

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 7TH FEBRUARY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00272/2023

COMPLAINANT.....

**ANIRUDH IYENGAR
S1, 15, SWATI PARC
1ST MAIN ROAD
VINAYAKA LAYOUT
VIJAYANAGAR
BANGALORE-560040.**

**(BY MR. AKASH R BANTIA,
ADVOCATE)**

V/S

RESPONDENT.....

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

**(BY MR. DEEPAK BHASKAR
ADVOCATE & OTHERS)**

*** * * * ***

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, Bangalore Rural for the relief of refund with interest.
2. This project is registered under RERA bearing registration No.PRM/KA/RERA/1250/303/PR/171019/000287 valid till

Mh

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

31/12/2022. The Authority has given Covid extension for a period of 9 months valid till 30/09/2023.

Brief facts of the complaint are as under:

3. The complainant had booked a flat bearing No. P 702, 7th Floor, Tower P in the project of the respondent for a total sale consideration of Rs.69,99,358/- (Rupees Sixty Nine Lakh Ninety Nine Thousand Three Hundred and Fifty Eight only) and entered into an agreement for sale dated 12/02/2020 and has paid Rs.57,00,000/- (Rupees Fifty Seven Lakh only) to the respondent on various dates. The respondent was supposed to handover the flat by December 2022 with a grace period of six months i.e. latest by June 2023. But till date there is no progress on the construction front. On enquiry the respondent claims that handover of possession will happen by March 2024. The complainant has raised loan from HDFC. The complainant has lost faith in the respondent as well as bank who have disbursed the loan amount without proper diligence despite having knowledge of delay in Ozone Urbana project. The amenities promised by the respondent in their brochure is the reason behind going for the purchase of the flat but now neither the unit nor the amenities are completed. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to refund the entire amount with interest, bear PEMI/EMI till such time the refund is done and cost of the present litigation. Hence, this complaint.
4. After registration of the complaint, in pursuance of the notice, the respondent appeared before the Authority through its counsel and have filed written submission as under:-
5. The respondent denies the entire allegations made against them in the complaint by the complainant as false. The respondent submits that in order to assist the complainant, they undertook to be a part of Tripartite

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

Agreement dated Nil and facilitated loan from HDFC whereby the respondent has the liability to pay PEMI to the Bank as agreed. But the complainant/borrower is not absolved from making payments in respect of the same as well and eventually the repayment liability as agreed upon is of the complainant/borrower himself.

6. The respondent contends that as the complainant has opted for cancellation of the flat and refund before the Hon'ble Authority, they are constrained to invoke **Clause 7** of the tripartite agreement which deals with the obligation of parties in the event of cancellation request initiated which reads as under:

"In the event of cancellation of allotment/booking of the flat by the borrower or builder for whatsoever reason in the event of builder not executing/registering the sale deed in favour of the borrower within the stipulated time, builder undertakes to promptly and immediately refund the entire sale consideration amount received by him to HDFC, notwithstanding whether the flat is resold or not. Borrower hereby irrevocably authorise builder to directly pay the said sale consideration amount to HDFC without requiring any further consent or authorisation for the same."

7. In view of the above, the respondent contends that they are liable to close the pending disbursed loan of Rs.50,00,000/- and that the refund to the complainant may be limited to his own contribution in accordance with the agreement.
8. The respondent submits that the Hon'ble Authority may please direct them to refund the own contribution of Rs.7,00,000/- along with interest Rs.2,44,520/- i.e. Rs.9,44,520/- after deducting Rs.58,734/- towards interest on delay in making scheduled payments i.e.Rs.8,85,786/- and

MWS

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

dispose of the complaint in accordance with tripartite agreement. The respondent submits that the complainant is entitled to receive the above amount only after they make payments in favour of the lending institution to facilitate the closure of the housing loan sanctioned.

9. The complainant is also liable to pay Rs.58,734/- to the respondent as interest for delay in making scheduled payments. The complainant has suppressed the facts deliberately. The respondent submits that the amount may be considered against the final amount due and payable to the complainant.

10. The respondent submits that the Hon'ble Authority may please take on record the revised calculation put forth by the respondent as shown below:-

1. Complainant's own contribution – Rs.7,00,000/-
2. Delay Interest payable to the complainant – Rs.2,44,520/-
3. Housing Loan due to HDFC – Rs.50,00,000/-
4. Less:- Interest for delay in making scheduled payments by the complainants – Rs.58,734/-

5. Total amount payable to the complainant – Rs.8,85,786/-

6. Total amount payable to HDFC – Rs.38,11,978/-

11. The respondent prays the Hon'ble Authority to allow them to close the loan with the bank in accordance with the tripartite agreement and refund the amount to the complainant as shown above.

12. The complainant in his rejoinder to the written submission and calculation of the respondent, submits that the scheme was introduced by Respondent themselves to lure and trap innocent home buyers and that the respondent and HDFC are hand in glove and have come out with

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

Ponzi subvention scheme. Regarding interest on delay in making scheduled payments, the complainant submits that there has been no delay by him in making scheduled payments to the respondent. Though the respondent claim to close the loan with HDFC, the complainant submits that he has no faith in them and prays the Hon'ble Authority to direct the respondent to make payments as per memo of calculation submitted by him.

13. The complainant also submits that though the Hon'ble Authority has passed orders in over 20 similar cases, the respondent is not honouring the judgements.

14. In support of their defence, the respondent has produced copies of agreement for sale, tripartite agreement, delay interest schedule and revised calculation sheet as on 06/07/2023.

15. In support of his claim, the complainant has produced copies of documents such as agreement of sale, home loan statement of account issued by HDFC, payment receipts and memo of calculation as on 06/07/2023.

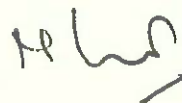
16. This case was heard on 18/7/2023, 7/9/2023, 31/10/2023, 13/12/2023 and 31/1/2024. Heard arguments of both sides.

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

19. **My answer to Point No.1:-** From the materials placed on record, it is apparent that in spite of entering into an agreement of sale and having received a substantial sale consideration amount from the complainant, the respondent has not handed over the possession of the flat as agreed and has delayed the project till date. There seems to be no possibility of completing the project or handing over the possession of the flat in the near future.
20. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has paid substantial total sale consideration amount towards the flat and as the project is delayed wants refund of the entire amount with interest, bear PEMI/EMI till the refund is done and cost of litigation in the instant complaint. Having accepted the said amount and failure to keep up promise to handover possession of the flat as agreed, certainly entitles the complainant herein for refund with interest.
21. During the process of the hearing, the Hon'ble Authority has perused the written submission filed by the respondent and written submission/objections filed by the complainant. The respondent's prayer to the Authority that they may be directed to first make payment to the lending financial institution so as to facilitate closure of the housing loan account and subsequently direct to make balance payable to the complainant is not accepted, as the fact is that the housing loan has been sanctioned in the name of the complainant.
22. 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 given

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

possession of the said flat to the complainant as agreed and has not complied with the terms of the said agreement of sale.

23. At this juncture, my attention is drawn towards decision of Hon'ble Supreme Court in Appeal No.6750-57/2021 M/s Newtech Promoters v/s The State of Uttar Pradesh which has held that:

"Section 18(1) of the Act spells out the consequences if the promoter fails to complete or 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 or 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."

24. In the Judgement reported in Civil Appeal No.3581-3590 of 2020 at Para 23 between M/s Imperia Structures Limited v/s Anil Patni & 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 of Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the project. In

H/W

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

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 the provision of 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."

25. 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, plot, 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.
26. 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 the sale agreement.
27. The complainant has filed his memo of calculation as on 06/07/2023 claiming an amount of Rs.76,57,506/- (Rupees Seventy Six Lakh Fifty Seven Thousand Five Hundred and Six only) as refund with interest. A thorough verification of the documentary proof submitted by the complainant reveals that his claim is genuine. The respondent in their calculation sheet have claimed that the amount refundable to the complainant is Rs.8,85,786/- which is not accepted by the Hon'ble Authority.
28. Having regard to all these aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest as calculated in his memo of calculation as on 06/07/2023.

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

29. Therefore, it is incumbent upon the respondent to refund the amount 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	2257	06/07/2023	8.15	10.15 as on 01-05-2017	0
2	02/02/2020	7,00,000	1250	06/07/2023	8.2	10.2 as on 10-01-2020	2,44,520
3	20/02/2020	50,00,000	1232	06/07/2023	8.15	10.15 as on 10-02-2020	17,12,986
4	TOTAL AMOUNT	57,00,000				TOTAL INTEREST (I2)	19,57,506

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 06-07-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
57,00,000	19,57,506	0	76,57,506

30. 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

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

ORDER

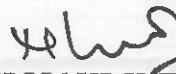
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.00272/2023** is hereby allowed.

Respondent is directed to pay the amount of **Rs.76,57,506/- (Rupees Seventy Six Lakh Fifty Seven Thousand Five Hundred and Six only)** towards refund with interest calculated at MCLR + 2% from 02/02/2020 till 06/07/2023 to the complainant within 60 days from the date of this order.

The interest due from 07/07/2023 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