

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 SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/220812/0009884

COMPLAINANT.....

**SANTOSH AMASI
B 13, SHRI DHAARA APARTMENTS
VISHWESHWAR NAGAR
MYSORE-570008.**

**(BY MS. ANUSHREE HS & MR. BHARGAV G
ADVOCATES)**

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 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.

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Brief facts of the complaint are as under:-

3. The complainant had booked a flat bearing No.L 702, 7th Floor, Tower L in the project of the respondent and entered into buyback agreement with guaranteed returns and agreement for sale dated 22/9/2016 with tripartite agreement. The complainant submits that the loan account was opened in his name and the respondent was liable to pay PEMIs from the date of first disbursement till handing over possession of the flat and its registration. The complainant submits that he decided to retain the flat assuming that the construction will be completed as promised. The complainant has paid Rs.56,74,912/- (Rupees Fifty Six Lakh Seventy Four Thousand Nine Hundred and Twelve only) to the respondent. The respondent was supposed to handover the possession of the flat by March 2019 with a grace period of six months i.e. by September 2019. But Ozone stopped paying PEMI and now the bank is initiating action against the complainant. The complainant submits that both the Bank and the respondent have colluded and hence without proper diligence the loan was disbursed. The complainant further submits that the respondent has received his money whereas the construction work is not completed and the loan is being recovered from the complainant instead of from the respondent as agreed. The complainant submits that he has complied with the terms of agreement.
4. The complainant further submits that he has obtained interim order/stay from the Hon'ble High Court of Karnataka against the Bank in W.P.No.21912/2021 (GM-RES) between Mohammed Akram & Others v/s National Housing Board & 12 others wherein the Hon'ble High Court was pleased to pass an interim order directing the respondent to pay the PEMI, which they have not done till date.

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5. Thus, the complainant has approached this Authority, praying for directions to 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 but have not submitted their statement of objections or produced any documents on their behalf.
7. The complainant in his written submission has submitted that the respondent stopped paying PEMIs to the Bank. Despite six years have been lapsed, there is no progress in the construction work and the respondent is not showing any interest in completing the project. Thus the complainant has decided to withdraw from the project and seeking refund of entire amount with interest.
8. Despite several opportunities were given, the respondent has failed to file their objections and documents in support of their defence. The respondent has also not filed their calculation sheet.
9. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, tripartite agreement, booking form, allotment letter, Letter dated 18/2/2018 from Ozone regarding assured benefits on account of retention, Housing Loan Statement of Account issued by Bank of Baroda pertaining to payment of PEMIs by the complainant, Bank letter dated 2/7/2021 regarding overdue of payments and Memo of calculation for refund with interest as on 14/09/2023.
10. This case was heard on 22/12/2022, 9/2/2023, 12/4/2023, 21/6/2023 and 27/7/2023. Heard arguments of both sides.



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11. **On the above averments, the following points would arise for my consideration:-**

- a. Whether the complainant is entitled for the relief claimed?
- b. What order?

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

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

REASONS

13. **My answer to Point No.1:-** It is undisputed that the respondent has failed to handover possession of the apartment to the complainant herein within agreed time even after receiving substantial sale consideration amount. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over before the end of March 2019 with a grace period of six months i.e. latest by September 2019. The respondent vide his letter dated 18/2/2018 regarding assured benefits on account of retention had agreed to pay pre-EMIs to the Bank till the handover of the flat to the complainant. But the respondent has failed to pay PEMIs as agreed.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant was supposed to get the flat delivered by September 2019, but the respondent is nowhere near completion of the project and even after six years the project is not completed. Having agreed to pay PEMIs to the Bank till the date of handover possession of the flat to the complainant, the respondent has failed to pay pre-EMIs to the Bank, certainly entitles the complainant herein for refund of entire amount with interest.

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15. The Hon'ble Authority has perused the written submissions submitted by 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.

16. During the process of the hearing, the Hon'ble Authority has noticed that the respondent has not filed their statement of objections and calculation sheet despite several opportunities were given. The Hon'ble Authority has also taken cognizance of the respondent letter dated 18/2/2018 in which they have assured the complainant that they will pay PEMIs till the handing over possession of the flat, but failed to pay as agreed.

17. 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."

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18. 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."

19. 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.

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20. 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.

21. The complainant has claimed Rs.90,64,818/- (Rupees Ninety Lakh Sixty Four Thousand Eight Hundred and Eighteen only) vide his revised memo of calculation as on 14/09/2023 towards refund with interest. The Hon'ble Authority had directed the complainant to file revised memo of calculation as he had not claimed housing loan amount and PEMIs paid by him in the earlier MOC filed on 13/1/2023. The respondent has not filed their memo of calculation despite several opportunities were given to them.

22. Having regard to all these aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 14/09/2023.

23. 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	20-09-2016	7,23,654	222	30-04-2017	39,612
2	11-01-2017	21,71,312	109	30-04-2017	58,357
3	24-03-2017	10,73,815	37	30-04-2017	9,796
4		39,68,781		TOTAL INTEREST (11)	1,07,765

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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	39,68,781	2327	14-09-2023	8.15	10.15 as on 01-05-2017	25,68,187
2	27-06-2018	10,85,656	1905	14-09-2023	8.45	10.45 as on 01-06-2018	5,92,121
3	30-12-2020	25,000	988	14-09-2023	7.3	9.3 as on 10-12-2020	6,293
4	30-01-2021	15,000	957	14-09-2023	7.3	9.3 as on 10-01-2021	3,657
5	22-03-2021	50,000	906	14-09-2023	7.3	9.3 as on 10-03-2021	11,542
6	19-04-2021	50,000	878	14-09-2023	7.3	9.3 as on 10-04-2021	11,185
7	26-05-2021	50,000	841	14-09-2023	7.3	9.3 as on 15-05-2021	10,714
8	09-06-2021	50,000	827	14-09-2023	7.3	9.3 as on 15-05-2021	10,535
9	06-07-2021	1,22,000	800	14-09-2023	7.3	9.3 as on 15-06-2021	24,867
10	08-10-2021	47,000	706	14-09-2023	7.3	9.3 as on 15-09-2021	8,454
11	06-11-2021	49,000	677	14-09-2023	7.3	9.3 as on 15-10-2021	8,452
12	12-11-2021	90,000	671	14-09-2023	7.3	9.3 as on 15-10-2021	15,387
13	09-02-2022	72,475	582	14-09-2023	7.3	9.3 as on 15-01-2022	10,747
14	TOTAL AMOUNT	56,74,912				TOTAL INTEREST (I2)	32,82,141

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 14-09-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
56,74,912	33,89,906	0	90,64,818

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24. Accordingly, the point raised above is answered in the Affirmative.

25. 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/220812/0009884** is hereby allowed.

The respondent is directed to pay the amount of **Rs.90,64,818/- (Rupees Ninety Lakh Sixty Four Thousand Eight Hundred and Eighteen only)** towards **refund with interest** calculated at 9% from 20/09/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 14/09/2023 to the complainant within 60 days from the date of this order.

The interest due from 15/09/2023 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

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Member, N-2000