

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 4TH DECEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.:01037/2023

COMPLAINANT.....

**AKSHATHA MOHAN
NO.46, 1ST MAIN, 3RD CROSS
2ND PHASE, 7TH BLOCK
BSK 3RD STAGE
BANGALORE-560085.**

(IN PERSON)

Vs

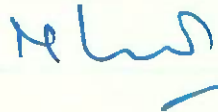
RESPONDENT.....

**M/S 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.



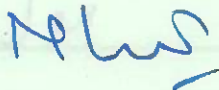
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Brief facts of the complaint are as under:-

3. The complainant had purchased a flat bearing No.VG02, Block-V in the project of the respondent under the subvention scheme for a total sale consideration of Rs.1,22,02,610/- (Rupees One Crore Twenty Two Lakh Two Thousand Six Hundred and Ten only). The complainant entered into an agreement for sale on 22/01/2018 and has paid an amount of Rs.77,91,393/- (Rupees Seventy Seven Lakh Ninety One Thousand Three Hundred and Ninety Three only) (including Housing Loan from HDF) to the respondent on various dates. The complainant has also entered into tripartite agreement for sanction of housing loan from HDFC dated 29/01/2018. The respondent was supposed to hand over the possession of the flat to the complainant by the end of December 2022. There is enormous delay in handing over the flat. Further, the complainant has paid PEMIs to the Bank which was supposed to be paid by the respondent. Whenever the loan disbursement was required, the respondent sent images of the project stating that some stage is complete. The complainant has initiated cancellation twice. The respondent responded only in March 2021 asking the complainant to fill the cancellation form. Despite several requests to the respondent, he has failed to handover the possession of the said Unit due to which the complainant has suffered monetary losses. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent for refund of entire amount with interest and cancellation of the property. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its representative/counsel. They have not filed their statement of objections nor produced copies of documents on their behalf.



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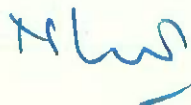
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5. In support of their defence, the respondent has filed calculation sheet as on 24/10/2023.
6. In support of her claim, the complainants have produced documents such as copies of Agreement for Sale, Tripartite Agreement, payment receipts, statement of account pertaining to housing loan and payment of PEMIs issued by HDFC, email correspondences with the respondent and Memo of calculation for refund with interest as on 24/10/2023.
7. This case was heard on 31/10/2023, 16/11/2023 and 28/11/2023. Heard arguments of both sides.
8. **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?
9. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -

REASONS

10. **My answer to Point No.1:-** From the materials placed on record, it is apparent that inspite of entering into an agreement for sale to handover the possession of the flat, the builder has not completed the project as per agreement and has not handed over the flat to the complainant till date. Hence, the builder has failed to abide by the terms of the agreement for sale dated 22/01/2018. There seems to be no possibility of completing the project or handing over the possession in near future. The respondent has also not paid the PEMIs to HDFC as agreed.

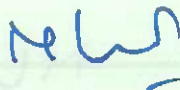


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11. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid substantial sale consideration amount and the housing loan was disbursed directly to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of the flat and failure to pay PEMIs, certainly entitles the complainant herein for refund with interest.
12. The Hon'ble Authority has perused the written submissions 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 from any ambiguity and vagueness. Here in this case, the respondent neither given possession of the flat to the complainant nor paid PEMIs to HDFC as agreed and have not complied with the terms of the said agreement.
13. The complainant has submitted proof of evidence in the form of statement of accounts issued by HDFC for having paid PEMIs and disbursement of housing loan to the respondent.
14. 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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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 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."

16. 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.

17. 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.

18. The complainant has claimed Rs.1,17,60,651/- (Rupees One Crore Seventeen Lakh Sixty Thousand Six Hundred and Fifty One only) vide her memo of calculation as on 24/10/2023 towards refund with interest.

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19. The respondent in their calculation sheet as on 24/10/2023 claim that they have to refund Rs.84,49,989/- to the complainant.
20. The Hon'ble Authority directed the complainant to go through the calculation sheet submitted by the respondent and come back. Accordingly, during the hearing on 28/11/2023, the respondent submitted a revised calculation sheet as on 28/11/2023 that they are liable to pay Rs.85,11,478/- (Rupees Eighty Five Lakh Eleven Thousand Four Hundred and Seventy Eight only) as refund to the complainant with interest inclusive of housing loan, PEMIs paid by the complainant and interest thereon. The complainant agreed with the claim of the respondent.
21. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest of Rs.85,11,478/- as submitted by the respondent in their calculation sheet as on 28/11/2023.
22. Therefore, it is incumbent upon the respondent to pay refund with interest which is determined as under:

Memo Calculation submitted by Respondent			
PRINCIPLE AMOUNT (A)	INTEREST (B) AS ON 28/11/2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
78,23,845	6,87,633	Nil	85,11,478

23. Accordingly point raised above is answered in the Affirmative.

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24. **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.01037/2023** is hereby allowed.

Respondent is directed to pay the amount of **Rs.85,11,478/- (Rupees Eighty Five Lakh Eleven Thousand Four Hundred and Seventy Eight only)** towards refund with interest calculated at MCLR + 2% from 01/05/2017 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

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[Handwritten Signature]
Member, MEMBERS