,185
7	08-08-2018	384,251	1644	07-02-2023	8.45	10.45 as on 01-08-2018	180,859
8	15-05-2019	435,636	1364	07-02-2023	8.65	10.65 as on 10-05-2019	173,378
9	05-02-2020	48,200	1098	07-02-2023	8.2	10.2 as on 10-01-2020	14,789
10	05-03-2020	48,200	1069	07-02-2023	8.15	10.15 as on 10-02-2020	14,328
11	05-06-2020	47,528	977	07-02-2023	7.55	9.55 as on 10-05-2020	12,149
12	09-09-2020	47,760	881	07-02-2023	7.3	9.3 as on 10-08-2020	10,720
13	05-10-2020	47,760	855	07-02-2023	7.3	9.3 as on 10-09-2020	10,404
14	05-11-2020	47,760	824	07-02-2023	7.3	9.3 as on 10-10-2020	10,027
15	05-12-2020	47,760	794	07-02-2023	7.3	9.3 as on 10-11-2020	9,662
16	05-01-2021	47,760	763	07-02-2023	7.3	9.3 as on 10-12-2020	9,284
17	05-03-2021	47,760	704	07-02-2023	7.3	9.3 as on 10-02-2021	8,566
18	05-04-2021	47,154	673	07-02-2023	7.3	9.3 as on 10-03-2021	8,085
19	05-05-2021	46,870	643	07-02-2023	7.3	9.3 as on 10-04-2021	7,678
20	05-06-2021	46,870	612	07-02-2023	7.3	9.3 as on 15-05-2021	7,308

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21	05-07-2021	46,870	612	07-02-2023	7.3	9.3 as on 15-05-2021	7,308
22	05-08-2021	46,870	551	07-02-2023	7.3	9.3 as on 15-07-2021	6,580
23	05-09-2021	46,870	520	07-02-2023	7.3	9.3 as on 15-08-2021	6,209
24	05-10-2021	46,870	490	07-02-2023	7.3	9.3 as on 15-09-2021	5,851
25	05-11-2021	46,870	459	07-02-2023	7.3	9.3 as on 15-10-2021	5,481
26	05-12-2021	46,870	429	07-02-2023	7.3	9.3 as on 15-11-2021	5,123
27	05-01-2022	46,870	398	07-02-2023	7.3	9.3 as on 15-12-2021	4,753
28	05-02-2022	47,760	367	07-02-2023	7.3	9.3 as on 15-01-2022	4,466
29	05-02-2022	46,870	367	07-02-2023	7.3	9.3 as on 15-01-2022	4,382
30	05-03-2022	46,870	339	07-02-2023	7.3	9.3 as on 15-02-2022	4,048
31	05-04-2022	46,870	308	07-02-2023	7.3	9.3 as on 15-03-2022	3,678
32	05-05-2022	47,154	278	07-02-2023	7.4	9.4 as on 15-04-2022	3,375
33	TOTAL AMOUNT	84,54,166				TOTAL INTEREST (I2)	37,59,804

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 07-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
84,54,166	37,59,804	0	1,22,13,970

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

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

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ORDER

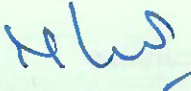
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220517/0009472** is hereby allowed.

The respondent is directed to pay the amount of **Rs.1,22,13,970/- (Rupees One Crore Twenty Two Lakh Thirteen Thousand Nine Hundred and Seventy only)** towards refund with interest calculated at MCLR + 2% from 31/03/2018 till 07/02/2023 to the complainants within 60 days from the date of this order.

The interest due from 08/02/2023 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