

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 08th NOVEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/221102/0010164

COMPLAINANT.....

**RAJESHWARI SHEKARAYYA
HASANABADIMATH
NO.118, SRINIDHI
4TH CROSS, M KRISHNAPPA LAYOUT
HOSAKEREHALLI, BSK III STAGE
BANGALORE-560085.**

**(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.

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Brief facts of the complaint are as under:-

3. The complainant submits that she had purchased a flat bearing No.A-804, 8th Floor, Block-A in the project of the respondent on 14/10/2015 and entered into Tripartite Subvention Scheme of 10:80:10 i.e. 10% down payment to be made by the complainant, 80% to be funded by the bank and 10% to be paid by the complainant at the time of registration and handover of the flat. The complainant submits that she had entered into agreement of sale and construction agreement on 19/10/2015 and has paid an amount of Rs.91,99,719/- (Rupees Ninety One Lakh Ninety Nine Thousand Seven Hundred and Nineteen only) to the respondent on various dates. The complainant submits that the respondent was supposed to handover the flat by the end of December 2017 with a grace period of six months i.e. by the end of June 2018.

4. The complainant submits that the terms of the subvention, laid-out that the respondent will bear the PEMI costs till handover of the flat and registration. Ozone group paid PEMI till July 2019. The complainant submits that the respondent stopped paying PEMIs and passed on the burden to the complainant and has violated the terms of the subvention scheme. The complainant also submits that there is a huge delay in handing over the flat by the respondent. The complainant also submits that the bank and the respondent have colluded and hence without proper diligence loan amount was disbursed to the respondent. The complainant further submits that the respondent has received the money though the work has not been completed and the bank is recovering loan from the complainant. The complainant submits that she has complied with the terms of the agreement. Thus, the complainant has approached this Hon'ble Authority and prays for directions to

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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 its counsel/representative and has submitted their statement of objections as under:

6. The respondent denies the entire allegations made against them in the complaint by the complainant as false. The respondent submits that the complainant has prayed for refund of the amount paid by him. 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 PEEMI to the Bank and EMI after possession.

7. The respondent contends that as the complainant has opted for full refund with interest 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:

"Borrower agrees that it unconditionally and irrevocable subrogates its right to receive any amount payable by the seller to the borrower in the event of cancellation of agreement for sale of undivided share and the agreement to build, in favour of HDFC."

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

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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. 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.

10. The respondent further submits that the complainant has to pay interest to the tune of Rs.1,19,467/- 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.13,14,589/- i.e. the own contribution made by the complainant and dispose the complaint in accordance with the tripartite agreement executed between the parties.

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 including interest – Rs.13,14,589/-
(Own contribution Rs.8,27,144 + Rs.6,06,912 interest payable
- Rs.1,19,467 delay interest payable by the complainant due
to non-adherence of payment schedule)
2. Housing Loan due to HDFC – Rs.63,04,990/-
3. Interest payable by the complainant for delayed payments –
Rs.1,19,467/-
4. Subvention & PEMI paid by Ozone to Bank – Rs.10,81,185/-

Hence, prays the Hon'ble Authority to allow the relief sought as above.

12. The complainant in her rejoinder to the objections and calculation sheet filed by the respondent contends that the respondent was supposed to handover the flat by December 2017 with a grace period of six months i.e. latest by June 2018, but has not handed over the flat even after more than five

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years and also failed to pay PEMIs to the Bank as per terms of the subvention scheme. The complainant submits that even the respondent has failed to provide amenities as assured and hence, she is seeking full refund with interest.

13. The complainant submits that the respondent's contention that the tripartite agreement was executed due to financial constraints which is not true and contends that the respondent has selectively used certain clauses of the agreement to their advantage. The complainant submits that her CIBIL score has been severely affected due to non-payment of PEMIs by the respondent. As regards the delay interest claimed by the respondent on the ground that the complainant has delayed in making scheduled payments, the complainant contends that there has been no delay from her side.

14. The complainant submits that the respondent has not considered the PEMI component of loan disbursed by HDFC, which they should have considered in their calculation sheet, as the respondent was supposed to pay PEMI until the date of handover of the unit, the burden was passed on to the complainants who are paying PEMIs to HDFC. Hence the respondent has to take into consideration the amount paid by the complainants and prays the Hon'ble Authority to issue direction to the respondent to refund the entire amount with interest.

15. 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 calculation sheet as on 28/02/2023.

16. In support of her claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement,

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payment receipts, statement of account from HDFC regarding disbursement of housing loan to the respondent, statement of account issued by ICICI Bank regarding payment of PEMIs by the complainant, email correspondence with the respondent and Memo of calculation for refund with interest as on 04/06/2023.

17. This case was heard on 21/2/2023, 09/03/2023, 30/05/2023, 05/07/2023, 3/8/2023, 5/9/2023, 14/9/2023 and 31/10/2023. Heard arguments of both sides.

18. 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?

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

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

REASONS

20. My answer to Point No.1:- From the materials placed on record, it is apparent that inspite of entering into an agreement to handover the flat to the complainant by December 2017 with a grace period of six months i.e. latest by the end of June 2018 and receiving substantial sale consideration amount, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the flat till today. The respondent has also failed to pay PEMIs to the Bank as agreed.

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21. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that complainant was supposed to get the possession of the flat by December 2017 with a grace period of six months i.e. by June 2018. Having accepted substantial sale consideration, the respondent has failed to handover the flat to the complainant and has not paid pre-EMIs to the Bank as agreed, certainly entitles the complainant herein for refund of entire amount with interest.

22. The Hon'ble Authority has perused the written submissions submitted by the respondent and the complainant and 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. 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 from any ambiguity and vagueness. Here in this case, the respondent has not given possession of the said flat to the complainant as agreed and have not complied with the terms of the said agreement of sale.

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

24. The complainants have submitted proof of evidence in the form of statement of accounts issued by HDFC pertaining to disbursement of loan to the respondent and statement of accounts issued by ICICI Bank for having paid PEMIs to the HDFC.

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:

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"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 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.

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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.1,47,37,307/- (Rupees One Crore Forty Seven Lakh Thirty Seven Thousand Three Hundred and Seven only) vide his memo of calculation as on 04/06/2023 towards refund with interest. The respondent in their calculation sheet as on 28/02/2023 submitted on 5/7/2023 claim that the refund amount with interest payable to the complainant is Rs.13,14,589/- 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.

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 04/06/2023.

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	15/06/2015	1,00,000	685	30/04/2017	16,890
2	15/10/2015	1,00,000	563	30/04/2017	13,882
3	17/10/2015	5,27,144	561	30/04/2017	72,919
4	08/11/2015	1,00,000	539	30/04/2017	13,290
5	30/11/2015	4,54,905	517	30/04/2017	57,991
6	30/11/2015	20,34,287	517	30/04/2017	2,59,329
7	29/01/2016	2,09,986	457	30/04/2017	23,662
8	29/01/2016	10,30,730	457	30/04/2017	1,16,147

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9	27/05/2016	1,76,762	338	30/04/2017	14,731
10	27/05/2016	10,63,954	338	30/04/2017	88,672
11	25/08/2016	1,00,916	248	30/04/2017	6,171
12	25/08/2016	7,26,228	248	30/04/2017	44,409
13	21/10/2016	3,68,606	191	30/04/2017	17,359
14	21/10/2016	44,966	191	30/04/2017	2,117
15		70,38,484		TOTAL INTEREST (11)	7,47,569

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	70,38,484	2225	04/06/2023	8.15	10.15 as on 01-05-2017	43,54,941
2	26/08/2019	53,041	1378	04/06/2023	8.45	10.45 as on 10-08-2019	20,925
3	21/09/2019	52,941	1352	04/06/2023	8.35	10.35 as on 10-09-2019	20,296
4	28/10/2019	52,376	1315	04/06/2023	8.25	10.25 as on 10-10-2019	19,341
5	14/11/2019	52,030	1298	04/06/2023	8.2	10.2 as on 10-11-2019	18,872
6	16/12/2019	52,010	1266	04/06/2023	8.2	10.2 as on 10-12-2019	18,400
7	13/01/2020	51,368	1238	04/06/2023	8.2	10.2 as on 10-01-2020	17,771
8	06/02/2020	51,488	1214	04/06/2023	8.2	10.2 as on 10-01-2020	17,467
9	04/03/2020	51,105	1187	04/06/2023	8.15	10.15 as on 10-02-2020	16,868
10	27/04/2020	51,600	1133	04/06/2023	7.7	9.7 as on 10-04-2020	15,536
11	21/05/2020	51,487	1109	04/06/2023	7.55	9.55 as on 10-05-2020	14,939
12	25/06/2020	51,487	1074	04/06/2023	7.3	9.3 as on 10-06-2020	14,089
13	29/07/2020	50,604	1040	04/06/2023	7.3	9.3 as on 10-07-2020	13,409

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14	31/08/2020	50,677	1007	04/06/2023	7.3	9.3 as on 10-08-2020	13,002
15	08/10/2020	1,00,259	969	04/06/2023	7.3	9.3 as on 10-09-2020	24,753
16	12/11/2020	42,830	934	04/06/2023	7.3	9.3 as on 10-11-2020	10,192
17	10/12/2020	49,300	906	04/06/2023	7.3	9.3 as on 10-12-2020	11,380
18	13/01/2021	48,656	872	04/06/2023	7.3	9.3 as on 10-01-2021	10,810
19	28/01/2021	48,138	857	04/06/2023	7.3	9.3 as on 10-01-2021	10,511
20	20/03/2021	48,138	806	04/06/2023	7.3	9.3 as on 10-03-2021	9,885
21	20/04/2021	48,138	775	04/06/2023	7.3	9.3 as on 10-04-2021	9,505
22	10/05/2021	50,000	755	04/06/2023	7.3	9.3 as on 10-04-2021	9,618
23	20/05/2021	48,138	745	04/06/2023	7.3	9.3 as on 15-05-2021	9,137
24	21/06/2021	47,879	713	04/06/2023	7.3	9.3 as on 15-06-2021	8,698
25	20/07/2021	47,879	684	04/06/2023	7.3	9.3 as on 15-07-2021	8,344
26	20/08/2021	47,879	653	04/06/2023	7.3	9.3 as on 15-08-2021	7,966
27	20/09/2021	47,879	622	04/06/2023	7.3	9.3 as on 15-09-2021	7,587
28	20/10/2021	47,879	592	04/06/2023	7.3	9.3 as on 15-10-2021	7,221
29	20/11/2021	47,879	561	04/06/2023	7.3	9.3 as on 15-11-2021	6,843
30	20/12/2021	47,879	531	04/06/2023	7.3	9.3 as on 15-12-2021	6,477
31	20/01/2022	47,879	500	04/06/2023	7.3	9.3 as on 15-01-2022	6,099
32	21/02/2022	47,879	468	04/06/2023	7.3	9.3 as on 15-02-2022	5,709
33	21/03/2022	47,879	440	04/06/2023	7.3	9.3 as on 15-03-2022	5,367

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34	20/04/2022	47,879	410	04/06/2023	7.4	9.4 as on 15-04-2022	5,055
35	20/05/2022	47,879	380	04/06/2023	7.5	9.5 as on 15-05-2022	4,735
36	20/06/2022	49,950	349	04/06/2023	7.7	9.7 as on 15-06-2022	4,632
37	20/07/2022	49,950	319	04/06/2023	7.8	9.8 as on 15-07-2022	4,278
38	20/08/2022	49,950	288	04/06/2023	8	10.0 as on 15-08-2022	3,941
39	20/09/2022	55,126	257	04/06/2023	8	10.0 as on 15-09-2022	3,881
40	20/10/2022	55,126	227	04/06/2023	8.25	10.25 as on 15-10-2022	3,514
41	26/11/2022	55,346	190	04/06/2023	8.35	10.35 as on 15-11-2022	2,981
42	20/12/2022	57,714	166	04/06/2023	8.6	10.6 as on 15-12-2022	2,782
43	20/01/2023	57,714	135	04/06/2023	8.6	10.6 as on 15-01-2023	2,262
44	TOTAL AMOUNT	91,99,719				TOTAL INTEREST (I2)	47,90,019

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 04-06-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
91,99,719	55,37,588	0	1,47,37,307

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

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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 complaint bearing **No.CMP/221102/0010164** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,47,37,307/- (Rupees One Crore Forty Seven Lakh Thirty Seven Thousand Three Hundred and Seven only)** towards refund with interest calculated at 9% from 15/06/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 04/06/2023 to the complainant within 60 days from the date of this order.

The interest due from 05/06/2023 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

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