

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 13TH SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220509/0009438

COMPLAINANT.....

**SUNIL RAVINDRAN
FLAT NO.301
196, 5TH CROSS
VENKATESHWARANAGAR
JAKKUR
BANGALORE-560064**

(IN PERSON)

Vs

RESPONDENT.....

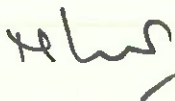
**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
BANGALORE-560042.**

**(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



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

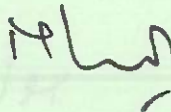
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

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 complainant submits that he had booked a flat bearing No.K-102, First Floor, Block K in the project of the respondent in March 2014 and entered into agreement of sale and construction agreement on 30/4/2014 and Tripartite Agreement dated Nil 2014. The complainant has paid an amount of Rs.68,21,473/- (Rupees Sixty Eight Lakh Twenty One Thousand Four Hundred and Seventy Three only) to the respondent on various dates. The complainant submits that the respondent was supposed to handover the flat in October 2016 with a grace period of six months i.e. latest by April 2017, but has not handed over the flat till date. The complainant submits that the respondent is going on to say that in another six months the flat will be handed over but there is no clarity on when the project will be complete and when the flat will be handed over. The complainant submits that the respondent was supposed to pay PEMI to the Bank till the handing over possession of the flat but from July 2019 onwards pushed the responsibility of paying PEMI on the complainant. The complainant further submits that he is paying rent and EMI at the same time and is facing financial hardship. The complainant submit that he don't have any hope when the possession of the flat will be handed over by the respondent. Thus, the complainant has approached this Hon'ble Authority and prays for direction to the respondent to refund the entire amount with interest. Hence, this complaint.

4. 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:

5. The respondent denies all the allegations made against them by the complainant as false. The respondent submits that the complainant has prayed for refund of the amount paid by him. In order to assist the complainant, they facilitated loan from HDFC. The respondent contends that as per tripartite agreement entered between both the parties the complainant has the liability to pay PEMI to the Bank and EMI after possession.

6. The respondent contends that as the complainant has opted for cancellation 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:

"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 there of 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."

7. In view of the above, the respondent prays that the refund of money to the complainant may be limited to own contribution made by the complainant as agreed and that the respondent may be allowed to close the loan of Rs.53,56,844/-.

8. The respondent further submits that the complainant has to pay interest to the tune of Rs.1,75,083/- for delay in making scheduled payments to the respondent. The respondent prays that the Hon'ble Authority may be pleased to direct the respondent to refund Rs.14,64,624/- i.e. the own

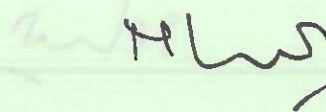
ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,

1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

contribution made by the complainant and dispose the complaint in accordance with the tripartite agreement executed between the parties.

9. 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 – Rs.14,64,624/-
 2. Interest payable to the customer – Rs.6,19,074/-
 3. Housing Loan due to HDFC – Rs.53,56,844/-
 4. Interest payable by the complainant for delayed payments – Rs.1,75,083/-
 5. Total amount payable to the complainant – Rs.19,08,615/- (after deduction of interest payable by the complainant for delayed payments)
10. 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 28/02/2023.
11. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, Construction agreement, Statement of Account issued by HDFC pertaining to payment of PEMIs by the complainant, Payment receipts and Memo of calculation for refund with interest as on 24/05/2023.
12. This case was heard on 21/2/2023, 09/03/2023, 30/05/2023 and 05/07/2023. Heard arguments of both sides.
13. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainant is entitled for the relief claimed?



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

2. What order?

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

1. In the Affirmative.

2. As per final order for the following -

REASONS

15. **My answer to Point No.1:-** It is undisputed that the respondent has failed to handover possession of the flat to the complainant even after receiving substantial total sale consideration amount and also failed to pay PEMIs to the Bank as agreed.

16. From the averments of the complaint and the copies of agreement between the parties, it is obvious that respondent was supposed to handover possession of the flat to the complainant in October 2016 with a grace period of six months i.e. latest by April 2017 and pay PEMIs to the Bank as agreed, certainly entitles the complainant herein for refund of entire amount with interest.

17. The Hon'ble Authority has perused the written submissions submitted by the respondent and the complainant. 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 complied with the terms of the said agreement of sale and buyback agreement. Therefore, the Hon'ble Authority 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.



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

18. The complainant has submitted proof of evidence in the form of statement of accounts issued by HDFC for having paid PEMIs to the Bank.

19. 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."

20. 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



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

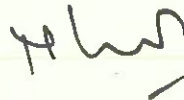
Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

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."

21. 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.

22. 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.

23. The complainant has claimed Rs.1,10,06,506/- (Rupees One Crore Ten Lakh Six Thousand Five Hundred and Six only) vide his memo of calculation as on 24/05/2023 towards refund with interest. The complainant has also admitted that the respondent has refunded an amount of Rs.13,99,268/- to him. The respondent in their revised calculation sheet as on 28/02/2023 submitted on 11/07/2023 claim that the refund amount with interest payable to the complainant is Rs.19,08,615/- after deducting the interest payable by



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

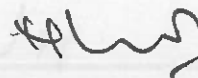
the complainant for the delayed payments. The Hon'ble Authority has not agreed with the claim made by the respondent.

24. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 24/05/2023.

25. 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	01-03-2014	2,00,000	1156	30-04-2017	57,008
2	25-03-2014	4,60,000	1132	30-04-2017	1,28,396
3	26-03-2014	72,317	1131	30-04-2017	20,167
4	25-04-2014	7,32,312	1101	30-04-2017	1,98,807
5	09-05-2014	13,19,281	1087	30-04-2017	3,53,603
6	28-01-2015	13,17,837	823	30-04-2017	2,67,430
7	12-09-2015	13,23,110	596	30-04-2017	1,94,442
8	28-12-2015	7,35,061	489	30-04-2017	88,630
9	20-01-2016	6,61,555	466	30-04-2017	76,015
10		68,21,473		TOTAL INTEREST (I1)	13,84,498

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	68,21,473	2214	24-05-2023	8.15	10.15 as on 01-05-2017	41,99,803
2	TOTAL AMOUNT	68,21,473				TOTAL INTEREST (I2)	41,99,803



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

Refund Interest Calculation From 01/05/2017 (After RERA)									
S. NO	AMOUNT PRINCIPLE	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	68,21,473	24-05-2023	13,99,268	54,22,205	0	24-05-2023	8.7	10.7 as on 15-04-2023	
2								TOTAL INTEREST (I3)	

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 24-05-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
68,21,473	55,84,301	13,99,268	1,10,06,506

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

27. **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/220509/0009438** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,10,06,506/- (Rupees One Crore Ten Lakh Six Thousand Five Hundred and Six only) towards refund with interest** calculated at 9% from 01/03/2014 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 24/05/2023 to the complainant within 60 days from the date of this order.

9
H L

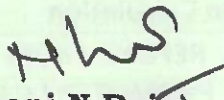
ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

The interest due from 25/05/2023 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.

No order as to the costs.


(Neelmani N Raju)
Member, K-RERA

NOT AN OFFICIAL COPY