

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 27th NOVEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220811/0009876

COMPLAINANTS.....

**SADHASIVAM PALANI &
ANUSHA SADHASIVAM
261, TVS COLONY, 52ND STREET
ANNA NAGAR WEST EXTN
CHENNAI-600101**

**DISTRICT: CHENNAI
STATE: TAMIL NADU**

(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)**

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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 submit that they had purchased a flat bearing No.A-202, 2nd Floor, Block-A in the project of the respondent and entered into agreement of sale and construction agreement dated 17/12/2015 and tripartite agreement dated 21/1/2016 under subvention scheme of 10:80:10 i.e. 10% down payment to be made by the complainants, 80% to be funded by the bank and 10% to be paid by the complainants at the time of registration and handover of the flat. The complainants submit that they have paid an amount of Rs.82,01,653/- (Rupees Eighty Two Lakh One Thousand Six Hundred and Fifty Three only) to the respondent on various dates. The complainants submit 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 complainants submit that the terms of the subvention, laid-out that the respondent will bear the PEMI costs till handover of the flat and registration. Ozone stopped paying PEMIs and started giving credit notes stating that the same will be adjusted at the time of registration which will not be more than six months away from the date of first default of PEMI payment. The complainants submit that this is not in compliance with the terms of the subvention scheme. The complainants submit that there is an inordinate delay in handing over the flat as promised and that the bank and the respondent have colluded and hence without proper diligence loan amount was disbursed to the respondent. The complainants further submit that the respondent has received the money though the work has not been completed and the bank is recovering loan from the complainants. The complainants submit that they have complied with the terms of the agreement.

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5. The complainants have approached the Hon'ble High Court of Karnataka and got stay in W.P.No.7330/2022 which has passed an interim order till the next date of hearing 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. Thus, the complainants have approached this Hon'ble Authority and prays for directions to the respondent to refund the entire amount with interest, clear all liabilities with respect to the housing loan and costs of this instant proceedings. 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 the entire allegations made against them in the complaint by the complainants are false. The respondent submits that the complainants have prayed for refund of the amount paid by him. 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 Bank and EMI after possession.

8. The respondent contends that as the complainants have opted for full refund with interest before the Hon'ble Authority, they are constrained to invoke Clause 14 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

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agreement to build, in favour of IHFL."

9. The respondent contends that as the complainants have opted for cancellation before the Hon'ble Authority, they are constrained to invoke Clause 13 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 IHFL."

10. In view of the above, the respondent prays that the refund of money to the complainants may be limited to the own contribution of Rs.24,86,489/- including Rs.17,33,092/- paid towards PEMI by them and that the respondent may be allowed to close the loan amount of Rs.57,15,164/- in accordance with the agreement and dispose the complaint in accordance with the tripartite agreement.

11. The respondent has paid instalments towards subvention and PEMI to the tune of Rs.15,33,868/- which may be considered against the final amount due to the complainants.

12. The respondent further submits that the complainants have to pay interest to the tune of Rs.21,330/- for delay in making scheduled payments to the respondent.

13. 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.24,86,489/- including Rs.17,33,092/- paid towards PEMIs.
2. Housing Loan due to IHFL – Rs.57,15,164/-

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3. Interest payable by the complainant for delayed payments –
Rs.21,330/-

4. Subvention & PEMI paid by Ozone to Bank – Rs.15,33,868/-

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

14. The complainants in their rejoinder to the written submissions and calculation sheet filed by the respondent contends that the subvention scheme was introduced by the respondent wherein they had promised to bear PEMI till handing over of the flat but have misled that the tripartite agreement was executed due to financial constraints.

15. The complainants submit that the respondent's contention that the tripartite agreement was executed due to financial constraints is not true and contends that they have selectively used certain clauses of the agreement to their advantage. The complainants submit that their 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 complainants have delayed in making scheduled payments, the complainants contend that there has been no delay on their part.

16. The complainants submit that the respondent has not considered the PEMI component of loan disbursed by IHFL, which they should have considered in their calculation sheet, as the respondent was supposed to pay PEMI until handing over of the flat, but the burden was passed on to the complainants who are paying PEMIs to the financial institution. The complainants submit that Rs.15,33,868/- supposed to have been paid by the respondent as PEMI cannot be said refund to the complainants. 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.

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15. In support of their defence, the respondent has filed copies of documents such as agreement of sale, tripartite agreement, delay payment schedule with demand notes and revised calculation sheet as on 31/3/2023 filed on 16/8/2023.

17. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, payment receipts, statement of account from the respondent dated 17/1/2022, letter dated 24/11/2017 from IHFL regarding sanction and disbursal of loan, statement of account pertaining to housing loan and payment of PEMIs issued by IHFL for the period 29/1/2016 to 31/8/2017, statement of account issued by ICICI for the period from 1/4/2021 to 18/1/2022 pertaining to payment of PEIMI, Order dated 20/4/2022 in respect of W.P.No.7330/2022 (GM-RES) of the Hon'ble High Court of Karnataka and Memo of calculation for refund with interest as on 17/12/2022.

18. This case was heard on 22/12/2022, 1/3/2023, 12/4/2023, 27/7/2023, 16/8/2023, 5/10/2023 and 16/11/2023. Heard arguments of both sides.

19. On the above averments, the following points would arise for my consideration:-

- a. Whether the complainants are entitled for the relief claimed?
- b. What order?

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

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

REASONS

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21. 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 complainants by December 2017 with a grace period of six months i.e. latest by the end of June 2018 and receiving full sale consideration amount, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the flat to the complainants till today. The respondent has also failed to pay PEMIs to the Bank as agreed.

22. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that complainants were 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 full sale consideration, the respondent has failed to handover the flat to the complainants and has not paid pre-EMIs to the Bank as agreed, certainly entitles the complainants herein for refund of entire amount with interest.

23. The Hon'ble Authority has perused the written submissions submitted by the respondent and the written submission, objections filed by complainants 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.

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

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

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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.

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.1,28,95,724/- (Rupees One Crore Twenty Eight Lakh Ninety Five Thousand Seven Hundred and Twenty Four only) vide thier memo of calculation as on 17/12/2022 towards refund with interest.

30. As there was difference in the principal amount in the calculation sheet submitted by the respondent as on 30/11/2022 submitted on 22/12/2022, the Hon'ble Authority directed them to sort out and file revised memo of

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calculation. Accordingly, the respondent submitted their revised memo of calculation as on 31/3/2023 submitted on 16/8/2023 which was not accepted by the Hon'ble Authority.

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 17/12/2022.

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 | 27-10-2015 | 1,00,000 | 551 | 30-04-2017 | 13,586 |
| 2 | 04-11-2015 | 6,53,397 | 543 | 30-04-2017 | 87,483 |
| 3 | 31-01-2016 | 24,27,765 | 455 | 30-04-2017 | 2,72,375 |
| 4 | 31-01-2016 | 5,72,235 | 455 | 30-04-2017 | 64,200 |
| 5 | 05-02-2016 | 1,52,544 | 450 | 30-04-2017 | 16,926 |
| 6 | 05-02-2016 | 6,52,492 | 450 | 30-04-2017 | 72,399 |
| 7 | 20-06-2016 | 9,65,215 | 314 | 30-04-2017 | 74,731 |
| 8 | 22-06-2016 | 1,76,296 | 312 | 30-04-2017 | 13,562 |
| 9 | 12-08-2016 | 77,175 | 261 | 30-04-2017 | 4,966 |
| 10 | 12-08-2016 | 4,74,825 | 261 | 30-04-2017 | 30,557 |
| 11 | | 62,51,944 | | TOTAL INTEREST (I1) | 6,50,785 |

| Interest Calculation From 01/05/2017 (After RERA) | | | | | | | |
|---|------------|-------------------------|------------|-----------------|------------------|------------------------|----------------|
| S.NO | DATE FROM | 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 | 62,51,944 | 2056 | 17-12-2022 | 8.15 | 10.15 as on 01-05-2017 | 35,74,467 |
| 2 | 21-11-2017 | 2,13,515 | 1852 | 17-12-2022 | 8.1 | 10.1 as on 01-11-2017 | 1,09,420 |

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| | | | | | | | |
|----|------------|--------|------|------------|------|---------------------------|--------|
| 3 | 10-07-2019 | 49,056 | 1256 | 17-12-2022 | 8.6 | 10.6 as on 10-07-2019 | 17,893 |
| 4 | 13-08-2019 | 49,056 | 1222 | 17-12-2022 | 8.45 | 10.45 as on 10-08-2019 | 17,162 |
| 5 | 10-09-2019 | 49,056 | 1194 | 17-12-2022 | 8.35 | 10.35 as on 10-09-2019 | 16,609 |
| 6 | 10-10-2019 | 54,794 | 1164 | 17-12-2022 | 8.25 | 10.25 as on 10-10-2019 | 17,910 |
| 7 | 11-11-2019 | 54,794 | 1132 | 17-12-2022 | 8.2 | 10.2 as on 10-11-2019 | 17,333 |
| 8 | 10-12-2019 | 54,794 | 1103 | 17-12-2022 | 8.2 | 10.2 as on 10-12-2019 | 16,889 |
| 9 | 10-01-2020 | 54,794 | 1072 | 17-12-2022 | 8.2 | 10.2 as on 10-01-2020 | 16,414 |
| 10 | 10-02-2020 | 54,794 | 1041 | 17-12-2022 | 8.15 | 10.15 as on 10-02-2020 | 15,861 |
| 11 | 10-03-2020 | 54,794 | 1012 | 17-12-2022 | 8.05 | 10.05 as on 10-03-2020 | 15,268 |
| 12 | 13-04-2020 | 54,794 | 978 | 17-12-2022 | 7.7 | 9.7 as on 10-04-2020 | 14,241 |
| 13 | 12-05-2020 | 54,794 | 949 | 17-12-2022 | 7.55 | 9.55 as on 10-05-2020 | 13,605 |
| 14 | 11-06-2020 | 54,794 | 919 | 17-12-2022 | 7.3 | 9.3 as on 10-06-2020 | 12,830 |
| 15 | 10-07-2020 | 54,794 | 890 | 17-12-2022 | 7.3 | 9.3 as on 10-07-2020 | 12,425 |
| 16 | 10-08-2020 | 54,794 | 859 | 17-12-2022 | 7.3 | 9.3 as on 10-08-2020 | 11,992 |
| 17 | 10-09-2020 | 54,794 | 828 | 17-12-2022 | 7.3 | 9.3 as on 10-09-2020 | 11,559 |
| 18 | 12-10-2020 | 54,794 | 796 | 17-12-2022 | 7.3 | 9.3 as on 10-10-2020 | 11,113 |
| 19 | 10-11-2020 | 54,794 | 767 | 17-12-2022 | 7.3 | 9.3 as on 10-11-2020 | 10,708 |
| 20 | 10-12-2020 | 54,794 | 737 | 17-12-2022 | 7.3 | 9.3 as on 10-12-2020 | 10,289 |
| 21 | 11-01-2021 | 54,794 | 705 | 17-12-2022 | 7.3 | 9.3 as on 10-01-2021 | 9,842 |
| 22 | 10-02-2021 | 54,794 | 675 | 17-12-2022 | 7.3 | 9.3 as on 10-02-2021 | 9,423 |

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| | | | | | | | |
|----|-----------------|-----------|-----|------------|-----|--------------------------|-----------|
| 23 | 10-03-2021 | 54,794 | 647 | 17-12-2022 | 7.3 | 9.3 as on 10-03-2021 | 9,032 |
| 24 | 12-04-2021 | 54,794 | 614 | 17-12-2022 | 7.3 | 9.3 as on 10-04-2021 | 8,572 |
| 25 | 10-05-2021 | 54,794 | 586 | 17-12-2022 | 7.3 | 9.3 as on 10-04-2021 | 8,181 |
| 26 | 10-06-2021 | 54,794 | 555 | 17-12-2022 | 7.3 | 9.3 as on 15-05-2021 | 7,748 |
| 27 | 12-07-2021 | 54,794 | 523 | 17-12-2022 | 7.3 | 9.3 as on 15-06-2021 | 7,301 |
| 28 | 10-08-2021 | 54,794 | 494 | 17-12-2022 | 7.3 | 9.3 as on 15-07-2021 | 6,896 |
| 29 | 10-09-2021 | 54,794 | 463 | 17-12-2022 | 7.3 | 9.3 as on 15-08-2021 | 6,464 |
| 30 | 10-10-2021 | 54,794 | 433 | 17-12-2022 | 7.3 | 9.3 as on 15-09-2021 | 6,045 |
| 31 | 10-11-2021 | 54,794 | 402 | 17-12-2022 | 7.3 | 9.3 as on 15-10-2021 | 5,612 |
| 32 | 17-12-2021 | 54,794 | 365 | 17-12-2022 | 7.3 | 9.3 as on 15-12-2021 | 5,095 |
| 33 | 10-01-2022 | 54,794 | 341 | 17-12-2022 | 7.3 | 9.3 as on 15-12-2021 | 4,760 |
| 34 | 10-02-2022 | 54,794 | 310 | 17-12-2022 | 7.3 | 9.3 as on 15-01-2022 | 4,327 |
| 35 | TOTAL AMOUNT | 82,01,653 | | | | TOTAL INTEREST (I2) | 40,43,286 |

| Memo Calculation | | | |
|------------------------------|--|-------------------------------|---------------------------------------|
| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2) AS ON 17-12-2022 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
| 82,01,653 | 46,94,071 | 0 | 1,28,95,724 |

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

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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/220811/0009876** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,28,95,724/- (Rupees One Crore Twenty Eight Lakh Ninety Five Thousand Seven Hundred and Twenty Four only) towards refund with interest** calculated at 9% from 27/10/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 17/12/2022 to the complainants 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 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

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