

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

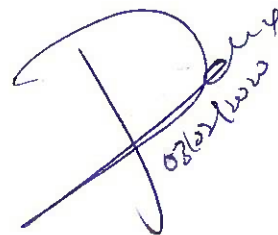
BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Presided by Sri K PADAKSHAPPA

Adjudicating Officer

Date: 03rd FEBRUARY 2020

<u>Complaint No.</u>	<u>CMP/190714/0003496</u>
Complainant	Vishal Sinha F-1303, Brigade Metropolis, Mahadevapura, Bengaluru-560048
Opponents	1. Mr. Srinivasan Gopalan CEO & Authorized Signatory 38, Ulsoor Road Bengaluru -560042 2. Mr. Santosh K Senior DGM CRM 38, Ulsoor Road Bengaluru -560042 3. Ms. Meena P Customer Relationship Officer 38, Ulsoor Road Bengaluru -560042 Represented by Deepak Bhandhar & Associates, Advocates



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"J U D G E M E N T"

1. Complainant VISHAL SINHA, has filed this complaint bearing complaint no.CMP/190714/0003496 under Section 31 of RERA Act against the project 'Ozone Urbana' developed by "Ozone Urbana Infra Developers Pvt. Ltd.," for the relief of refund as the complainant is the consumer in the said project. The complaint is as follows:

I along with my wife Mrs. Poonam Sinha had booked unit D 902 in the project Urbana Avenue of Ozone Developers Bangalore Pvt. Ltd./ Ozone Urbana Infra Developers Pvt Ltd on June 20, 2015, and subsequently entered into Construction Agreement & Agreement of Sale with them on September 24, 2015. At present, we have number of complaints against the Promoter which are classified under the 5 broad sections below ? 1. Delayed Possession a. At the time of agreement, we were promised a delivery date of December 31, 2017 as per Annexure 3 of the Construction Agreement (please refer pg. 34 of the same). b. However, since then the project has seen multiple delays and we have still not received possession after more than 18 months of the promised date. c. Our total amount of Rs. 76,47,878 (Seventy Six lacs, Forty Seven thousand, Eight Hundred and Seventy Eight) including our own booking amount of Rs. 8,99,573 and HDFC loan amount of Rs. 67,48,305 stays locked with the builder as on date because of these delays. 2. False Advertising a. At the time of taking our booking amount in June 2015, we were promised lot of amenities in their marketing brochure ? Retail Village, Hospital, IT offices, Business park etc. (please refer old marketing flyer pg. 5, old marketing brochure pg. 7, and old Master plan). b. Since this project is in the remote location of Devanahalli and very far from the main city, we had entered into agreement with the builder only based on these promised amenities which would have made Ozone Urbana a truly independent/ integrated township. c. However, work has not even started on any of these amenities in the last 4 years, and all of them have been taken off their new marketing brochures which has come out later after RERA has come into effect. d. The new brochure says ?Future development yet to be designed? where the old brochure had listed Retail Village, BR Life Hospital, IT Park, Commercial Office Space etc. (please refer new marketing brochure pg. 8). 3. Change in Structural Design of the unit without prior intimation/ approval a. Builder has also made structural changes to our flat without prior notice/ approval from us. We were promised an extended sit out (for which we pay close to Rs. 7.5 lacs extra) that would be part covered and mostly open (please refer old

D. S. Srinivas
16/02/2020

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marketing brochure pg. 13,14, 30, 31). b. Now this extended sit out has been converted to a fully covered balcony (denying us access to open sun and sky) by providing an extended terrace for on 10th floor of D block (without prior notice/ approval from us) which covers our extended sit out completely. 4. Unilateral withdrawal from the Subvention Scheme a. Another important point is regarding the subvention scheme that was promised at the time of booking (please refer subvention scheme letter on Ozone letterhead). As per it, builder had promised paying the pre-emis for the home loan till possession of the flat.

Relief Sought from RERA :Exit from project with full refund & interest

2. In pursuance of the summons issued by this authority, the parties have appeared. The developer has filed statement of objections. The complainant has filed his reply.
3. I have heard arguments of the complainant and the matter was posted for judgment on merits.
4. The points that arise for consideration is as to:
Whether the complainant is entitled for refund ?
5. My answer is affirmative for the following

REASONS

6. The parties have entered into agreement on 24.09.2015 and according to this document the date of delivery of possession was on 31.12.2017 plus six months grace period, but till today, the developer has not completed the project. The complainant has prayed for the return of his amount for having paid the same to the developer. He is paying the amount since 20.06.2015 till 18.10.2016. The parties have entered into agreement with respect to apartment No.D-902. The complainant wants to go out of the project, because the developer has failed to complete the project. During the course of the argument, it was submitted that the complainant has paid Rs.11,09,899/- as self amount whereas HDFC Bank has released amount of Rs.78,58,204 as loan. But

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the developer has denied the case of the complainant by stating that he has given the completion dated to RERA as 2020-2022. Therefore, it is his submission that there is no delay at all.

7. It is the case of the developer that the complainant has entered into agreement under the sub-venture scheme. The developer has agreed to pay the 3 EMI's payment till the possession is delivered. But beyond the control of his limit he could not able to make EMI's payment. In this regard, the developer has sent a notice , wherein in Para 'e', 'f' and 'g' stated as under:

e. it is submitted that, due to reasons beyond the control of the Respondent, unfortunately the respondent is no longer able make the payments under the subvention scheme. The respondent via a email dated 25th June 2019 informed the complainant that due to regulatory constraints, wherein HDFC did not allow for further extension of the subvention scheme they will not be able to honor there financial commitments. It is reiterated that HDFC has refused to accept payments by the builder/developers under the subvention scheme. The regulatory constraints imposed by HDFC is in furtherance of a circular dated 19th July 2019 issued by the National Housing Bank advising such Housing finance companies to "... desist from offering loan products involving servicing of the loan dues by builders/developers etc. on behalf of the borrowers." A copy of the circular for your perusal is annexure herewith as Annexure E.

f. however, in order to ensure that complainants are not affected adversely, the respondent assured the complainants that the landed cost of their apartments will not suffered and the spirit of the subvention scheme will be maintained. The respondent even offered to pass an advance credit note in favor of the complainants in lieu of the pre- EMI payment made by the complainants that would effects reduce the cost of the purchase and save them all the incidental costs associated with the same,

D. Devi
Bhaskar

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*thus ensuring that the landed cost of the Apartment Unit will not suffer owing to the delay, thereby retaining the essence of the Pre EMI Scheme. A copy of the email dated 25th July 2019, where the respondents assured the same has been annexed herewith for your kind perusal as **Annexure F**.*

g. further, a perusal of the Tripartite Agreement will illustrate that the Respondent has no liability in relation to the loan other than making the interest payments to the bank till December 2017. Further, the Tripartite agreement under Clause 4 and clause 8 provide that even on assumption of interest by the respondent, the liberty of the complainant is not reduce or relinquished and after December 2017 the liability to pay the loan amount will be that of complainant's, notwithstanding any other terms of any agreements executed between the complainant and the respondent.

It is therefore clear that the respondents have no incumbent liability towards pre-EMI payments after the liability period, notwithstanding the same, are will not undertake the payment in the interest of the complainants.

8. I would say that, assured date was June 2018. Now we have completed 2019, till this date it is not the case of the developer that his project going to be completed in a nearer date. Surprisingly, he has submitted that he has given the deadline to the RERA as 2022, but already the date given in the agreement of sale shall deadline as per Sec.18 and in case any delay it is bounden duty of the developer to make either towards delay compensation or towards refund of the amount paid by the complainant. Here, the complainant had chosen withdrawal from the project. There is no any reason to say that compensation with draw from the project is wrong one, hence, the complaint is to be allowed. Ofourse there is one more ground for withdrawal was that the developer has failed to remit the EMI to the bank. It was

[Handwritten signature]
03/02/2020

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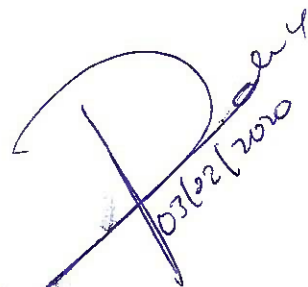
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the case of the developer that he has stopped in making the EMI because of the instructions given by the RBI and he wanted to defend that there was no default on his part.

9. It is also submitted that the developer submits that the prayer of the complainant is premature one since according to him he has given the completion date to RERA as 31/12/2022. In support of the same he has given the decision of Neelkamal case. But it is already decided in so many cases that the date of completion given in the agreement of sale is the deadline but not the date given by the developer to authority while registering the project. Hence, the contention taken by the developer that the complaint is premature holds no water. The complainant is entitled for refund since the developer has failed to complete the project within due date and as such the complainant is entitled for the relief.

10. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. The said 60 days be computed from the date of appearance of the parties. In this case the parties have appeared on 23.08.2019 and closure of this case today is with some delay.

A handwritten signature in blue ink, followed by the date '03/02/2020' written below it.

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11. With this observation, I proceed to pass the following

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190714/0003496 is hereby allowed
- b. The developer is hereby directed to return Rs.11,09,899/- to the complainant. The developer is also directed to pay interest @ 9% p.a. on the respective amount paid on the respective date till 30.04.2017 and @ 2% above the MCLR of SBI on the total amount paid by the complainant commencing from 01.05.2017 till realization.
- c. The developer is also directed to discharge the bank loan along with its interest, EMIs., if paid, EMI if any due along with any other statutory expenses.
- d. The complainant is hereby directed to execute cancellation of agreement of sale after entire amount is realized.
- e. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.
- f. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 03/02/2020)

K. PALAKSHAPPA
Adjudicating Officer

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