

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 28TH NOVEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:CMP/220912/0010003

COMPLAINANT.....

**SHIKHAR JAISWAL
693/301, 8TH MAIN ROAD
SECTOR 7, HSR LAYOUT
BANGALORE-560102.**

(MR. PRAGNYA VASISHTHA, ADVOCATE)

Vs

RESPONDENTS.....

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

**2. ECO GLOBAL BUILDERS & DEVELOPERS
NO.1, PIONEER HOUSE
HOLLYWOOD TOWN, SADAHALLI POST
DEVANAHALLI TALUK
BANGALORE-562110.**

**(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

Handwritten signature

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

Prime NH-7, Kannamangala Village, Devanahalli, Bengaluru Urban for the relief of refund with interest.

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. Based on the claims made by the respondents, the complainant had booked a flat bearing No.G-1404, 13TH Floor, Block-G in the project of the respondents for a total sale consideration of Rs.51,35,761/- (Rupees Fifty One Lakh Thirty Five Thousand Seven Hundred and Sixty One only) and entered into an agreement for sale dated 19/04/2019. The complainant submits that Respondent-1 was to construct a residential apartment complex Urbana Prime as part of the integrated project Ozone Urbana. The Respondent-2 is the land owner and promoter of the said project. The complainant has paid Rs.25,000/- as booking amount on 31/3/2019; Rs.77,715/- on 17/6/2019; Rs.1,50,000/- on 26/6/2019 and in addition Rs.1,50,000/- on 26/6/2019 but the respondents have not completed any major construction milestone. Besides, the respondents have not shown additional amount of Rs.1,50,000/- paid on 26/6/2019 while accounting the money received.
4. The complainant has obtained housing loan of Rs.12,88,010/- which has been disbursed to the respondent-1 as and when the demand was raised. In all the complainant has paid Rs.17,69,580/- to the respondents on various dates. The complainant is paying PEMIs and EMIs towards loan and loan insurance. The respondents were supposed to handover the flat to the complainant by April 2022, but till date they have not handed over the flat.



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

5. Frustrated by this act of respondents and mounting financial burden and slow construction, on 15/3/2022 the complainant has sent cancellation form to respondent-1. After multiple follow ups, the cancellation form was acknowledged by respondent-1 on 20/3/2022. The respondent-1 in an email has stated that the refund of amount would be processed within 3-4 months but no refund has been made so far. The respondent-1 is ignoring the communications from the complainant including legal notice sent on 2/8/2022. The complainant's dream of owning his own house has been shattered by the enormous delay. Thus, the complainant has approached this Hon'ble Authority and prays for direction to the respondent-1 for refund of 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. The respondent has filed their statement of objections as under and produced documents on their behalf.
7. The respondent-1 denies all the allegations made against them by the complainant in his complaint. The respondent contends that the complainant has sought for cancellation of the allotment and refund of the amount with interest. The respondent-1 submits that the own contribution made by the complainant is Rs.2,52,715/- along with housing loan disbursement of Rs.12,88,010/-. The respondent-1 submits that the complainant had made booking for the flat under the cash back scheme 2% and that an amount of Rs.1,50,000/- has already been refunded to the complainant.



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

8. The respondent-1 submits that the complainant has sent cancellation form dated 15/3/2022 seeking cancellation of apartment and refund of amount. The cancellation request has been initiated and due to discrepancies in the calculations, there has been delay in refunding the amount.
9. The respondent-1 has prayed the Hon'ble Authority to take into consideration the revised calculation submitted by them.
- Own contribution - Rs.2,52,715/-
 - Interest payable to the complainant - Rs.1,02,625/-
 - Total amount payable to the complainant - Rs.3,55,340/-
 - Housing Loan - Rs.12,88,010/-
10. The respondent-1 prays this Hon'ble Authority to allow them to close the housing loan with the Bank first and refund the complainant's amount payable later.
11. The complainant in his rejoinder has submitted that on verification it has been found that the respondent-1 has refunded an amount of Rs.1,50,000/- and has been credited to his bank account. The complainant denies that the refund was not initiated by the respondent-1 due to discrepancies in the calculation. The complainant submits that the respondent-1 has not taken into consideration the payment made towards PEMIs and EMI towards the loan insurance while making calculation. The complainant submits that the respondents are not responding to any of his communications.
12. The complainant has made a proposal for settlement of Rs.19,22,160/- if the respondent-1 makes refund within 16/10/2023.

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

13. The complainant submits that the refund of Rs.1,50,000/- under 2% cash back scheme made on 8/7/2019 will be accounted for while interest as-on-date is updated and prays the Hon'ble Authority to pass order on the fresh memo of calculation. Accordingly, the complainant has submitted revised memo of calculation as on 28/11/2023 accounting the refund made by the respondent-1.
14. In support of their defence, the respondent-1 has filed copies of documents such as, agreement for sale and revised calculation sheet as on 31/3/2023.
15. In support of their claim, the complainant has produced documents such as copies of Agreement for Sale, payment receipts, statement of accounts issued by the HDFC pertaining to housing loan, loan statement for HDFC loan, loan insurance statement, cancellation form dated 15/3/2022, email communication with respondents and revised Memo of calculation for refund with interest as on 28/11/2023.
16. This case was heard on 09/02/2023, 12/4/2023, 27/7/2023, 16/8/2023, 13/9/2023 and 16/11/2023. Heard arguments of both sides.
17. **On the above averments, the following points would arise for my consideration:-**
1. Whether the complainant is entitled for the relief claimed?
 2. What order?
18. **My answer to the above points are as under:-**
1. In the Affirmative.
 2. As per final order for the following -

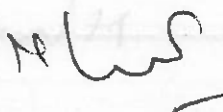


ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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

REASONS

14. **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 possession of the flat had to be handed over before the end of April 2022.
15. 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 April 2022, but the respondent is nowhere near completion of the project, certainly entitles the complainant herein for refund of entire amount with interest.
16. During the process of the hearing, the Hon'ble Authority provided an opportunity to both the parties to settle the matter between them but no settlement was arrived at.
17. The Hon'ble Authority has perused the written submission submitted by the respondent-1 and written submission, rejoinder filed 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. Therefore, the Hon'ble Authority has not accepted the contentions of the respondent-1.
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:



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

“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 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.

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

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 complainant has claimed Rs.26,09,404/- (Rupees Twenty Six Lakh Nine Thousand Four Hundred and Four only) vide his memo of calculation as on 28/11/2023 towards refund with interest.

24. Having regard to all these aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest calculated vide their memo of calculation as on 28/11/2023.

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	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	798	08-07-2019	8.15	10.15 as on 01-05-2017	0
2	31-03-2019	25,000	99	08-07-2019	8.75	10.75 as on 10-03-2019	728
3	17-06-2019	77,715	21	08-07-2019	8.65	10.65 as on 10-06-2019	476

[Handwritten signature]

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

4	26-06-2019	1,50,000	12	08-07-2019	8.65	10.65 as on 10-06-2019	525
5	26-06-2019	1,50,000	12	08-07-2019	8.65	10.65 as on 10-06-2019	525
6	29-06-2019	7,74,500	9	08-07-2019	8.65	10.65 as on 10-06-2019	2,033
7	05-07-2019	78,855	3	08-07-2019	8.65	10.65 as on 10-06-2019	69
8	23-08-2019	3,63,510	1558	28-11-2023	8.45	10.45 as on 10-08-2019	1,62,146
9	14-09-2019	1,50,000	1536	28-11-2023	8.35	10.35 as on 10-09-2019	65,332
10	TOTAL AMOUNT	17,69,580				TOTAL INTEREST (I2)	2,31,834

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	17,69,580	08-07-2019	1,50,000	16,19,580	1604	28-11-2023	8.65	10.65 as on 10-06-2019	7,57,990
2								TOTAL INTEREST (I3)	7,57,990

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 08-02-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
17,69,580	9,89,824	1,50,000	26,09,404

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

Handwritten signature

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

27. My answer to Point No. 2:- In view of the above discussion, I proceed to pass the following order:-

ORDER

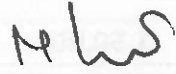
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220912/0010003** is hereby allowed.

The respondent-1 is directed to pay the amount of **Rs.26,09,404/- (Rupees Twenty Six Lakh Nine Thousand Four Hundred and Four only)** towards refund with **interest** calculated at MCLR + 2% from 31/03/2019 till 28/11/2023 to the complainant within 60 days from the date of this order.

The interest due from 29/11/2023 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