

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 19TH DECEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/UR/221226/0010530

COMPLAINANTS.....

**VINOD NAIR &
KASHMIRA PATKI NAIR
C-1003, 10TH FLOOR
PURVA SUNFLOWER
MAGADI ROAD
BANGALORE-560023.**

**(BY MR. AKASH R BANTIA,
ADVOCATE)**

Vs

RESPONDENT.....

**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
OZONE GROUP
NO.38, YELLAPPA GARDEN
YELLAPPA CHETTY LAYOUT
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 AVENUE" developed by **M/S. OZONE URBANA INFRA DEVELOPERS PRIVATE LIMITED** situated at Urbana Avenue, Poojanahalli Village, Kasaba Hobli, Devanahalli Taluk, Bengaluru Rural District for the relief of refund with interest.

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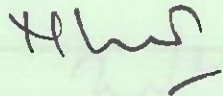
2. This project has not been registered under RERA.

Brief facts of the complaint are as under:-

3. The complainants submit that they had purchased a flat bearing No.W 803, 8th Floor, Block-W in the project of the respondent and entered into agreement for sale and construction agreement on 08/02/2016 with Tripartite 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 entered into Tripartite Agreement in March 2016 with the respondent and HDFC for housing loan and have paid an amount of Rs.83,11,148/- (Rupees Eighty Three Lakh Eleven Thousand One Hundred and Forty Eight only) (including housing loan from HDFC) to the respondent on various dates. The complainants submit that the respondent was supposed to handover the flat on or before August 2018 with a grace period of six months i.e. latest by February 2019.

4. The complainants submit that the terms of the subvention, laid-out that the respondent will bear the PEMI costs till intimation of the flat being ready for handover. Ozone group paid PEMI till June 2019. The respondent stopped paying PEMIs citing government regulations along with an undertaking that the flat would be handed over within six months which has not happened and passed on the burden to the complainants and have violated the terms of the subvention scheme.

5. There is a huge delay in handing over the flat as promised by the respondent. No progress in the construction work and the project is on standstill. The Bank has called upon the flat under NPA. Thus, the complainants have approached this Hon'ble Authority and pray for direction to



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the respondent to refund the entire amount with interest. 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 full amount paid by them. In order to assist the complainants, they undertook to be a part of Tripartite Agreement dated Nil March 2016 and facilitated loan from HDFC whereby the respondent has the liability to pay PEMI to the Bank till December 2017/till date of possession. The respondent contends that as per tripartite agreement entered between both the parties the complainants have the liability to pay PEMI to the Bank until possession and EMI after possession.

8. The respondent reiterates **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 irrevocably 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."

9. The respondent contends that as the complainants have opted for cancellation of the flat and refund 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:



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"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."

10. In view of the above, the respondent contends that they are liable to close the pending disbursed loan of Rs.59,94,860/- and that the refund to the complainants may be limited to their own contribution of Rs.8,26,669/- with interest of Rs.6,09,621/- and dispose the complaint in accordance with the tripartite agreement executed between the parties.

11. The respondent contends that they have paid Rs.90,400/- towards subvention and PEMI which the complainants are liable to pay. As regards PEMI paid by the complainants, proof has not been produced. Once the complainants produce the proof, the calculation will be reconciled with the difference amount.

12. The respondent further submits that the complainants are liable to pay interest to the tune of Rs.1,02,304/- for delay in making scheduled payments to the respondent.

12. The respondent submits that the Hon'ble Authority may please take on record the MOC put forth by the respondent as shown below:-

1. Complainants own contribution – Rs.8,26,669/-
2. Interest payable to the complainants – Rs.6,09,621/-
3. Housing Loan due to HDFC – Rs.59,94,860/-
4. Interest payable by the complainants for delayed payments – Rs.1,02,304/-
5. Subvention paid by Ozone to Bank – Rs.90,400/-

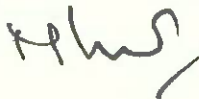
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6. Total amount payable – Rs.13,33,986/- (after deducting interest payable by the complainants for delayed payment)
13. The respondent prays the Hon'ble Authority to allow them to close the loan with the bank in accordance with the tripartite agreement and refund the amount to the complainants as shown above.
14. The complainants in their rejoinder to the written submission and calculation sheet filed by the respondent submit that the tripartite agreement was executed on the basis of subvention scheme to lure and trap innocent home buyers. The respondent in a letter dated Nil pertaining to Subvention Scheme promises to bear the PEMI until intimation of the flat being ready for handover.
15. The complainants submit that the respondent's contention that the tripartite agreement was executed due to financial constraints is not true. The CIBIL score of the complainants has been severely affected due to non-payment of PEMIs by the respondent. The Hon'ble High Court of Karnataka has passed an interim order in W.P.No.16053/2023 directing the respondent to pay PEMI, which they have failed to do so. 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 from their side.
16. The complainants submit that the respondent has not considered the PEMI component paid by them and have taken only principal amount for consideration. The claim of the respondent that the total amount due including interest and bank disbursement is Rs.73,28,846/- is not correct.
17. 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 20/5/2023.



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18. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, construction agreement, Tripartite Agreement, payment receipts and Memo of calculation for refund with interest as on 20/05/2023.

19. This case was heard on 7/6/2023, 18/7/2023, 7/9/2023, 31/10/2023 and 13/12/2023. Heard arguments of both sides.

20. 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?

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

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

REASONS

22. My answer to Point No.1:- From the materials placed on record, it is apparent that in spite of entering into an agreement to handover the flat to the complainants by February 2019 including six months grace period 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.

23. 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 February 2019. Having accepted substantial sale

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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.

24. The Hon'ble Authority has perused the written submissions submitted by the respondent and the complainants and 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 and the disbursed loan amount will be paid to the Bank directly. 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 given possession of the said flat to the complainants as agreed and have not complied with the terms of the said agreement of sale.

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:

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"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.

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.1,28,79,780/- (Rupees One Crore Twenty Eight Lakh Seventy Nine Thousand Seven Hundred and Eighty only) vide their memo of calculation as on 20/05/2023 towards refund with interest. The respondent in their calculation sheet as on 20/05/2023 submitted on 31/10/2023 claim that the refund amount with interest payable to the

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complainants is Rs.13,33,986/- after deducting Rs.1,02,304/- towards the interest payable by the complainants for the delayed payments. The Hon'ble Authority has not agreed with the claim of the respondent.

30. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest calculated vide her memo of calculation as on 20/05/2023.

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	30-11-2015	1,00,000	517	30-04-2017	12,747
2	17-12-2015	3,63,335	500	30-04-2017	44,794
3	25-12-2015	3,63,334	492	30-04-2017	44,077
4	26-03-2016	20,03,313	400	30-04-2017	1,97,587
5	30-03-2016	3,71,949	396	30-04-2017	36,318
6	13-03-2017	10,99,513	48	30-04-2017	13,013
7	14-03-2017	89,167	47	30-04-2017	1,033
8		43,90,611		TOTAL INTEREST (I1)	3,49,569

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	43,90,611	2210	20-05-2023	8.15	10.15 as on 01-05-2017	26,98,301
2	21-05-2017	0	2190	20-05-2023	8.15	10.15 as on 01-05-2017	0
3	21-06-2017	11,29,498	2159	20-05-2023	8.15	10.15 as on 01-06-2017	6,78,127
4	22-06-2017	59,182	2158	20-05-2023	8.15	10.15 as on 01-06-2017	35,515

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5	27-12-2017	8,26,853	1970	20-05-2023	8.1	10.1 as on 01-12-2017	4,50,736
6	28-12-2017	1,078	1969	20-05-2023	8.1	10.1 as on 01-12-2017	587
7	20-01-2018	4,14,307	1946	20-05-2023	8.1	10.1 as on 01-01-2018	2,23,096
8	11-10-2021	4,15,493	586	20-05-2023	7.3	9.3 as on 15-09-2021	62,037
9	11-10-2021	2,27,430	586	20-05-2023	7.3	9.3 as on 15-09-2021	33,957
10	01-04-2022	3,38,173	414	20-05-2023	7.3	9.3 as on 15-03-2022	35,672
11	01-07-2022	10,358	323	20-05-2023	7.7	9.7 as on 15-06-2022	889
12	02-05-2023	4,98,165	1	20-05-2023	8.7	10.7 as on 15-04-2023	146
13	TOTAL AMOUNT	83,11,148				TOTAL INTEREST (I2)	42,19,063

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 20-05-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
83,11,148	45,68,632	0	1,28,79,780

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 complaint bearing **No.CMP/UR/221226/0010530** is hereby allowed.

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Respondent is directed to pay the amount of **Rs.1,28,79,780/- (Rupees One Crore Twenty Eight Lakh Seventy Nine Thousand Seven Hundred and Eighty only) towards refund with interest** calculated at 9% from 30/11/2015 to 30/4/2017 and MCLR + 2% from 01/05/2017 till 20/05/2023 to the complainants within 60 days from the date of this order.

The interest due from 21/05/2023 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

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