

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 9TH FEBRUARY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00542/2023

COMPLAINANT.....

**KRISHNANANDA BHANDARY ADKA
NO.C-2, 803 SOUTH CITY
NEAR AREKERE, MICO LAYOUT
OFF. BANNERGHATTA
BANGALORE-560076.**

**(SUJNANESHWARI SHETTY
ADVOCATE)**

V/S

RESPONDENT.....

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

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

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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 AVENUE**" developed by M/s Ozone Urbana Infra Developers Private Limited situated at Sy.No.75, 77/1, 77/2, 77/3, 77/4, 78, 79, 80, 81/2, 83/2, 83/3, 83/5, 83/6, 86/2 Urbana Avenue, Kannamangala Village, Devanahalli Taluk, Bangalore Rural District for the relief of refund with interest.
2. This project is not registered under RERA.

Brief facts of the complaint are as under:



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3. The complainant submits that he had booked a flat bearing No.P-604, 6th Floor, Block-P in the project of the respondent for a total sale consideration of Rs.80,09,566/- (Rupees Eighty Lakh Nine Thousand Five Hundred and Sixty Six only) and entered into agreement for sale and construction agreement on 22/04/2016 with the respondent and has paid an amount of Rs. 70,03,717/- (Rupees Seventy Lakh Three Thousand Seven Hundred and Seventeen only) to the respondent on various dates including housing loan and PEMIs. The complainant also entered into tripartite agreement with the HDFC and the respondent for housing loan. As per the tripartite agreement, the respondent was supposed to bear the PEMIs till the handover of the property and registration. The respondent has given PEMI credit notes to the tune of Rs.18,75,678/- towards interest paid by the complainant from June 2019 to June 2022. Later the respondent stopped issuing credit notes and passed on the burden to the complainant and thus has violated the terms of the agreement. The respondent vide their letter dated Nil also intimated that they are gearing up for handover of the unit by 31/12/2020 and that the participating banks for the subvention scheme are not allowing any further extension of the scheme thus forcing them to stop paying the PEMI on behalf of the complainant. The respondent also intimated that the respective bank/financial institutions will get in touch with the complainant towards collection of PEMIs starting from 1st July, 2019. The respondent was supposed to handover the flat by 31/08/2018 with a grace period of six months i.e. latest by February 2019 but has not handed over possession of the flat till date. There is no progress in the construction work since mid of 2018. The respondent has no plans to complete the project and execute registration/sale deed in favour of the complainant.
4. The complainant further submits that he has invested the hard-earned money to own a flat of his own, but due to the enormous delay in handing over

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r the possession of the flat by the respondent has put him under financial stress and caused mental agony. The respondent has clearly violated the terms of the agreement. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent for refund of entire amount with interest with costs of this instant litigation. Hence, this complaint.

5. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representatives. The respondent has not filed their written submission/statement of objections nor produced any documents on their behalf. They have filed their calculation sheet as on 7/9/2023.
6. The complainant in his objections to the calculation sheet filed by the respondent, submits that the respondent has calculated interest only on own contribution of Rs.9,20,546/- and not on the housing loan of Rs.60,83,171/- released by HDFC and have not included interest of Rs.40,76,132/- in their final total. The respondent has also deducted an amount of Rs.1,35,292/- towards interest on delay in making scheduled payments which does not arise in this case. The complainant request the Hon'ble Authority to dismiss the calculation sheet filed by the respondent.
7. In support of their defence, the respondents have produced revised calculation sheet as on 7/9/2023.
8. In support of his claim, the complainant has produced copies of documents such as agreement of sale, construction agreement, tripartite agreement, payment receipts, letter regarding discontinuance of payment of PEMI by the respondent, HDFC loan disbursement details, statement



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of account issued by HDFC towards PEMI paid by the complainant and memo of calculation as on 08/09/2023.

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

10. 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?

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 of sale and construction agreement and having received a substantial sale consideration amount from the complainant, the respondent has not handed over the possession of the flat as per agreement and have delayed the project till date. The respondent has also stopped paying PEMIs as agreed till the handover of the property and its registration. There seems to be no possibility of completing the project or handing over the possession of the flat in the near future.

13. 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. Having accepted the said amount and failure to keep up promise to

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handover possession of the flat and not paying PEMIs as agreed, certainly entitles the complainant herein for refund with interest.

14. During the process of the hearing, the Authority has perused the complainant's written submission and objections to calculation sheet filed by respondent. Despite opportunities were given, the respondent has failed to submit written submission/statement of objections and file any documents on their behalf.
15. 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 possession of the said flat to the complainant as agreed and has not complied with the terms of the said agreement of sale.
16. 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."
17. 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:



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"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 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."

18. 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.
19. 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.

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20. The complainant has filed his memo of calculation as on 08/09/2023 claiming an amount of Rs.1,15,39,464/- (Rupees One Crore Fifteen Lakh Thirty Nine Thousand Four Hundred and Sixty Four only) as refund with interest. The complainant has admitted that the respondent has refunded Rs.13,61,302/- on various dates. A thorough verification of the documentary proof submitted by the complainant reveals that his claim is genuine.
21. The respondent in their calculation sheet submit that the amount refundable to the complainant is Rs.14,25,797/- which was not accepted by the Hon'ble Authority.
22. 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 08/09/2023.
23. 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	29/03/2016	1,00,000	397	30/04/2017	9,789
2	22/04/2016	3,29,748	373	30/04/2017	30,327
3	30/04/2016	26,05,959	365	30/04/2017	2,34,536
4	03/05/2016	30,664	362	30/04/2017	2,737
5	16/03/2017	4,29,748	45	30/04/2017	4,768
6	21/03/2017	12,89,242	40	30/04/2017	12,715
7	23/03/2017	17,364	38	30/04/2017	162
8		48,02,725		TOTAL INTEREST (I1)	2,95,034



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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	43,24,225	58	28/06/2017	8.15	10.15 as on 01-05-2017	69,744
2	28/06/2017	12,89,242	2263	08/09/2023	8.15	10.15 as on 01-06-2017	8,11,319
3	11/07/2017	13,023	2250	08/09/2023	8.15	10.15 as on 01-07-2017	8,148
4	16/02/2018	8,98,727	2030	08/09/2023	8.1	10.1 as on 01-02-2018	5,04,838
5	TOTAL AMOUNT	70,03,717				TOTAL INTEREST (I2)	13,94,049

Refund Interest Calculation Till 30/04/2017 (Before RERA)							
S.NO	AMOUNT PRINCIPAL	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	48,02,725	30/04/2016	3,84,970	44,17,755	325	21/03/2017	3,54,025
2	44,17,755	21/03/2017	93,530	43,24,225	40	30/04/2017	42,649
3						TOTAL INTEREST (I3)	3,96,674

Refund Interest Calculation From 01/05/2017 (After RERA)									
S. NO	AMOUNT PRINCIPAL	REFUND DATE	REFUND AMOUNT	BALANCE	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	65,25,217	28/06/2017	61,514	64,63,703	223	06/02/2018	8.15	10.15 as on 01-06-2017	4,00,829
2	64,63,703	06/02/2018	40,180	64,23,523	27	05/03/2018	8.1	10.1 as on 01-02-2018	47,991
3	64,23,523	05/03/2018	39,964	63,83,559	32	06/04/2018	8.35	10.35 as on 01-03-2018	57,924
4	63,83,559	06/04/2018	47,145	63,36,414	29	05/05/2018	8.35	10.35 as on 01-04-2018	52,106
5	63,36,414	05/05/2018	47,145	62,89,269	32	06/06/2018	8.35	10.35 as on 01-05-2018	57,068
6	62,89,269	06/06/2018	48,159	62,41,110	31	07/07/2018	8.45	10.45 as on 01-06-2018	55,391

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7	62,41,110	07/07/2018	48,159	61,92,951	31	07/08/2018	8.45	10.45 as on 01-07-2018	54,964
8	61,92,951	07/08/2018	48,159	61,44,792	31	07/09/2018	8.45	10.45 as on 01-08-2018	54,537
9	61,44,792	07/09/2018	49,680	60,95,112	28	05/10/2018	8.65	10.65 as on 01-09-2018	49,796
10	60,95,112	05/10/2018	49,680	60,45,432	31	05/11/2018	8.7	10.7 as on 01-10-2018	54,938
11	60,45,432	05/11/2018	49,680	59,95,752	30	05/12/2018	8.7	10.7 as on 01-11-2018	52,729
12	59,95,752	05/12/2018	50,187	59,45,565	31	05/01/2019	8.7	10.7 as on 01-11-2018	54,031
13	59,45,565	05/01/2019	50,187	58,95,378	31	05/02/2019	8.75	10.75 as on 10-12-2018	53,825
14	58,95,378	05/02/2019	50,187	58,45,191	30	07/03/2019	8.75	10.75 as on 10-01-2019	51,645
15	58,45,191	07/03/2019	50,694	57,94,497	34	10/04/2019	8.75	10.75 as on 10-02-2019	58,024
16	57,94,497	10/04/2019	50,694	57,43,803	30	10/05/2019	8.7	10.7 as on 10-04-2019	50,513
17	57,43,803	10/05/2019	50,694	56,93,109	31	10/06/2019	8.65	10.65 as on 10-05-2019	51,495
18	56,93,109	10/06/2019	50,694	56,42,415	1551	08/09/2023	8.65	10.65 as on 10-06-2019	25,53,486
19								TOTAL INTEREST (13)	38,11,292

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 08-09-2023	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
70,03,717	58,97,049	13,61,302	1,15,39,464

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

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

ORDER

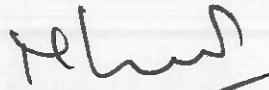
In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.00542/2023** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,15,39,464/- (Rupees One Crore Fifteen Lakh Thirty Nine Thousand Four Hundred and Sixty Four only) towards refund with interest** calculated at 9% from 29/03/2016 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 08/09/2023 to the complainant within 60 days from the date of this order.

The interest due from 09/09/2023 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