

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 19TH DECEMBER 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00226/2023

COMPLAINANTS.....

**MUKESH V FOFLIA &
BHARATI M FOFLIA
227/V, 'AASHIRWAAD'
13TH MAIN ROAD, 3RD BLOCK
RAJAJINAGAR
BENGALURU-560010.**

**(MR. HARSH S PAREKH,
MR.LOKPAL HANGAL &
MR.TEJAS KHIRAIYA, ADVOCATES
DHARMA LAW PARTNERS)**

Vs

RESPONDENT.....

**OZONE URBANA INFRA DEVELOPERS
PRIVATE LIMITED
NO.38, ULSOOR ROAD
BANGALORE-560042.**

**(BY MR. DEEPAK BHASKAR &
ASSOCIATES, ADVOCATES)**

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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.



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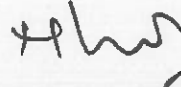
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2. This project has been registered under RERA vide registration No.PRM/KA/RERA/1250/303/PR/171019/000287 and was valid from 30/7/2017 till 31/12/2022. The Authority has extended its registration for a further period of 9 months i.e. till 30/09/2023.

3. Brief facts of the complaint are as under:-

The complainants had purchased a flat bearing No.A-1104, 11th Floor, Tower-A in the project of the respondent for a total sale consideration of Rs.78,28,229/- (Rupees Seventy Eight Lakh Twenty Eight Thousand Two Hundred and Twenty Nine only). The complainants have entered into an agreement for sale on 13/10/2017 and have paid an amount of Rs.67,90,009/- (Rupees Sixty Seven Lakh Ninety Thousand and Nine only) to the respondent on various dates. The respondent was supposed to handover the flat to the complainants by December 2022, but till date the respondent has not handed over the possession. The respondent vide their demand note dated 16/10/2017 asked them to pay Rs.66,74,766/- on or before 31/10/2017. The respondent in their letter dated 27/10/2017 confirmed that the civil works in the flat would be completed by the end of December 2018 and will be handed over for interiors/wood works. Based upon this the complainants have issued two cheques dated 30/10/2017 for a total amount of Rs.66,90,009/- to the respondent and the same was acknowledged vide receipt dated 31/10/2017. The complainants submit that despite the above payments, the flat has not been completed till today and there is a huge delay in handing over the possession as agreed. Thus, the complainants have approached this Hon'ble Authority and pray for direction to the respondent to refund 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 representative/counsel. They have filed their statement of objections and produced copies of documents on their behalf as under:
5. The respondent denies the entire allegations made against them in the complaint by the complainants are false. The respondent submits that the complainants have prayed for refund of the entire amount paid by them. The respondent submits that the complainants have made own contribution to the tune of Rs.67,90,009/- and interest of Rs.38,73,457/- and are therefore liable to be refunded their own contribution as shown above.
6. The respondent submits that the complainants are liable to pay interest for delay on scheduled payments to the tune of Rs.46,574/- which will be adjusted out of the final payment due to the complainants.
7. The respondent prays the Hon'ble Authority to take on record the quantum of amount to be paid to the complainant as under:
 - A) Complainants Own contribution - Rs.67,90,009/-
 - B) Interest payable to the complainants - Rs.38,73,457/-
 - C) Interest payable to the respondent for delay in scheduled payments - Rs.46,574/-
 - D) Total amount payable after deducting interest for delay in making scheduled payments - Rs.1,06,16,892/-
8. The respondent prays the Hon'ble Authority to allow the relief payable to the complainants as above.
9. The complainants in their written submission have contended that the respondent has claimed delay interest on scheduled payment



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towards "on 9th Floor slab", but in the extract of the payment schedule there is no mention of payment to be made "on 9th Floor slab" and that the respondent has failed to produce any notice/communication demanding the complainants to make payments as per the scheduled payments.

10. In support of their defence, the respondent has filed copies of documents such as agreement for sale, delay interest schedule with demand notes and revised calculation sheet as on 26/06/2023 filed on 16/11/2023.
11. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, payment receipts, cancellation request form, statement of account issued by Axis Bank as proof for having made payments to the respondent and Memo of calculation for refund with interest as on 26/6/2023.
12. This case was heard on 28/6/2023, 3/8/2023, 5/9/2023, 13/9/2023, 16/11/2023 and 13/12/2023. Heard arguments of both sides.
13. **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?
14. **My answer to the above points are as under:-**
 1. In the Affirmative.
 2. As per final order for the following -

REASONS

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15. **My answer to Point No.1:-** From the materials placed on record, it is apparent that in spite of entering into an agreement for sale and accepting substantial sale consideration, the respondent has failed to handover the possession of the flat as agreed.
16. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainants have paid the substantial sale consideration amount to the respondent. The respondent has failed to handover the flat to the complainants as agreed, certainly entitles the complainants herein for refund with interest.
17. The Hon'ble Authority has perused the written submissions filed by the respondent and the complainants. The Authority has disagreed with the contentions of the respondent that the complainants are liable to pay interest on delay in making scheduled payments. 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 has not complied with the terms of the said agreement.
18. The complainants have submitted proof of evidence in the form of statement of accounts issued by Axis Bank and payment receipts.
19. 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



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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."

20. 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."

21. 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,

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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.

22. 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.
23. The complainants have claimed Rs.1,06,63,466/- (Rupees One Crore Six Lakh Sixty Three Thousand Four Hundred and Sixty Six only) vide their memo of calculation as on 26/6/2023 towards refund with interest.
24. The respondent in their revised calculation sheet as on 26/6/2023 have claimed that the complainants are liable to be refunded Rs.1,06,16,892/-. The Hon'ble Authority did not accept the contention of the respondent.
25. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest calculated vide their memo of calculation as on 26/06/2023.
26. Therefore, it is incumbent upon the respondent to pay refund with interest which is determined as under:

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	2247	26-06-2023	8.15	10.15 as on 01-05-2017	0
2	05-10-2017	1,00,000	2090	26-06-2023	8.15	10.15 as on 01-10-2017	58,119

M/S

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3	03-11-2017	54,90,009	2061	26-06-2023	8.1	10.1 as on 01-11-2017	31,30,974
4	03-11-2017	12,00,000	2061	26-06-2023	8.1	10.1 as on 01-11-2017	6,84,364
5	TOTAL AMOUNT	67,90,009				TOTAL INTEREST (I2)	38,73,457

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 26-06-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
67,90,009	38,73,457	0	1,06,63,466

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

28. **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.00226/2023** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,06,63,466/- (Rupees One Crore Six Lakh Sixty Three Thousand Four Hundred and Sixty Six only)** towards refund with interest calculated at MCLR + 2% from 05/10/2017 to 26/06/2023 to the complainants within 60 days from the date of this order.

The interest due from 27/06/2023 up to the date of final payment will be calculated likewise and paid to the complainants.

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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

