

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 6TH NOVEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220803/0009848

COMPLAINANT.....

**NAGARAJ SHASHI KIRAN
25/6, 4TH CROSS
LIC COLONY, 3RD BLOCK
JAYANAGAR
BENGALURU-560011.**

**(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 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.

Handwritten signature

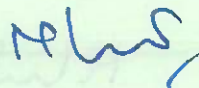
ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing No.H 502, 5th Floor, Block H in the project of the respondent and has entered into agreement of sale and construction agreement dated 31/7/2017 with a tripartite subvention scheme of 10:80:10 i.e. 10% down payment 80% to be financed by bank/financial institution and 10% to be paid at the time of registration and handover possession of the flat. The complainant has paid an amount of Rs.94,80,305/- (Rupees Ninety Four Lakh Eighty Thousand Three Hundred and Five only) to the respondent on various dates. The complainant had also entered into Tripartite Agreement with the respondent and HDFC for housing loan. As per the tripartite agreement the respondent was to bear the cost of paying PEMIs till the handover of the flat and registration from the date of first disbursement of loan. However the burden of PEMI was passed on to the complainant citing government regulations and issued credit notes to the complainant along with an undertaking that the project would be completed within six months but the respondent has neither paid the PEMI nor handed over the flat and since then the complainant is carrying the burden of paying PEMI to the bank though it is the burden of the respondent.
4. As per agreement of sale and agreement of construction the respondent was under obligation to handover possession of the flat to the complainant by December 2019 with a grace period of six months i.e. latest by June 2020. The complainant submits that he has complied with the terms of the agreement. Though more than three years have been lapsed, the respondent is reluctant to complete the construction and has failed to handover the possession of the flat to the complainant. Thus, the complainant has approached this Authority, praying for



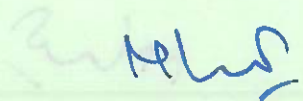
directions to the respondent to refund the entire amount with interest.
Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through their counsel/representative but has not submitted their statement of objections nor produced any documents on their behalf.
6. The complainant in his objections to the memo of calculation submitted by the respondent submits that the respondent has not considered the PEMI component of loan disbursed by the bank and that as per the terms of the subvention, the respondent was obligated to pay PEMI till the date of handover, but it was passed on to the complainant. Since then the complainant is carrying the burden of paying PEMI and fulfilling the obligations of the respondent. Hence, the respondent should have considered PEMI component paid by the complainant in their memo of calculation.
7. The complainant has further submitted that due to the non-payment of PEMIs by the respondent, the financial institution started following up it with him for payment of PEMIs. The complainant approached the Hon'ble High Court of Karnataka and got stay in W.P.No.16053/2022 which has passed an interim order directing the bank not to cease and desist from recovering EMI payments from the petitioners; take any coercive action against the complainant for non-payment of PEMIs and the respondent developer to pay PEMI/EMIs till the next date of hearing. Despite the interim order passed by the Hon'ble High Court of Karnataka, the respondent has failed to pay PEMIs to the Bank and have violated the orders of the Hon'ble High Court.

8. In support of their defence, the respondent has submitted a calculation sheet as on 30/11/2022.
9. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Construction Agreement, Tripartite Agreement, payment receipts, Statement of Account issued by HDFC pertaining to disbursement of loan amount to the respondent & payment of PEMI by the complainant, Interim Order dated 1/9/2022 of the Hon'ble High Court of Karnataka and Memo of calculation for refund with interest as on 17/12/2022.
10. This case was heard on 22/12/2022, 1/3/2023, 12/4/2023, 21/6/2023, 27/7/2023 and 31/10/2023. Heard arguments of both sides.
11. **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?
12. **My answer to the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following -

REASONS

13. My answer to Point No.1:- It is undisputed that the respondent has failed to handover possession of the flat to the complainant herein as agreed even after receiving substantial sale consideration amount. As per the terms of agreement of sale and construction agreement between the parties, the possession of the apartment was supposed to be handed over before the end of December 2019 with a grace period of six months i.e. by June 2020. As per the tripartite agreement, the respondent had agreed to pay pre-EMIs to the Bank till the handover of the flat to the complainant. Though the respondent



paid PEMIs initially later stopped paying pre-EMIs to the Bank and passed on the burden of making PEMI payment to the complainant.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid substantial sale consideration amount to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of the flat even after three years and not paying pre-EMIs to the Bank as agreed, certainly entitles the complainant herein for refund of entire amount with interest.

15. During the process of the hearing, the Hon'ble Authority has perused the written submissions submitted by the complainant. The Hon'ble Authority had also noticed that there was a huge difference in the principal amount between both the parties and directed them to reconcile with it.

16. The complainant has submitted proof of evidence in the form of statement of accounts issued by the HDFC for having paid PEMIs and disbursement of loan amount to the respondent.

17. 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."

18. 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."

19. 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

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

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.

20. 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.

21. The complainant has claimed Rs.1,41,23,724/- (Rupees One Crore Forty One Lakh Twenty Three Thousand Seven Hundred and Twenty Four only) vide his memo of calculation as on 17/12/2022 towards refund with interest. The respondent in their calculation sheet as on 30/11/2022 submitted on 22/12/2022 claim that the refund amount with interest payable to the complainant is Rs.1,07,62,120/-. The Hon'ble Authority did not agree with the claim made by the respondent as they had failed to handover possession of the flat to the complainant within stipulated time and failed to pay PEMIs as agreed.

22. Having regard to all the above aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 17/12/2022.

23. 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	30-01-2016	50,000	456	30-04-2017	5,621
2	16-05-2016	4,14,388	349	30-04-2017	35,660
3		4,64,388		TOTAL INTEREST (I1)	41,281

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

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	4,64,388	2056	17-12-2022	8.15	10.15 as on 01-05-2017	2,65,507
2	05-05-2017	4,86,725	2052	17-12-2022	8.15	10.15 as on 01-05-2017	2,77,737
3	29-08-2017	71,05,403	1936	17-12-2022	8.15	10.15 as on 01-08-2017	38,25,315
4	20-03-2020	1,06,652	1002	17-12-2022	8.05	10.05 as on 10-03-2020	29,424
5	16-04-2020	52,995	975	17-12-2022	7.7	9.7 as on 10-04-2020	13,731
6	11-05-2020	6,078	950	17-12-2022	7.55	9.55 as on 10-05-2020	1,510
7	13-05-2020	52,995	948	17-12-2022	7.55	9.55 as on 10-05-2020	13,144
8	11-06-2020	52,995	919	17-12-2022	7.3	9.3 as on 10-06-2020	12,409
9	06-07-2020	52,995	894	17-12-2022	7.3	9.3 as on 10-06-2020	12,071
10	11-08-2020	52,995	858	17-12-2022	7.3	9.3 as on 10-08-2020	11,585
11	10-09-2020	51,773	828	17-12-2022	7.3	9.3 as on 10-09-2020	10,922
12	22-10-2020	50,992	786	17-12-2022	7.3	9.3 as on 10-10-2020	10,212
13	24-11-2020	50,626	753	17-12-2022	7.3	9.3 as on 10-11-2020	9,713
14	05-12-2020	50,626	742	17-12-2022	7.3	9.3 as on 10-11-2020	9,571
15	11-01-2021	50,034	705	17-12-2022	7.3	9.3 as on 10-01-2021	8,987
16	11-02-2021	50,034	674	17-12-2022	7.3	9.3 as on 10-02-2021	8,592
17	08-03-2021	626	649	17-12-2022	7.3	9.3 as on 10-02-2021	103
18	08-03-2021	49,368	649	17-12-2022	7.3	9.3 as on 10-02-2021	8,163

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

19	11-04-2021	50,034	615	17-12-2022	7.3	9.3 as on 10-04-2021	7,840
20	19-05-2021	43,289	577	17-12-2022	7.3	9.3 as on 15-05-2021	6,364
21	14-06-2021	50,500	551	17-12-2022	7.3	9.3 as on 15-05-2021	7,089
22	12-07-2021	50,045	523	17-12-2022	7.3	9.3 as on 15-06-2021	6,668
23	06-08-2021	50,148	498	17-12-2022	7.3	9.3 as on 15-07-2021	6,363
24	03-09-2021	49,738	470	17-12-2022	7.3	9.3 as on 15-08-2021	5,956
25	05-10-2021	49,738	438	17-12-2022	7.3	9.3 as on 15-09-2021	5,550
26	06-11-2021	50,085	406	17-12-2022	7.3	9.3 as on 15-10-2021	5,181
27	06-12-2021	49,738	376	17-12-2022	7.3	9.3 as on 15-11-2021	4,765
28	10-01-2022	49,738	341	17-12-2022	7.3	9.3 as on 15-12-2021	4,321
29	14-02-2022	49,738	306	17-12-2022	7.3	9.3 as on 15-01-2022	3,877
30	05-03-2022	49,738	287	17-12-2022	7.3	9.3 as on 15-02-2022	3,637
31	23-04-2022	50,507	238	17-12-2022	7.4	9.4 as on 15-04-2022	3,095
32	14-05-2022	48,969	217	17-12-2022	7.4	9.4 as on 15-04-2022	2,736
33	TOTAL AMOUNT	94,80,305				TOTAL INTEREST (I2)	46,02,138

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 17-12-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
94,80,305	46,43,419	0	1,41,23,724

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

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

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

ORDER

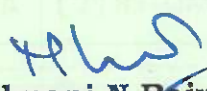
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220803/0009848** is hereby allowed.

The respondent is directed to pay the amount of **Rs.1,41,23,724/- (Rupees One Crore Forty One Lakh Twenty Three Thousand Seven Hundred and Twenty Four only)** towards refund with interest calculated at 9% from 30/1/2016 to 30/4/2017 and MCLR + 2% from 01/05/2017 till 17/12/2022 to the complainant within 60 days from the date of this order.

The interest due from 18/12/2022 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