

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, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: CMP/00175/2023

COMPLAINANT.....

**TRILOKI NATH CHALLU
E 1802, PURVA HIGHLANDS
HOLIDAY VILLAGE ROAD
MALLASANDRA
BENGALURU-560062**

(BY MR. AKASH R BANTIA, ADVOCATE)

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.

M. S. R.

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Brief facts of the complaint are as under:-

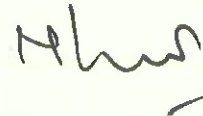
3. The complainant had booked a flat bearing No.D-503, 5th Floor, Tower D in the project of the respondent and entered into an agreement for sale dated 22/01/2020. The complainant has paid Rs.55,04,132/- (Rupees Fifty Five Lakh Four Thousand One Hundred and Thirty Two only) to the respondent on various dates. The complainant submits that the respondent has received 90% of the sale consideration and has not done any construction activity during the past 3 years. The complainant also submits that the respondent has not provided amenities as promised. The complainant submits that though the respondent was supposed to handover the flat to the complainant by December 2022 with a grace period of six months i.e. by June 2023, the respondent vide their email dated 3/12/2021 had informed the complainant that most of the work is completed and they will initiate handover of A, B, C & D Blocks from March, 2022 and later postponed it to July 2022 vide their email dated 28/1/2022. Prior to this, the respondent vide their email dated 9/3/2021 had requested the complainant to bear with the delay until 3rd quarter of 2021. The complainant submits that the respondent has failed to handover possession of the flat to the complainant till date. The complainant also submits that on an inquiry he learnt that few residents who are staying in different towers also do not have any occupancy certificate. The complainant further submits that the respondent has received his money whereas the construction work is not yet completed. The complainant also submits that he has complied with the terms of the agreement. Thus, the complainant has approached this Authority, praying for directions to the respondent to refund the entire amount with interest. Hence, this complaint.

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4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative but has not submitted their statement of objections or produced any documents on their behalf.
5. The complainant in his written submission has submitted that the respondent in their email dated 30/8/2023 has informed that the flat of the complainant will be ready for possession by December 2023 and Occupancy Certificate by March 2024. Thus the complainant has decided to withdraw from the project and seeking refund of entire amount with interest.
6. 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.
7. In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, payment receipts, email correspondences with the respondent and Memo of calculation for refund with interest as on 08/06/2023.
8. This case was heard on 28/6/2023, 3/8/2023, 5/9/2023 and 13/9/2023. Heard arguments of both sides.
9. **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?
10. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -



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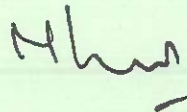
REASONS

13. **My answer to Point No.1:-** It is undisputed that the respondent has failed to handover possession of the flat 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 respondent was supposed to handover the possession of the flat was supposed to be handed over by December 2022 with a grace period of six months i.e. latest by June 2023.

14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that though the complainant was supposed to get possession of the flat by December 2022 with a grace period of six months i.e. latest by June 2023, the respondent vide their several emails went on giving false assurances regarding the date of delivery of the flat and ultimately vide their email dated 30/8/2023 they have given assurance that the complainant's flat will be ready for possession by December 2023 and the occupancy certificate by March 2024. Thus, the respondent has kept shifting the date of delivery, which certainly entitles the complainant herein for refund of entire amount with interest.

15. The Hon'ble Authority has perused the written submission 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 complainant counsel also



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brought to the notice of the Hon'ble Authority that the age of the complainant is 94 years.

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."

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

Mhs

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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.

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.74,07,288/- (Rupees Seventy Four Lakh Seven Thousand Two Hundred and Eighty Eight only) vide his memo of calculation as on 08/06/2023 towards refund with interest. The respondent has not filed their memo of calculation despite several opportunities were given to them.

22. Having regard to all these aspects and keeping the age factor of the complainant and non-cooperation of the respondent, the Hon'ble Authority

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concludes that the complainant is entitled for refund with interest calculated vide his memo of calculation as on 08/06/2023.

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	30-04-2017	0	0	30-04-2017	0
2		0		TOTAL INTEREST (I1)	0

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	0	2229	08-06-2023	8.15	10.15 as on 01-05-2017	0
2	06-01-2020	50,000	1249	08-06-2023	8.2	10.2 as on 10-12-2019	17,451
3	17-01-2020	53,97,207	1238	08-06-2023	8.2	10.2 as on 10-01-2020	18,67,226
4	16-03-2020	56,925	1179	08-06-2023	8.05	10.05 as on 10-03-2020	18,479
5	TOTAL AMOUNT	55,04,132				TOTAL INTEREST (I2)	19,03,156

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 08-06-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
55,04,132	19,03,156	0	74,07,288

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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

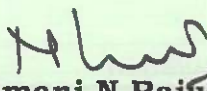
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the **Complaint No. 00175/2023** is hereby allowed.

The respondent is directed to pay the amount of **Rs.74,07,288/- (Rupees Seventy Four Lakh Seven Thousand Two Hundred and Eighty Eight only)** towards **refund with interest** calculated at MCLR + 2% from 06/01/2020 till 08/06/2023 to the complainant within 60 days from the date of this order.

The interest due from 09/06/2023 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