

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 29th SEPTEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/220920/0010031

COMPLAINANTS.....

**ARINDAM GHOSH &
APARAJITA GHOSH
FLAT 2145, PRESTIGE TRANQUILITY
BUDIGERE CROSS
BOMMENAHALLI
BANGALORE-560049.**

(MR. PRAGNYA VASISHTHA, ADVOCATE)

Vs

RESPONDENT.....

**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.51/7-1, RATHNA AVENUE
OFF RICHMOND ROAD
CIVIL STATION
BANGALORE-560025.**

**(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 PRIME**" developed by **M/S. OZONE URBANA INFRA DEVELOPERS PRIVATE LIMITED** situated at Ozone Urbana Prime NH-7, Kannamangala Village, Devanahalli, Bengaluru Urban for the relief of refund with interest.

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2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1251/309/PR/180217/002477 and is valid till 31/12/2023.

Brief facts of the complaint are as under:-

3. The complainants had booked a flat bearing No.C-706, 7th Floor, C Block in the project of the respondent for a total sale consideration of Rs.61,31,190/- (Rupees Sixty One Lakh Thirty One Thousand One Hundred and Ninety only) and entered into an agreement for sale dated 27/11/2018. The complainants submit that they were supposed to get possession of the flat in June 2021 with a grace period of six months i.e. by December 2021. The complainants submit that they have obtained housing loan from Piramal Capital & Housing Finance Limited and so far Rs.27,50,603/- has been disbursed to the respondent. The complainants submit that the loan account was later transferred to HDFC. The complainants have paid Rs.36,65,512/- (Rupees Thirty Six Lakh Sixty Five Thousand Five Hundred and Twelve only) to the respondent on various dates. The complainants submit that they have not received any update from the respondent regarding when Tower C will be completed. The complainants submit that on 9/7/2022 when they went to visit the project, they were not allowed to enter into the project and they could see hardly any construction activity going on.
4. The complainants submit that they are paying EMI of the loan disbursed by HDFC in addition to the rent and that they are finding it difficult to bear the burden. The complainants submit that when they reached the respondent for delay compensation, there was no response from the respondent. However, the respondent verbally assured that the complainants will be compensated at the time of handing over possession

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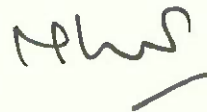
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of the flat. The complainants submit that there is no clarity when the handing over will happen and that the respondent has not notified in writing the reasons for delay. The complainants submit that the respondent is not answering the calls, emails.

5. The complainants submit that the respondent in April 2020 asked the complainants for support and to make own contribution instead of disbursement of bank loan. The complainants have paid Rs.4,45,490/- to the respondent for which the respondent has given 10% additional credit in their consideration. The complainants submit that they came to know that when the respondent raised latest demand for funds, the HDFC has refused to pay the demand amount since the project is on hold and therefore, the respondent sought for payment from the complainants. The financial institution has refused to make further disbursement to the respondent and the respondent is in discussion with the financial institution for releasing loan disbursement of customers. The complainants apprehension is that why the financial institution is refusing disbursement to the respondent.
6. The complainants submit that they had booked the flat on going through the brochure promising 185 care integrated township with 5 star hotel, hospital and club house. So far, none of them have come up till date. The complainants submit that they are anxious about the outcome of their hard earned money after investing in the project. Thus, the complainants have approached this Hon'ble Authority and pray for direction to the respondent for giving clarity on the completion of Tower-C; delay compensation and reasons for Banks not disbursing loans. Hence, this complaint.

7. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its

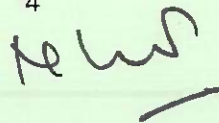


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counsel/representative. The respondent has not filed their statement of objections nor produced any documents on their behalf.

8. The complainants in their written submission have submitted that the respondent vide their email dated 11/11/2021 requested the complainants to reconsider the decision of cancellation of the flat and to stay invested with them. The complainants submit that regarding delay compensation the respondent went on to maintain that the delay compensation will be processed at the time of handing over the flat.
9. In support of their defence, the respondent has not filed any documents and their memo of calculation despite several opportunities was given to them.
10. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, payment receipts, statement of accounts issued by the respondent dated 30/6/2020 and Memo of calculation for refund with interest as on 05/03/2023.
11. This case was heard on 09/02/2023, 12/4/2023, 21/6/2023 and 13/9/2023. Heard arguments of both sides.
12. **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?
13. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -



REASONS

14. **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 amount. As per the terms of agreement of sale between the parties, the possession of the flat had to be handed over before the end of June 2021 with a grace period of six months i.e. by December 2021.

15. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants were supposed to get the flat delivered by December 2021, but the respondent is nowhere near completion of the project, certainly entitles the complainants herein for refund of entire amount with interest.

16. During the process of the hearing, the complainants submitted before the Hon'ble Authority that they want to change their prayer to refund as they are not sure of the progress of the project and the prayer was accepted accordingly. The Hon'ble Authority instructed the complainants to submit their memo of calculation for refund with interest, as the memo of calculation submitted on 5/1/2023 was for delay period interest. Accordingly, the complainants have submitted their memo of calculation as on 5/3/2023 for refund with interest. Despite several opportunities was given, the respondent has not filed their memo of calculation.

17. The Hon'ble Authority has perused the written submission 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

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and vagueness. Here in this case, the respondent has not complied with the terms of the said agreement of sale.

18. 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."

19. 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

M. H. S.

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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."

20. 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.

21. 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.

22. The complainants have claimed Rs.50,65,784/- (Rupees Fifty Lakh Sixty Five Thousand Seven Hundred and Eighty Four only) vide their memo of calculation as on 05/03/2023 towards refund with interest.

23. During the process of the hearing on 13/9/2023, the respondent agreed for refund of Rs.50,65,784/- (Rupees Fifty Lakh Sixty Five Thousand Seven Hundred and Eighty Four only) to the complainants.

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24. Having regard to all these aspects, the Hon'ble Authority concludes that the complainants are entitled for refund with interest calculated vide their memo of calculation as on 05/03/2023.

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	30-04-2017	0	1	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	2134	05-03-2023	8.15	10.15 as on 01-05-2017	0
2	11-11-2018	25,000	1575	05-03-2023	8.7	10.7 as on 01-11-2018	11,542
3	10-12-2018	39,457	1546	05-03-2023	8.75	10.75 as on 10-12-2018	17,965
4	18-12-2018	12,04,687	1538	05-03-2023	8.75	10.75 as on 10-12-2018	5,45,690
5	09-04-2019	1,28,914	1426	05-03-2023	8.75	10.75 as on 10-03-2019	54,142
6	11-04-2019	5,15,658	1424	05-03-2023	8.7	10.7 as on 10-04-2019	2,15,259
7	06-09-2019	5,49,167	1276	05-03-2023	8.45	10.45 as on 10-08-2019	2,00,621

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8	09-09-2019	5,492	1273	05-03-2023	8.45	10.45 as on 10-08-2019	2,001
9	22-11-2019	60,200	1199	05-03-2023	8.2	10.2 as on 10-11-2019	20,170
10	28-11-2019	4,81,091	1193	05-03-2023	8.2	10.2 as on 10-11-2019	1,60,389
11	17-04-2020	1,00,710	1052	05-03-2023	7.7	9.7 as on 10-04-2020	28,155
12	24-04-2020	4,45,490	1045	05-03-2023	7.7	9.7 as on 10-04-2020	1,23,718
13	27-04-2020	49,510	1042	05-03-2023	7.7	9.7 as on 10-04-2020	13,710
14	09-12-2021	60,136	451	05-03-2023	7.3	9.3 as on 15-11-2021	6,910
15	TOTAL AMOUNT	36,65,512				TOTAL INTEREST (I2)	14,00,272

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 05-03-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
36,65,512	14,00,272	0	50,65,784

26. Accordingly, the 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

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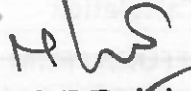
complaint bearing **No.CMP/220920/0010031** is hereby allowed.

The respondent is directed to pay the amount of **Rs.50,65,784/- (Rupees Fifty Lakh Sixty Five Thousand Seven Hundred and Eighty Four only) towards refund with interest** calculated at MCLR + 2% from 11/11/2018 till 05/03/2023 to the complainants within 60 days from the date of this order.

The interest due from 06/03/2023 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