

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 13<sup>TH</sup> NOVEMBER 2024**

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

**COMPLAINT NO.:00098/2024**

**COMPLAINANTS.....**

**ANAND PURANIK &  
MENAKA PURANIK  
NO.82, GURUPADESHWAR  
SHIVAGIRI, 4<sup>TH</sup> MAIN  
DHARWAD-580007  
KARNATAKA STATE**

**(BY MR. VIKAS M, ADVOCATE)**

**Vs**

**RESPONDENTS.....**

**1.OZONE REALTORS PRIVATE LIMITED  
NO.51/7-1, RATHNA AVENUE  
OFF RICHMOND ROAD  
CIVIL STATION  
BANGALORE-560025.**

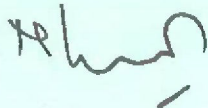
**2. VASUDEVAN SATHYAMOORTHY  
3. SATHYA MOORTHY SAI PRASAD  
NO.32, NORRIS ROAD  
RICHMOND TOWN  
BANGALORE-560025.**

**(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 POLESTAR" developed by **M/S. OZONE REALTORS PRIVATE LIMITED** situated at Sy.No.78/5, Nagavara Village, Kasaba Hobli, Bangalore North Taluk, Bangalore Urban District for the relief of refund Rs.53,44,160/- with interest.



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2. *The complainants filed an application dated 27/6/2024 to implead Vasudevan Sathyamoorthy and Sathya Moorthy Sai Prasad as Respondents No.2 & 3 in the present complaint. The Hon'ble Authority has allowed the application accordingly vide its order dated 4/7/2024.*
3. This project has been registered under RERA vide registration No.PRM/KA/RERA/1251/309/PR/171015/000386 and was valid till 31/3/2021. The Authority has granted covid extension for a period of 9 months valid till 31/12/2021. The proposed project completion date is expired.

**Brief facts of the complaint are as under:-**

4. The complainants had booked Flat No.904, 9<sup>TH</sup> floor, Tower-A under the subvention scheme in the above said project for a total sale consideration of Rs.1,32,08,725/- and entered into an agreement for sale dated 13/04/2018. The complainants have paid Rs.53,44,160/- including housing loan from IHFL to the respondents on various dates. The respondents were supposed to handover possession of the flat by December 2021. The complainants had also entered into tripartite agreement dated 2/7/2018 with the IHFL and the respondents for availing housing loan and the respondents were supposed to pay PEMIs to the financial institution until the intimation of the unit being ready for handover as per the terms and conditions reflected in the subvention scheme letter dated Nil issued by the respondents. But the respondent stopped making PEMI payment.
5. This PEMI is not a regular EMI. PEMI is the payment of interest applicable on the loan only. Only by paying full EMI, the interest is repaid and the outstanding loan amount will be reduced during the loan period. PEMI amount is lesser than full EMI amount, since only the interest portion is paid and the principal remains intact. However,

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since the entire loan amount has not been disbursed due to non-completion of the project, the PEMI has to be paid for the partly disbursed loan amount. Since the respondents have not completed the project, the financial institution has started deducting interest for the loan amount disbursed and the same was not paid by the respondents, the complainants were compelled to pay the PEMIs. This has been informed to the respondents with all details.

6. On 27/12/2022 the complainants intimated the respondents that they are no more interested to purchase the flat due to inordinate delay and sought for refund. Thus, the complainants have approached this Hon'ble Authority and pray for direction to the respondents to refund Rs.53,44,160/- with interest. Hence, this complaint.
7. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Authority through their counsel/representative and have filed their written submissions as under:-
8. The respondent No.1 has denied all the allegations made against them in the complaint by the complainants as false. R-1 submits that the complainants desirous of purchasing the above said flat in their project, approached them and entered into agreement for sale dated 13/04/2018. R-1 submits that becoming aware of the financial constraints of the complainants, they undertook to be a part of the tripartite agreement dated 2/7/2018 between the R-1, IHFL and the complainants to assist in making the financing of the unit more affordable to the complainants, whereby the builder/seller has the liability to pay EMI/interests to the Bank as mutually agreed upon. But the 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 borrower himself as mentioned in clause 3 of the

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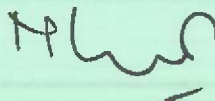
agreement. R-1 also submits that Clause 4 of the tripartite agreement captures the bank's knowledge about the arrangement between the parties and establishes the liability under the arrangement between the three parties.

9. The R-1 submits that the complainants have prayed for relief of refund of Rs.53,44,160/- paid to the respondents for the purchase of apartment and cancellation of the unit, they are constrained to invoke Clause 17 of the tripartite agreement which deals with the obligation of the parties in the event a cancellation request is initiated. The Clause 14 of the agreement captures that the borrower agrees that it unconditionally and irrevocable subrogates its right to receive any amount payable by the builder to the borrower in the event of cancellation in favour of IHFL". The R-1 submits that this is so because the arrangement between the parties is such that all disbursed amount to Ozone by the HDFC will be closed by Ozone Realtors Private Limited with them, which makes the mechanism prescribed for settling dues under the tripartite agreement. Therefore R-1 is liable to close the pending disbursed loan of Rs.48,01,239/- and refund only own contribution of Rs.5,31,981/- plus interest of Rs.3,35,407/- to the complainants and dispose the complaint in accordance with the tripartite agreement executed between the parties

10. The R-1 also submits that Clause 17 penalizes them on account of failure to close the disbursed loan amount due to IHFL. Hence, R-1 prays that they may be allowed to settle the disbursed loan under the tripartite agreement with IHFL as agreed between the parties.

11. The respondent prays the Hon'ble Authority to take into record the quantum of amount due to the complainants as follows:

1. Complainants own contribution – Rs.5,31,981/-
2. Interest payable to the complainants – Rs.3,35,407/-



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3. Amount payable to Bank – Rs.48,01,239/-

4. Total amount payable to complainants – Rs.8,67,388/-

12. The respondent prays the Hon'ble Authority to allow the relief as above and dispose of the complaint accordingly.

13. The complainants in their objections to the written submissions/MOC filed by R-1, submits that they are seeking refund of Rs.86,32,541/- as on 17/6/2024 and have submitted all the documents to substantiate their claim. The complainants submit that R-1 is showing PEMI payment of Rs.21,80,118/- made to the Bank as refund which is not acceptable. According to the tripartite agreement, the respondent is supposed to pay PEMI till the handing over possession of the flat. The complainants submit that when R-1 stopped paying PEMIs, they approached Hon'ble High Court of Karnataka in W.P.No.14946/2023 and the Hon'ble Court passed an interim order dated 24/7/2023 desisting the IHFL from recovering PEMI/EMI payments from the complainants and directing the respondent to pay PEMI to the Bank. Hence, the respondent is liable to pay PEMI to the Bank. The complainants pray the Hon'ble Authority to reject the calculation submitted by the respondent and accept their MOC in the interest of justice and equity.

14. R-2 & R-3 in their common statement of objections filed before the Authority submit that they deny all the allegations made by the complainants in the complaint as false. The respondents are the Directors in R-1 company Ozone Realtors Private Limited and that the complainants desirous of purchasing a flat in the residential project of R-1 have executed various agreements towards the purchase of the same with R-1 company.

15. The R-2 & R-3 have reproduced provisions of Section 36, 37, 38 and 40 and contends that the RERA has no jurisdiction over the

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Directors of the Company which is further substantiated with definition of Allottees, Promoters and Real Estate Agents as per Section 2 clauses (d) (zk) and (zm).

16. The R-2 & R-3 submit that Section 69 of the Act requires that the imposition of vicarious liability qua a Director be preceded by proof of such Director's active knowledge and lack of due diligence in the commission of an offence. This being a question of fact represents a triable issue and cannot be examined by RERA which only exercises its powers summarily. The R-2 & R-3 contend that on this ground alone the compliant is liable to be dismissed.

17. The R-2 & R-3 submit that it has been repeatedly emphasized in various judicial precedents that the corporate veil should not be lifted routinely, as it would undermine the concept of legal personality granted to a company and it is well established that Directors cannot be held personally liable for the company's actions. It is pertinent to note that the Hon'ble Courts have consistently recognized that a company has its own identity and seal, separate from those of its Directors and therefore, they cannot be held liable for the actions of the company. The R-2 & R-3 have produced 9 memo of citations in this regard for the perusal of the Hon'ble Authority.

18. The R-2 & R-3 further contend that according to Section 2 (i) of the Indian Contract Act, 1872, agreements are enforceable by law only at the option of the parties thereto. A contract establishes specific rights, obligations and duties of the contracting parties. However, the agreements referred to in the complaint are between the company and the complainant. The R-2 & R-3 in their individual capacity not being party to such agreements, cannot be made as parties in the present proceedings. The R-2 & R-3 submit that the complainants cannot



seek relief against them as they have failed to demonstrate any liability that can be fastened upon R-2 & R-3.

19. The R-2 & R-3 pray the Hon'ble Authority to take on record the common statement of objections put forth by them and dismiss the complaint against them in the interest of justice and equity.

20. The complainants in their rejoinder to the statement of objections filed by R2 & R3, submit that the Hon'ble High Court of Karnataka vide their judgement dated 27/5/2024 in W.P.No.10211/2023 has directed that the Directors of the Company should also be made respondent so that RERA execution proceedings can be initiated against the Directors of the company along with the company. Hence, they have been made respondents in the present complaint and prays the Hon'ble Authority to pass final order as against R2 & R3 along with R1.

21. The R-1 has filed revised calculation vide their memo dated 7/11/2024 showing the quantum of money payable as under:

1. Own Contribution by the complainants - Rs.5,31,981/-
2. PEMI paid by the customer - NIL
3. Total own contribution - Rs.5,31,981/-
4. Interest on own contribution - Rs.3,35,407/-
5. Interest on PEMI paid by the customer - Nil
6. Total interest on own contribution - Rs.3,35,407/-
7. Bank Loan - Rs.48,01,239/-
8. Interest on Bank Loan - Rs.29,37,311/-
9. Total payable - Rs.86,05,938/-
10. Total deduction - Rs.21,80,118/-
11. Total payable , - Rs.64,25,820/-

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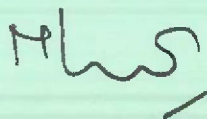
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12. Net payable to Bank - Rs.48,01,239/-
13. Net payable to complainants - Rs.16,24,581/-
22. The respondent No.1 prays that they may be allowed to close the loan with the bank in accordance with the tripartite agreement executed between the parties and refund the complainants their own contribution as detailed above.
23. In support of their defence, the respondents have filed copies of documents such as agreement for sale, tripartite agreement, memo of citation and revised calculation sheet as on 7/11/2024.
24. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Tripartite Agreement, Subvention Scheme letter, Statement of Account with regard to loan disbursement issued by IHFL, payment receipts and Memo of calculation for refund with interest as on 17/06/2024.
25. This case was heard on 26/6/2024, 4/7/2024, 21/8/2024 and 7/11/2024. Heard arguments of both sides.
26. **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?
27. **My answer to the above points are as under:-**
1. In the Affirmative.
  2. As per final order for the following -

**REASONS**

28. **My answer to Point No.1:-** It is undisputed that the respondents have failed to handover possession of the flat to the complainants herein





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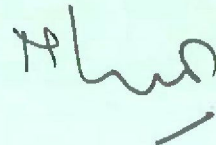
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within agreed time as per the terms of agreement for sale and tripartite agreement within December 2021. The respondents have also failed to pay PEMIs as agreed.

29. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that the complainants were supposed to get possession of the above said flat by December 2021. The respondents have failed to give possession of the flat within stipulated time and to pay PEMIs as agreed. Having accepted the substantial amount towards sale consideration and failure to keep up promise to handover possession of the flat, not paying pre-EMIs to the financial institution as agreed, certainly entitles the complainants herein for refund with interest.

30. During the process of the hearing, the Hon'ble Authority has perused the written submissions/statement of objections filed by the respondents and written submissions/rejoinder filed by the complainants. 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 complied with the terms of the said agreement for sale. The respondent has prayed that they may be allowed to clear the loan amount disbursed by the Bank by themselves. The Authority has not accepted the contentions of the respondents made in their written submissions/statement of objections. The Authority has also not accepted the contentions of the respondents that R2 & R3 are not liable to this complaint and that the complaint against them should be dismissed.

31. The complainants have submitted proof of payments in the form of payment receipts and bank statements to substantiate their claim.



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32. 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."*

33. 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*

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*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."*

34. 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.

35. 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.

36. The complainants have claimed Rs.86,32,541/- (Rupees Eighty Six Lakh Thirty Two Thousand Five Hundred and Forty One only) vide their memo of calculation as on 17/06/2024 towards refund with interest.

37. The respondent No.1 vide their revised calculation sheet as on 7/11/2024 claim that the amount payable to the complainants is Rs.16,24,581/- and to the Bank is Rs.48,01,239/-. The Hon'ble Authority has not accepted the calculation of the respondent.

38. 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 17/06/2024.

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

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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	2604	17/06/2024	8.15	10.15 as on 01-05-2017	0
2	18/12/2017	50,000	2373	17/06/2024	8.1	10.1 as on 01-12-2017	32,831
3	26/12/2017	50,000	2365	17/06/2024	8.1	10.1 as on 01-12-2017	32,721
4	13/04/2018	10,940	2257	17/06/2024	8.35	10.35 as on 01-04-2018	7,001
5	27/04/2018	31,981	2243	17/06/2024	8.35	10.35 as on 01-04-2018	20,340
6	29/06/2018	7,49,598	2180	17/06/2024	8.45	10.45 as on 01-06-2018	4,67,851
7	29/06/2018	38,69,753	2180	17/06/2024	8.45	10.45 as on 01-06-2018	24,15,255
8	30/06/2018	4,00,000	2179	17/06/2024	8.45	10.45 as on 01-06-2018	2,49,540
9	30/09/2020	1,81,888	1356	17/06/2024	7.3	9.3 as on 10-09-2020	62,842
10	TOTAL AMOUNT	53,44,160				TOTAL INTEREST (I2)	32,88,381

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 17-06-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
53,44,160	32,88,381	0	86,32,541

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

41. **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.00098/2024** is hereby allowed.

The Respondents No.1, 2 & 3 are directed to pay the amount of **Rs.86,32,541/- (Rupees Eighty Six Lakh Thirty Two Thousand Five Hundred and Forty One only)** towards refund with interest calculated at MCLR + 2% from 18/12/2017 till 17/06/2024 to the complainants within 60 days from the date of this order.

The interest due from 18/06/2024 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

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