

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 22nd DECEMBER, 2023

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00538/2023

COMPLAINANTS.....

**ASHISH THUKRAL &
ANUJA THUKRAL
A 1303, BRIGADE METROPOLIS
MAHADEVAPURA
BANGALORE-560048.**

**(BY MR. SRINIVAS V,
MR.M.D. RAJKUMAR
MR.K.J. SHARAN &
SMT.NAAGESHWARI S.N.,
ADVOCATES)**

Vs

RESPONDENT.....

**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 District 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

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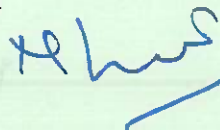
30/7/2017 till 31/12/2022. The Authority has extended its registration for a further period of 9 months i.e. till 30/09/2023.

Brief facts of the complaint are as under:-

3. The complainants submit that they had purchased a flat bearing No.N 403, 4th Floor, Tower-N in the project of the respondent vide allotment letter dated 14/3/2016. They had entered into agreement for sale and construction agreement on 19/05/2016 and have paid an amount of Rs.14,44,954/- (Rupees Fourteen Lakh Forty Four Thousand Nine Hundred and Fifty Four only) (including PEMIs paid by them) to the respondent on various dates. The complainants submit that the respondent was supposed to handover the flat on or before August 2018 with a grace period of six months i.e. latest by February 2019.

4. The complainants have also entered into Tripartite agreement dated 29/4/2016 with the respondent and the HDFC for housing loan. The flat was purchased under subvention scheme and as per the terms of the subvention scheme, the respondent was to bear the PEMI costs till intimation of the flat being ready for handover. The respondent had paid PEMI till June 2019. The respondent had stopped paying PEMIs and passed on the burden to the complainants. Even after six years the project is still incomplete. The complainants intend to exit from the project. Thus, the complainants have approached the Hon'ble Authority and pray for exit from the project and refund of entire amount with interest. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative and but has not submitted their statement of objections nor produced any documents on their behalf.



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6. The complainants have submitted that they are claiming their own contribution and PEMIs paid by them along with interest . They have submitted payment receipts, statement of account issued by HDFC as proof to substantiate their claim.

7. In support of their defence, the respondent has not filed any documents but have filed calculation sheet as on 19/8/2023.

8. In support of their claim, the complainants have produced documents such as copies of allotment letter, Agreement for Sale, construction agreement, Tripartite Agreement, payment receipts, statement of account from HDFC, loan disbursement letter and Memo of calculation for refund with interest as on 10/12/2023.

9. This case was heard on 7/9/2023, 31/10/2023 and 13/12/2023. Heard arguments of both sides.

10. 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?

11. My answer to the above points are as under:-

1. In the Affirmative.
2. As per final order for the following -

REASONS

12. My answer to Point No.1:- From the materials placed on record, it is apparent that in spite of entering into an agreement to handover the flat to the complainants by February 2019 inclusive of six months grace period and



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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 flat till today. The respondent has also failed to pay PEMIs to the Bank as agreed.

13. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that complainants were supposed to get the possession of the flat by February 2019. Having accepted substantial sale consideration, the respondent has failed to handover the flat to the complainants and has not paid pre-EMIs to the Bank as agreed, certainly entitles the complainants herein for refund of entire amount with interest.

14. The Hon'ble Authority has perused the written submissions submitted by the complainants. The complainants have claimed refund of their own contribution and PEMIs paid by them to the HDFC along with interest. 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 said flat to the complainants as agreed and have not complied with the terms of the said agreement of sale.

15. 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

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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."

16. 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."

17. In case the allottee wishes to withdraw from the project the promoter is liable without prejudice to any other remedy available, to return the

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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.

18. 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.

19. The complainants have claimed Rs.22,99,833/- (Rupees Twenty Two Lakh Ninety Nine Thousand Eight Hundred and Thirty Three only) vide their memo of calculation as on 10/12/2023 towards refund with interest.

20. The respondent in their calculation sheet as on 19/08/2023 submitted on 31/10/2023 claim that the refund amount with interest payable to the complainants is Rs.12,50,164/- after deducting Rs.2,34,412/- towards the interest payable by the complainants for the delayed scheduled payments. The Hon'ble Authority has not agreed with the claim of the respondent.

21. 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 10/12/2023.

22. 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	13-01-2016	1,00,000	473	30-04-2017	11,663
2	10-03-2016	4,00,000	416	30-04-2017	41,030

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3	11-03-2016	3,51,116	415	30-04-2017	35,929
4		8,51,116		TOTAL INTEREST (I1)	88,622

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	8,51,116	2414	10-12-2023	8.15	10.15 as on 01-05-2017	5,71,346
2	11-09-2019	53,535	1551	10-12-2023	8.35	10.35 as on 10-09-2019	23,544
3	06-11-2019	69,262	1495	10-12-2023	8.25	10.25 as on 10-10-2019	29,078
4	12-12-2019	52,997	1459	10-12-2023	8.2	10.2 as on 10-12-2019	21,607
5	31-01-2020	52,549	1409	10-12-2023	8.2	10.2 as on 10-01-2020	20,691
6	05-07-2020	57,700	1253	10-12-2023	7.3	9.3 as on 10-06-2020	18,421
7	07-11-2020	99,735	1128	10-12-2023	7.3	9.3 as on 10-10-2020	28,664
8	17-03-2021	2,08,060	998	10-12-2023	7.3	9.3 as on 10-03-2021	52,906
9	TOTAL AMOUNT	14,44,954				TOTAL INTEREST (I2)	7,66,257

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 10-12-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
14,44,954	8,54,879	0	22,99,833

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.00538/2023** is hereby allowed.

Respondent is directed to pay the amount of **Rs.22,99,833/- (Rupees Twenty Two Lakh Ninety Nine Thousand Eight Hundred and Thirty Three only)** towards **refund with interest** calculated at 9% from 13/01/2016 to 30/4/2017 and MCLR + 2% from 01/05/2017 till 10/12/2023 to the complainants within 60 days from the date of this order.

The interest due from 11/12/2023 up to the date of final payment will be calculated likewise and paid to the complainants.

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