

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 4<sup>TH</sup> SEPTEMBER, 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINT NO.: CMP/210126/0007502**

**COMPLAINANTS.....**

**VENKAT RAO GOPISHETTY &  
JAYA PRADHA GOPISHETTY  
HOUSE NO.3-6-596, STREET NO.8  
HIMAYAT NAGAR  
HYDERABAD - 500029  
STATE: TELANGANA  
DISTRICT: HYDERABAD**

**(By Mr. Joseph Anthony,  
Advocate)**

**Vs**

**RESPONDENTS.....**

**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



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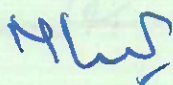
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30/7/2017 till 31/12/2022. The Authority has extended its registration for a further period of 9 months i.e. till 30/09/2023.

**Brief facts of the complaint are as under:-**

3. The complainants on seeing the advertisements from Ozone Group have booked a flat bearing No.A 102, First Floor, Block A, in the project of the respondent and have entered into agreement of sale and construction agreement dated 11/3/2016. The complainants have paid an amount of Rs.83,76,305/- (Rupees Eighty Three Lakh Seventy Six Thousand Three Hundred and Five only) to the respondent on various dates. The complainants have also entered into Tripartite Agreement with the respondent and Indiabulls Housing Finance Limited on 22/3/2016 for housing loan. As per the tripartite agreement the respondent is liable to bear the cost of paying PEMIs for 21 months i.e. till 31/12/2017 from the date of first disbursement of loan.
4. As per agreement of sale and construction agreement the respondent was under obligation to handover possession by August 2018 with a grace period of six months i.e. latest by February 2019. Though more than four years have been lapsed, the respondent is reluctant to complete the construction and has failed to handover the possession of the flat to the complainants. The complainants submit that the construction in the project has not been completed. Thus, the complainants have approached this Authority, praying for directions to 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 their counsel/representative and have submitted their statement of objections as under:





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6. The respondent deny all the allegations made against them by the complainants as false and that a perusal of the agreement of sale goes to show that there is no mention of date of possession/completion. The respondent contends that any interest or compensation payable shall accrue only in the event of promoter failing to complete or is unable to give possession of the flat, plot or building in accordance with the terms of the agreement of sale. The respondent contends that the date in respect of handover of possession would be the completion date provided by the RERA i.e. 30/10/2023. The respondent therefore submits that the contention of the complainants that the date of handing over possession of the flat is 31/8/2018 with grace period of six months is false.
7. The respondent further contends that if the complainants still wish to withdraw from the project, the respondent is entitled to forfeit 20% of the total amount received under the agreement of sale and construction agreement along with interest and any other charges applicable, if any. The respondent prays the Hon'ble Authority to dismiss the complaint.
8. The complainants in their written submission have submitted that the respondent through email dated 15/9/2020 had undertaken to disburse PEMI from the month of October 2020 and had assured that the possession of flat would be handed over by December 01, 2019 vide their letter dated Nil. The CEO had also informed that the participating banks for the subvention scheme are not allowing any further extension of the scheme thus forcing the respondent to stop paying PEMIs on behalf of the complainants and that the respective banks/financial institutions will get in touch with the complainants directly towards collection of PEMIs from 1<sup>st</sup> July, 2019.



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9. The complainants further submit that since the respondent failed to perform its obligations under the tripartite agreement, the complainants terminated the tripartite agreement with the respondent and Indiabulls vide notice dated 27/11/2020 as a result of which the loan account availed in the names of the complainants ought to be closed. The complainants submit that the Indiabulls vide their letter dated 18/12/2020 issued a letter of foreclosure that the loan account in the names of the complainants shall stand closed, subject to the payment of total foreclosure amount i.e. Rs.52,56,461.07.
10. The complainants further submit that through an email dated 23/12/2020 sent to the respondent informed that the respondent is liable to pay the total foreclosure amount for closure of the loan account. But till date, the respondent has neither acknowledged the email nor addressed the issues. This being the case, the complainants are being harassed as well as threatened by the Indiabulls to pay EMIs. The complainants pray this Hon'ble Authority for directions to the respondent to refund the amount with interest.
11. In support of their defence, the respondents have filed copies of documents such as agreement of sale, construction agreement, demand notes, memo of calculation dated 20/6/2022 and calculation sheet as on 31/8/2022.
12. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Construction agreement, Tripartite Agreement, email correspondences with the respondent, Statement of Account issued by Indiabulls pertaining to payment of PEMIs by the complainants, Payment receipts, notice of termination dated 27/11/2020 sent to Indiabulls, letter of foreclosure



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dated 18/12/2020 from Indiabulls and Memo of calculation for refund with interest as on 17/08/2022.

13. This case was heard on 22/6/2022, 2/8/2022, 17/8/2022, 23/8/2022, 8/9/2022, 15/9/2022, 18/10/2022, 22/11/2022, 13/12/2022, 31/1/2023, 9/2/2023, 12/4/2023, 21/6/2023 and 27/7/2023. Heard arguments of both sides.

14. **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?

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

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

**REASONS**

16. **My answer to Point No.1:-** It is undisputed that the respondent has failed to handover possession of the flat to the complainants herein within agreed time even after receiving substantial sale consideration. As per the terms of agreement of sale and construction between the parties, the possession of the apartment had to be handed over before the end of August 2018 with a grace period of six months i.e. latest by February 2019. As per the tripartite agreement, the respondent had agreed to pay pre-EMIs to the Bank till 31/12/2017.

17. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have already paid substantial sale consideration amount to the respondent. Having accepted the



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said amount and failure to keep up promise to handover possession of the flat even after four years, certainly entitles the complainants herein for refund of entire amount with interest.

18. The Hon'ble Authority has perused the statement of objections submitted by the respondents and the written submissions submitted by the complainants. 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. Therefore, the Hon'ble Authority has disagreed with the contentions of the respondent made in their statement of objections.

19. The complainants have submitted statement of accounts issued by Indiabulls for having paid PEMIs.

20. 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."*

*[Handwritten signature]*



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21. 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."*

22. 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.

M/S

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23. 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.

24. During the process of the hearing the Authority noticed dispute regarding PEMIs and Principal amount in the calculation sheet by the respondent and instructed them to come up with reconciliated amount. On filing the fresh calculation sheet also, there was still a mismatch in the amount.

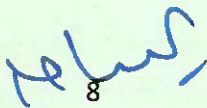
25. ***During the process of the hearing on 27/7/2023 the complainants agreed to accounts submitted by the respondent for Rs.86,65,698/- as on 13/12/2022 as refund.***

26. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund of Rs.86,65,698/- (Rupees Eighty Six Lakh Sixty Five Thousand Six Hundred and Ninety Eight only) as on 13/12/2022.

27. Therefore, it is incumbent upon the respondent to pay refund with interest which is determined as under:

Respondent Memo of Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST AS ON 13-12-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
61,33,535	34,51,560	9,19,397	86,65,698

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





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29. **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/210126/0007502** is hereby allowed.

The respondent is directed to pay the amount of **Rs.86,65,698/- (Rupees Eighty Six Lakh Sixty Five Thousand Six Hundred and Ninety Eight only)** towards **refund with interest** calculated at 9% from 12/6/2016 to 30/4/2017 and MCLR + 2% from 01/05/2017 till 13/12/2022 to the complainants within 60 days from the date of this order.

The interest due from 13/12/2022 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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