

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 22ND SEPTEMBER 2022

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220116/0008798

RECTIFICATION ORDER UNDER SECTION 39 RERA ACT

COMPLAINANTS.....

**DR. RANJAN SARKAR
& MRS. RIDDHI SARKAR
34/7, IAF OFFICERS ENCLAVE
OLD AIRPORT ROAD
VIMANAPURA PO
BENGALURU-560017.**

(In Person)

**(2ND Complainant's name added
Vide order dated 17/8/2023)**

V/S

RESPONDENT.....

**Ozone Urbana Infra Developers Pvt Ltd
No.38, Ulsoor Road,
Bengaluru-560042.**

**(By Mr.Deepak Bhaskar & Associates,
Advocates)**

J U D G E M E N T

This complaint is filed under section 31 of the RERA Act against the project
"Ozone Urbana Avenue" for the relief of refund with interest.

Brief facts of the complaint are as under:-

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1. The complainant has purchased an apartment in the project "Ozone Urbana Aqua" of the respondent and entered into an agreement of sale on 30/12/2013 and had paid an amount of Rs.49,68,905/- to the respondent. Later the complainant shifted to "Ozone Urbana Avenue" under subvention scheme entering into an agreement of sale on 05/12/2018 and has paid in all an amount of Rs.83,23,864/- (Rupees Eighty Three Lakh Twenty Three Thousand Eight Hundred and Sixty Four only) (including Bank Loan from HDFC and the amount paid for flat in the project Ozone Urban Aqua) to the respondent till date. At the time of agreement, the respondent had agreed to pay pre-EMIs till the date of possession. As per the sale agreement dated 5/12/2018, the respondent was supposed to hand over the possession of the flat to the complainant by the end of December 2022 with a grace period of six months, but the respondent vide his email communication dated 25/6/2019 sent to the complainant has intimated that they are gearing up to handover the possession of the flat by 31/12/2019. However, the respondent has failed to handover the possession of the said Unit till date, and has also stopped paying pre-EMIs to Bank. Hence, this complaint.
2. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative. But it has not contested the matter by filing statement of objections, producing documents on its behalf.
3. In support of his claim, the complainant has produced in all 8 documents such as copies of Sale Agreement, HDFC Home Loan Agreement, Allotment letter, Tripartite Agreement, email communication dated 25/6/2019 regarding intimation of date for handing over the possession of the flat, Statement of Account from HDFC dated 11/6/2022, Ozone Letter dated 5/12/2018 for having received payments, and memo of calculation for refund with interest as on 11/06/2022.

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4. Heard arguments of both sides.

5. 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?

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

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

REASONS

7. **My answer to point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project, stopped paying pre-EMIs to the Bank and has not handed over the unit in favour of complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale and construction agreement dated 5/12/2018. There seems to be no possibility of completing the project or handing over the possession in near future.
8. As per section 18(1) of RERA Act, 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, plot, 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.
9. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter



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fails to complete or provide possession of an apartment etc., in accordance with sale agreement.

10. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid the sale consideration amount. Having accepted the said amount and failing to keep up promise to handover possession of apartment and not paying pre-EMIs to the Bank, certainly entitles the complainant herein for refund with interest. The complainant has submitted his memo of calculation as on 11/6/2022 claiming an amount of Rs.1,26,86,898/- as refund including interest. Though the respondent has filed a calculation sheet as on 31/8/2022 claiming that they have to refund an amount of Rs.98,03,570/- including interest, the Authority opines that their claim cannot be accepted as the respondent has filed the calculation sheet after the case was posted for orders. A thorough verification of the documentary proofs furnished by the complainant reveals that his claim is genuine. Having regard to these aspects, the Authority concludes that the complainant is entitled for refund of an amount of Rs.1,26,86,898/- including interest as on 11/6/2022 as claimed by him in his memo of calculation.

11. Therefore, it is incumbent upon the respondent to refund the amount 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 TILL 30/04/2017	INTEREST @9%
1	30-12-2013	1,00,000	1217	30,008
2	10-02-2014	42,000	1175	12,168
3	10-02-2014	3,50,000	1175	1,01,404
4	07-04-2014	5,88,502	1119	1,62,378
5	10-06-2014	8,20,479	1055	2,13,436
6	10-06-2014	1,52,951	1055	39,788

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7	08-03-2016	9,38,614	418	96,741
8	03-08-2016	6,33,687	270	42,187
9	23-08-2016	13,42,672	250	82,767
10			TOTAL INTEREST (I1)	7,80,877

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	49,68,905	1867	11-06-2022	8.15	10.15 as on 01-05-2017	25,79,753
2	31-01-2019	21,99,041	1227	11-06-2022	8.75	10.75 as on 10-01-2019	7,94,682
3	17-07-2019	46,216	1060	11-06-2022	8.6	10.6 as on 10-07-2019	14,226
4	09-08-2019	45,706	1037	11-06-2022	8.6	10.6 as on 10-07-2019	13,764
5	11-09-2019	45,706	1004	11-06-2022	8.35	10.35 as on 10-09-2019	13,012
6	05-10-2019	45,706	980	11-06-2022	8.35	10.35 as on 10-09-2019	12,701
7	14-11-2019	45,195	940	11-06-2022	8.2	10.2 as on 10-11-2019	11,872
8	12-12-2019	45,195	912	11-06-2022	8.2	10.2 as on 10-12-2019	11,518
9	13-01-2020	45,195	880	11-06-2022	8.2	10.2 as on 10-01-2020	11,114
10	11-02-2020	44,940	851	11-06-2022	8.15	10.15 as on 10-02-2020	10,634
11	05-03-2020	44,940	828	11-06-2022	8.15	10.15 as on 10-02-2020	10,347
12	13-04-2020	44,940	789	11-06-2022	7.7	9.7 as on 10-04-2020	9,422
13	15-05-2020	43,918	757	11-06-2022	7.55	9.55 as on 10-05-2020	8,698
14	11-06-2020	43,918	730	11-06-2022	7.3	9.3 as on 10-06-2020	8,168

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15	11-07-2020	39,833	700	11-06-2022	7.3	9.3 as on 10-07-2020	7,104
16	22-08-2020	39,833	658	11-06-2022	7.3	9.3 as on 10-08-2020	6,678
17	15-09-2020	39,833	634	11-06-2022	7.3	9.3 as on 10-09-2020	6,434
18	13-10-2020	36,003	606	11-06-2022	7.3	9.3 as on 10-10-2020	5,559
19	12-11-2020	36,003	576	11-06-2022	7.3	9.3 as on 10-11-2020	5,283
20	08-12-2020	36,003	550	11-06-2022	7.3	9.3 as on 10-11-2020	5,045
21	14-01-2021	35,492	513	11-06-2022	7.3	9.3 as on 10-01-2021	4,639
22	10-02-2021	35,492	486	11-06-2022	7.3	9.3 as on 10-02-2021	4,394
23	11-02-2021	35,492	485	11-06-2022	7.3	9.3 as on 10-02-2021	4,385
24	19-04-2021	35,237	418	11-06-2022	7.3	9.3 as on 10-04-2021	3,752
25	06-05-2021	35,236	401	11-06-2022	7.3	9.3 as on 10-04-2021	3,600
26	09-06-2021	35,236	367	11-06-2022	7.3	9.3 as on 15-05-2021	3,294
27	06-07-2021	35,236	340	11-06-2022	7.3	9.3 as on 15-06-2021	3,052
28	05-08-2021	35,236	306	11-06-2022	7.3	9.3 as on 15-07-2021	2,747
29	14-09-2021	34,726	270	11-06-2022	7.3	9.3 as on 15-08-2021	2,388
30	07-10-2021	34,726	247	11-06-2022	7.3	9.3 as on 15-09-2021	2,185
31	30-11-2021	34,726	193	11-06-2022	7.3	9.3 as on 15-11-2021	1,707
32	TOTAL AMOUNT	83,23,864				TOTAL INTEREST (12)	35,82,157

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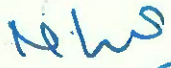
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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 11-06-2022	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
83,23,864	43,63,034	0	1,26,86,898

12. Accordingly the point raised above is answered in the Affirmative.
13. **My answer to point No.2:-** In view of the above discussion, I proceed to pass the following -

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/220116/0008798** is hereby allowed. Respondent is directed to pay a sum of **Rs.1,26,86,898/- (Rupees One Crore Twenty Six Lakh Eighty Six Thousand Eight Hundred and Ninety Eight only)** towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 30/12/2013 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 11/06/2022 to the complainant within 60 days from the date of this order. The interest due from 12/06/2022 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.


(Neelmani N Raju)
Member-2
K-RERA

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AMOUNT	DATE	DESCRIPTION
11-01-2023	11-01-2023	...
12-31-2023	12-31-2023	...
1-31-2024	1-31-2024	...
2-28-2024	2-28-2024	...

[Signature]
 (Name) N. N.
 Member
 AREA