

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 20<sup>TH</sup> DECEMBER 2023**

**PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU**

**COMPLAINANT IN ALL THE  
FOUR COMPLAINTS .....**

1. CMP/210120/0007441  
2. CMP/210120/0007477  
3. CMP/210121/0007479  
4. CMP/210321/0007806  
**DR. KISHORE KUMAR BAHL  
C/O No.156, 2<sup>ND</sup> FLOOR  
2<sup>ND</sup> MAIN ROAD  
SESHADRIPURAM  
BANGALORE-560020.**

**(IN PERSON)**

**V/S**

**RESPONDENT.....**

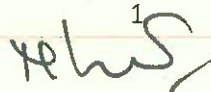
**M/S. OZONE URBANA INFRA  
DEVELOPERS PRIVATE LIMITED  
NO.38, ULSOOR ROAD  
BANGALORE-560042.**

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

**\* \* \* \* \***

**J U D G E M E N T**

1. All the above complaints have been 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 District for the relief of refund with interest.

*1*  


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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. **All these matters are taken up together for disposal in order to avoid repetition as they are arising out of the same project and have common issues.**

**Brief facts of all the complaints are as under:**

4. In 2015 the complainant was approached by "Asset India - UK" and convinced the complainant to book four (4) flats under the subvention scheme 10:80:10 bearing Nos.
  - (1) K-203, 2<sup>nd</sup> Floor, Block-K;
  - (2) K-202, 2<sup>nd</sup> Floor, Block-K;
  - (3) K-204, 2<sup>nd</sup> Floor, Block-K; and
  - (4) KG 04, Ground Floor, Block-Kin the project Urbana Avenue of the respondent. The complainant has entered into agreement of sale and construction agreement in all the four cases on 29/01/2016 and has paid the amount as under in each case:
  - (1) Dr.Kishore Kumar Bahl (CMP No.7441) - Rs.50,42,734/-;
  - (2) Dr.Kishore Kumar Bahl (CMP No.7477) - Rs.50,65,710/-;
  - (3) Dr.Kishore Kumar Bahl (CMP No.7479) - Rs.50,42,734/- and
  - (4) Dr.Kishore Kumar Bahl (CMP No.7806) - Rs.55,65,076/-
5. The respondent was supposed to handover the possession of the flats to the complainant by August 2018 with six months grace period i.e. by February 2019, but till today the respondent has not handed over the possession of the flats. As per the subvention agreement, the respondent was liable to bear PEMIs till the possession of the flats are handed over.

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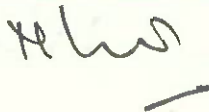
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The complainant submits that he has not signed any loan agreement with the Bank. When he had obtained the documents pertaining to loan from the respondent, he found that the signature on the cost sheets has been forged. The complainant has raised this issue with Asset India and the respondent, never got satisfactory answer and requested the Bank to refrain from depositing cheques that were handed over to be used after the possession of the flats are handed over by the respondent. The respondent also failed to pay PEMIs as agreed. As the respondent did not pay PEMIs, the IHFL team visited the complainant's father's house at Ajmer, Rajasthan and on few occasion the PEMI was deducted from the bank account of the complainant. The Bank has colluded with the respondent and without proper diligence they have disbursed the loan amount to the respondent though the work is incomplete. Thus, the complainant has approached this Hon'ble Authority requesting for full refund with interest in all the above four cases. Hence, these complaints.

6. After registration of the complaints, in pursuance of the notice, the respondent appeared before the Authority through its counsel and has contested the matter by filing statement of objections as under:-

The respondent submits that the complainant has paid a sum of Rs.89,409/- as advance consideration out of the total sale consideration. The respondent has denied all the allegations made by the complainant in the above cases as false. The respondent contends that any interest or compensation payable shall accrue only in the event that a promoter fails to complete or is unable to give possession of the apartment, plot or building in accordance with the terms of the agreement of sale which terms do not exist in so far as the date of handover of possession is concerned.





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7. The respondent also contends that the relevant date of handover of possession of the flats would be the completion date i.e. as per RERA 30/10/2023 and as such, there is no delay in the delivery of the units and the possession can be handed over till 30<sup>th</sup> October 2023.
8. The respondent submits that if the complainant wish to withdraw their purchase of the units, they are entitled to forfeit a sum of 20% of the total amount received under the agreement of sale and construction agreement and prays the Hon'ble Authority to dismiss the complaints.
9. In support of their defence, the respondent has produced documents such as agreement of sale, construction agreement, RERA registration certificate and calculation sheet as on 10/11/2023.
10. In support of his claim, the complainant has produced documents such as agreement of sale, construction agreement, RERA Registration certificate and memo of calculation as on 18/12/2023.
11. The cases were heard on 21/6/2022, 17/8/2022, 23/8/2022, 18/10/2022, 13/12/2022, 9/2/2023, 12/4/2023, 27/7/2023, 5/10/2023 and 6/12/2023. Heard arguments of both sides.
12. 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?
13. My answer to the above points are as under:-
  1. In the Affirmative.
  2. As per final order for the following
14. **My answer to Point No.1:-** From the materials placed on record, it is apparent that in spite of entering into agreement of sale and



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construction agreement to handover the flats to the complainant by August 2018 with a grace period of six months i.e. latest by February 2019 and receiving substantial sale consideration amount, the respondent has failed to abide by the terms of the agreement and not handed over the possession of the flats till today. The respondent has also failed to pay PEMIs to the Bank as agreed.

15. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that complainant was supposed to get the possession of the flats by August 2018 with a grace period of six months i.e. latest by February 2019. Having accepted substantial sale consideration amount in respect of all the four flats, the respondent has failed to handover the flats to the complainant and has not paid pre-EMIs to the Bank as agreed, certainly entitles the complainant herein for refund of entire amount with interest in all the above four cases.

16. During the process of the hearing, the Authority has perused the statement of objections filed by the respondent and written submission submitted by the complainant. Both the parties wanted to negotiate for settlement. But the negotiations failed. The complainant submitted before the Authority that his counsel is not responding to his emails and as such, he has come all along from UK and is attending the hearing personally in all the four cases. 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 given possession of the flats to the complainant as agreed and have not complied with the terms of the said agreement of

HWS  
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sale and construction agreement. Therefore, the Authority has disagreed with the contentions of the respondent.

17. 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."*

18. 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*

*[Handwritten signature]*



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*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."*

19. 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.
20. 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.
21. The complainant has filed memo of calculation as on 18/12/2023 and the respondent has submitted their calculation sheet on 10/11/2023. The details of refund with interest claimed by the complainants and the respondent's refund calculation are as under:

Complaint Number	Complaint Name	Refund with interest claimed by the complainants as on 18/12/2023	Respondent's claim of refund with interest to be paid to the complainants as on 10/11/2023
1	2	3	4
CMP/7441	Dr.Kishore Kumar Bahl	87,56,943	54,05,317
CMP/7477	Dr.Kishore Kumar Bahl	87,85,948	54,24,363
CMP/7479	Dr.Kishore Kumar Bahl	87,56,943	54,05,317
CMP/7806	Dr.Kishore Kumar Bahl	96,58,915	57,59,811

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The Authority has not accepted the calculation sheets submitted by the respondent claiming refund as shown in Column No.4 above.

22. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as claimed by him in all the above four cases as on 18/12/2023.

23. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Complaint Number	Complainant Name	Refund with interest as on 18/12/2023 claimed by the complainant
1	2	3
CMP/7441	Dr.Kishore Kumar Bahl	87,56,943
CMP/7477	Dr.Kishore Kumar Bahl	87,85,948
CMP/7479	Dr.Kishore Kumar Bahl	87,56,943
CMP/7806	Dr.Kishore Kumar Bahl	96,58,915

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

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

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the following complaints bearing Nos.

(1) **CMP/210120/0007441**

(2) **CMP/210120/0007477**

(3) **CMP/210121/0007479 and**

(4) **CMP/210321/0007806** are hereby allowed.



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The respondent is directed to pay the amount as mentioned in Para 23, Column No.3 above **towards refund with interest** calculated at 9% from 30/07/2015 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 18/12/2023 to the complainant within 60 days from the date of this order.

The interest due from 19/12/2023 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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