

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 FULL BENCH

PRESENT:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

SMT. NEELMANI N RAJU, HON'BLE MEMBER

SHRI. GURIJALA RAVINDRANADHA REDDY, HON'BLE MEMBER

COMPLAINT NO.: CMP/200217/0005418

DATED THIS 26th DAY OF OCTOBER, 2023

COMPLAINANTS.....

PRASHANT TRIPATHI & TRIPTI TRIPATHI,
B301, Concorde Windrush,
Ramasagaar Village,
Heelalige Road,
Bengaluru - 560100.

(In person)

V/S

RESPONDENT.....

**OZONE URBANA INFRA DEVELOPERS PVT.
LTD.,**
No.38, Ulsoor Road,
Bengaluru - 560042.

(Rep. By Sri. Deepak Bhaskar, Advocate)

1. This complaint is filed under section 31 of the RERA Act against the project "Ozone Urbana" developed by "Ozone Urbana Infra Developers Pvt. Ltd.," on Sy. Nos.74, 86/1, 87/2 (P) and Sy. No.87/3 measuring 5 acres 4.07 Guntas, situated at Kannamangala Village, Kasaba Hobli, Devanahalli Taluk, Bengaluru District for the relief of interest on delay period.

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Deepak Bhaskar
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2. This project is registered under RERA bearing Registration No. PRM/KA/RERA/1250/303/PR/171019/000287 valid till 30/09/2023.

Brief facts of the complaint are as under:-

3. The complainants have purchased a flat bearing No. C 502 in Urbana Pavilion in the project 'Ozone Ubana' of respondent wherein the complainant had entered into an agreement for sale and construction agreement both dated 20/10/2014 for the total sale consideration of Rs.53,64,705/- (Rupees Fifty Three Lakh Sixty Four Thousand Seven Hundred and Five Only) and paid the same to the respondent on various dates. The respondent was supposed to handover the said flat along with all the amenities and facilities in favour of the complainants on or before February 2019 with an additional grace period of 6 months as per agreement of sale. As per subvention scheme the respondent was supposed to pay the interest to the banks till the possession. But the respondent has stopped paying interest to bank and forced the complainants take the apartment registration without obtaining BESCOM approvals, fire NOC, building occupancy certificate and amenities. Even, the builder has charged for open car parking space. The builder has done the illegal handover to avoid paying interest to bank. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, respondent has appeared before the Authority through his counsel and filed vakalat. But not contested the matter by filing statement of objections and producing documents on their behalf.
5. In support of his claim, the complainant has produced in all 3 documents such as copy of agreement of sale and construction agreement both dated 20/10/2014 and statement of accounts.
6. Respondent has not produced any documents on their behalf.






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7. Hearings were conducted on 18/05/2023, 31/05/2023, 03/08/2023 and 09/08/2023.
8. Heard arguments.
9. **On the above averments, the following points would arise for our consideration:-**
 1. Whether the complainants are entitled for the relief claimed?
 2. What order?
10. **Our findings on the above points is as under:-**
 1. In the Affirmative.
 2. As per final order for the following

REASON

11. **Our finding on point No. 1:-** The complainants have approached this forum for the relief of interest on delay period from 28/02/2019 till handing over possession of the villa on the grounds that, as per the agreement of sale dated 20/10/2014 the respondent was supposed to handover possession of flat bearing No. C 502 to the complainants on 28/02/2019. But, he has failed to complete the project and to handover the possession of said flat as agreed. When the respondent has failed to handover possession as agreed by them, the complainants have approached this forum for the relief of interest on delay period.
12. The respondent has not resisted the claim of the complainant and not contested the matter by filing statement of objections, producing documents etc.,
13. Looking to the averments of agreement, parties herein have entered into an agreement of sale on 20/10/2014. The agreement of sale is a key instrument which binds the parties in a contractual relation so as to be properly enforced







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in accordance with law, it is quite necessary that it shall be free from any ambiguity and vagueness. As per the terms of agreement of sale, the respondent was supposed to handover the possession of the said flat to the complainants on 28/02/2019. But the respondent had not completed and handover the possession of the said flat to the complainant till date.

14. As per decision of Hon'ble Supreme Court in Appeal No.6750-57/2021, M/s. Newtech Promoters V/s. The State of UP and other it is held as under:-

Para No.22:- "If we take a conjoint reading of subsections (1), (2) and (3) of section 18 of the Act, the different contingencies spelt out therein, (A) the allottee can either seek refund of the amount by withdrawing from the project; (B) such refund could be made together with interest as may be prescribed; (C) in addition, can also claim compensation payable under sections 18(2) and 18(3) of the Act; (D) the allottee has the liberty, if he does not intend to withdraw from the project, will be required to be paid interest by the promoter for every months' delay in handing over possession at such rates as may be prescribed'.

15. 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

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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 the possession. It is upto the allottee to proceed either under section 18(1) or under proviso to section 18(1). The case of Himashu 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".

The said principles are aptly applicable to the present case on hand.

16. As per section 18 of RERA Act, the respondent is liable to pay interest for delay period. Considering the entire materials available on record, the delay in handing over possession being apparent, this Authority see no legal impediment in allowing the complaint as prayed. The complainant has paid full amount to the respondent towards entire sale consideration.
17. From the averments of the complainant and the copies of agreement between the parties, it is obvious that complainant has already paid the entire sale consideration. Having accepted the said amount and failure to keep up promise to handover possession of apartment with occupancy certificate and completion certificate with all the amenities even after 9 years certainly entitles the complainant herein for interest on delay period. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period.
18. A thorough verification of documentary evidence submitted by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for

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refund with interest as submitted vide their memo of calculation dated 04/10/2023.

19. Therefore, it is incumbent upon the respondent to pay interest on delay period which is determined as under:-

Payment Details

S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	5,364,705	28/02/19
3	TOTAL DELAYED INTEREST as on 04/10/2023	2,445,906	

Interest Calculation

S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 5,364,705						
1	28/02/19	28/03/19	28	8.75	10.75 as on 10-02-2019	44,240
2	28/03/19	28/04/19	31	8.75	10.75 as on 10-03-2019	48,980
3	28/04/19	28/05/19	30	8.7	10.7 as on 10-04-2019	47,180
4	28/05/19	28/06/19	31	8.65	10.65 as on 10-05-2019	48,524
5	28/06/19	28/07/19	30	8.65	10.65 as on 10-06-2019	46,959
6	28/07/19	28/08/19	31	8.6	10.6 as on 10-07-2019	48,297
7	28/08/19	28/09/19	31	8.45	10.45 as on 10-08-2019	47,613
8	28/09/19	28/10/19	30	8.35	10.35 as on 10-09-2019	45,636
9	28/10/19	28/11/19	31	8.25	10.25 as on 10-10-2019	46,702
10	28/11/19	28/12/19	30	8.2	10.2 as on 10-11-2019	44,975
11	28/12/19	28/01/20	31	8.2	10.2 as on 10-12-2019	46,474
12	28/01/20	28/02/20	31	8.2	10.2 as on 10-01-2020	46,474
13	28/02/20	28/03/20	29	8.15	10.15 as on 10-02-2020	43,263
14	28/03/20	28/04/20	31	8.05	10.05 as on 10-03-2020	45,791
15	28/04/20	28/05/20	30	7.7	9.7 as on 10-04-2020	42,770
16	28/05/20	28/06/20	31	7.55	9.55 as on 10-05-2020	43,512
17	28/06/20	28/07/20	30	7.3	9.3 as on 10-06-2020	41,006
18	28/07/20	28/08/20	31	7.3	9.3 as on 10-07-2020	42,373
19	28/08/20	28/09/20	31	7.3	9.3 as on 10-08-2020	42,373
20	28/09/20	28/10/20	30	7.3	9.3 as on 10-09-2020	41,006
21	28/10/20	28/11/20	31	7.3	9.3 as on 10-10-2020	42,373
22	28/11/20	28/12/20	30	7.3	9.3 as on 10-11-2020	41,006
23	28/12/20	28/01/21	31	7.3	9.3 as on 10-12-2020	42,373
24	28/01/21	28/02/21	31	7.3	9.3 as on 10-01-2021	42,373

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25	28/02/21	28/03/21	28	7.3	9.3 as on 10-02-2021	38,273
26	28/03/21	28/04/21	31	7.3	9.3 as on 10-03-2021	42,373
27	28/04/21	28/05/21	30	7.3	9.3 as on 10-04-2021	41,006
28	28/05/21	28/06/21	31	7.3	9.3 as on 15-05-2021	42,373
29	28/06/21	28/07/21	30	7.3	9.3 as on 15-06-2021	41,006
30	28/07/21	28/08/21	31	7.3	9.3 as on 15-07-2021	42,373
31	28/08/21	28/09/21	31	7.3	9.3 as on 15-08-2021	42,373
32	28/09/21	28/10/21	30	7.3	9.3 as on 15-09-2021	41,006
33	28/10/21	28/11/21	31	7.3	9.3 as on 15-10-2021	42,373
34	28/11/21	28/12/21	30	7.3	9.3 as on 15-11-2021	41,006
35	28/12/21	28/01/22	31	7.3	9.3 as on 15-12-2021	42,373
36	28/01/22	28/02/22	31	7.3	9.3 as on 15-01-2022	42,373
37	28/02/22	28/03/22	28	7.3	9.3 as on 15-02-2022	38,273
38	28/03/22	28/04/22	31	7.3	9.3 as on 15-03-2022	42,373
39	28/04/22	28/05/22	30	7.4	9.4 as on 15-04-2022	41,447
40	28/05/22	28/06/22	31	7.5	9.5 as on 15-05-2022	43,285
41	28/06/22	28/07/22	30	7.7	9.7 as on 15-06-2022	42,770
42	28/07/22	28/08/22	31	7.8	9.8 as on 15-07-2022	44,651
43	28/08/22	28/09/22	31	8	10.0 as on 15-08-2022	45,563
44	28/09/22	28/10/22	30	8	10.0 as on 15-09-2022	44,093
45	28/10/22	28/11/22	31	8.25	10.25 as on 15-10-2022	46,702
46	28/11/22	28/12/22	30	8.35	10.35 as on 15-11-2022	45,636
47	28/12/22	28/01/23	31	8.6	10.6 as on 15-12-2022	48,297
48	28/01/23	28/02/23	31	8.6	10.6 as on 15-01-2023	48,297
49	28/02/23	28/03/23	28	8.7	10.7 as on 15-02-2023	44,034
50	28/03/23	28/04/23	31	8.7	10.7 as on 15-03-2023	48,752
51	28/04/23	28/05/23	30	8.7	10.7 as on 15-04-2023	47,180
52	28/05/23	28/06/23	31	8.7	10.7 as on 15-05-2023	48,752
53	28/06/23	28/07/23	30	8.7	10.7 as on 15-06-2023	47,180
54	28/07/23	28/08/23	31	8.75	10.75 as on 15-07-2023	48,980
55	28/08/23	28/09/23	31	8.75	10.75 as on 15-08-2023	48,980
56	28/09/23	04/10/23	6	8.75	10.75 as on 15-08-2023	9,480
					TOTAL DELAYED INTEREST as on 04/10/2023	2,445,906

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

21. **Our findings on point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, we proceed to pass the following order.

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ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/200217/0005418 is hereby allowed

1. The respondent is directed to pay an amount of Rs.24,45,906/- (Rupees Twenty Four Lakh Forty Five Thousand Nine Hundred and Six Only) calculated at the rate of SBI MCLR+2% from 28/02/2019 till 04/10/2023 to the complainants within 60 days from the date of this order.
2. Further, the interest due from 05/10/2023 up to the date of final payment will be calculated likewise and paid to the complainants.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with this order.

No order as to costs.

(G.R. REDDY)
Member
K-RERA

(NEELMANI N RAJU)
Member
K-RERA

(H.C. KISHORE CHANDRA)
Chairman
K-RERA