

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 4TH JULY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 01249/2023

COMPLAINANT.....

**P DEEPAK KUMAR MAHENDERKAR
152, CHARLES CAMPBELL ROAD,
COX TOWN
BANGALORE-560005**

(IN PERSON)

Vs

RESPONDENT.....

**OZONE INFRA DEVELOPERS
PRIVATE LIMITED
NO.51/7-1, RATHNA AVENUE
OFF. RICHMOND ROAD
CIVIL STATION
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 URBANA PRIME" developed by M/S. OZONE INFRA DEVELOPERS PRIVATE LIMITED situated at Urbana Prime NH-7, Kannamangala Village, Devanahalli, Bengaluru North, Bengaluru Urban District for the relief of interest on delay period.

2. This project is registered under RERA bearing registration No. PRM/KA/RERA/1251/309/PR/180217/002477 valid till 31/12/2023.



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Brief facts of the complaint are as under:-

3. The complainant has purchased a flat bearing No.1604, 16th Floor, Tower-B in the project Urbana Prime developed by the respondent and entered into agreement for sale dated 15/5/2019 for a total sale consideration of Rs.49,21,473/-. The complainant has paid Rs.44,29,326/- to the respondent on various dates. The complainant submits that the respondent has failed to deliver possession of the above flat till today as agreed. The complainant submits that the respondent was supposed to handover the flat by June 2021 with a grace period of six months i.e. by December 2021. There is an inordinate delay in handing over the flat by the respondent due to which the complainant has suffered heavy financial loss and undergone mental agony. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondent to pay interest for the delay period until the handing over possession of the above flat, to complete and handover the flat along with occupancy certificate without any further delay. Hence, this complaint.

4. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel/representative and have submitted their statement of objections as under:

5. The respondent denies all the allegations made in the complaint by the complainant as false. The respondent submits that the complainant has prayed for delay period interest. The respondent contends that as per agreement for sale executed between both the parties, the stipulated time for handing over possession of the above flat the complainant was June 2021 with a grace period of six months i.e. latest by December 2021. However, the complainant has calculated the interest on delay period from 30/6/2021 instead of from 30/12/2021 and has requested the Hon'ble Authority to direct

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the complainant to submit a fresh and revised memo of calculation for consideration.

6. The respondent submits that as per their records the principal amount received from the complainant is Rs.40,27,933/- whereas the complainant claim amounts to Rs.44,29,326/-. The respondent seeks the complainant to provide documentary proof to substantiate his claim. The respondent admits that the complainant is eligible for interest on delay period until handing over possession of the flat by the respondent i.e. Rs.40,27,933/- plus interest Rs.7,47,871/-. The respondent accordingly files their calculation sheet as on 23/1/2024 and prays to take it on record.

7. In support of their defence, the respondent has filed copies of documents such as agreement for sale and calculation sheet as on 23/01/2024.

8. In support of his claim, the complainant has produced copies of documents such as Agreement for Sale, payment receipts, statement of account issued by The Bhavasara Kshatriya Co-operative Bank Ltd & ICIC Bank and Memo of calculation for interest on delay period as on 23/01/2024.

9. This case was heard on 6/12/2023, 23/1/2024, 13/3/2024, 29/5/2024 and 25/6/2024. 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 -



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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 for sale to handover the flat to the complainant by June 2021 with a grace period of six months i.e. by the end of December 2021 and receiving substantial sale consideration amount, the respondent has failed to abide by the terms of the agreement and has not handed over the possession of the above said flat till today.

13. 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 flat by December 2021 including six months grace period. Having accepted substantial sale consideration, the respondent has failed to handover the flat to the complainant and has not complied with the terms of the agreement, certainly entitles the complainant herein for interest on the delay period until handing over possession of the above flat by the respondent.

14. During the process of the hearing, the Hon'ble Authority has perused the statement of objections filed by the respondent and written submission filed by the complainant. 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. Therefore, the Authority has not accepted the contentions of the respondent made in their statement of objections.

15. The Hon'ble Authority has perused the written submissions submitted by the respondent in which they have submitted that the principal amount received from the complainant amounts to Rs.40,27,933/- and not Rs.44,29,326/- as claimed by the complainant.

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16. The Hon'ble Authority has perused the copy of the statement of accounts issued by The Bhavasara Kshatriya Co-operative Bank Ltd & ICIC Bank furnished by the complainant, according to which the principal amount paid by the complainant to the respondent amounts to Rs.40,27,933/- as claimed by the respondent and that there is no dispute.

17. Further, the Hon'ble Authority has noticed that the respondent has given Rs.3,35,873/- as upfront payment discount and Rs.65,520/- as Referral amount in respect of Unit No.B904 in their Urbana Prime Cost Sheet and Payment schedule dated 25/6/2024, which cannot be taken into consideration while calculating interest on delay period. The actual principal amount paid by the complainant is Rs.40,27,933/- as per documentary proof furnished by him and, as such, the Hon'ble Authority has allowed Rs.40,27,933/- as the principal amount for which the interest on delay period is allowed to be calculated.

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

"Para No.22: If we take a conjoint reading of subsections (1), (2) and (3) of Section 18 of the Act, the different contingencies spelt out therein -

(A) the allottee can either seek refund of the amount by withdrawing from the project;

(B) such refund could be made together with interest as may be prescribed;

(C) in addition, can also claim compensation under sections 18(2) & 18(3) of the Act;

(D) the allottee has the liberty, if he does not intend to



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withdraw from the project, will be required to be paid interest by the promoter for every month's delay in handing over possession at such rates as may be prescribed."

19. The complainant has claimed Rs.11,41,562/- (Rupees Eleven Lakh Forty One Thousand Five Hundred and Sixty Two only) on the principal amount of Rs.44,29,326/- vide his memo of calculation as on 23/01/2024 towards interest on delay period calculated from 30/06/2021. The Hon'ble Authority has not accepted the memo of calculation filed by the complainant, as the delay period interest is admissible from 31/12/2021 and the principal amount of Rs.40,27,933/-.

20. The respondent in their revised calculation sheet as on 23/01/2024 have claimed that the interest on delay period payable to the complainant is Rs.7,47,871/-. The Hon'ble Authority has not agreed to the claim made by the respondent as their calculation is not correct.

21. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period from 30/12/2021 till the date of handing over possession of the flat by the respondent.

22. Therefore, it is incumbent upon the respondent to pay interest on delay period which is determined as under:

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION AS PER AGREEMENT	40,27,933	31/12/2021
2	TOTAL DELAYED INTEREST as on 25/06/2024	10,34,519	

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Interest Calculation						
S.NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 40,27,933						
1	31-12-2021	31-01-2022	31	7.3	9.3 as on 15-12-2021	31,815
2	31-01-2022	28-02-2022	28	7.3	9.3 as on 15-01-2022	28,736
3	28-02-2022	28-03-2022	28	7.3	9.3 as on 15-02-2022	28,736
4	28-03-2022	28-04-2022	31	7.3	9.3 as on 15-03-2022	31,815
5	28-04-2022	28-05-2022	30	7.4	9.4 as on 15-04-2022	31,119
6	28-05-2022	28-06-2022	31	7.5	9.5 as on 15-05-2022	32,499
7	28-06-2022	28-07-2022	30	7.7	9.7 as on 15-06-2022	32,113
8	28-07-2022	28-08-2022	31	7.8	9.8 as on 15-07-2022	33,525
9	28-08-2022	28-09-2022	31	8	10.0 as on 15-08-2022	34,209
10	28-09-2022	28-10-2022	30	8	10.0 as on 15-09-2022	33,106
11	28-10-2022	28-11-2022	31	8.25	10.25 as on 15-10-2022	35,065

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12	28-11-2022	28-12-2022	30	8.35	10.35 as on 15-11-2022	34,265
13	28-12-2022	28-01-2023	31	8.85	10.85 as on 15-12-2023	37,117
14	28-01-2023	28-02-2023	31	8.6	10.6 as on 15-01-2023	36,262
15	28-02-2023	28-03-2023	28	8.7	10.7 as on 15-02-2023	33,062
16	28-03-2023	28-04-2023	31	8.7	10.7 as on 15-03-2023	36,604
17	28-04-2023	28-05-2023	30	8.7	10.7 as on 15-04-2023	35,423
18	28-05-2023	28-06-2023	31	8.7	10.7 as on 15-05-2023	36,604
19	28-06-2023	28-07-2023	30	8.7	10.7 as on 15-06-2023	35,423
20	28-07-2023	28-08-2023	31	8.75	10.75 as on 15-07-2023	36,775
21	28-08-2023	28-09-2023	31	8.75	10.75 as on 15-08-2023	36,775
22	28-09-2023	28-10-2023	30	8.75	10.75 as on 15-09-2023	35,589
23	28-10-2023	28-11-2023	31	8.75	10.75 as on 15-10-2023	36,775
24	28-11-2023	28-12-2023	30	8.75	10.75 as on 15-11-2023	35,589

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25	28-12-2023	28-01-2024	31	8.85	10.85 as on 15-12-2023	37,117
26	28-01-2024	28-02-2024	31	8.85	10.85 as on 15-12-2023	37,117
27	28-02-2024	28-03-2024	29	8.85	10.85 as on 15-12-2023	34,722
28	28-03-2024	28-04-2024	31	8.85	10.85 as on 15-12-2023	37,117
29	28-04-2024	28-05-2024	30	8.85	10.85 as on 15-12-2023	35,920
30	28-05-2024	25-06-2024	28	8.85	10.85 as on 15-12-2023	33,525
					TOTAL DELAYED INTEREST as on 25/06/2024	10,34,519

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

24. **My answer to point No. 2:-** In view of the above discussion, this complaint deserves to be allowed. Hence, 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.01249/2023** is hereby allowed.

1. The Respondent is hereby directed to pay the amount of **Rs.10,34,519/- (Rupees Ten Lakh Thirty Four Thousand Five Hundred and Nineteen only) towards interest on delay period** calculated at MCLR + 2% from 31/12/2021 to

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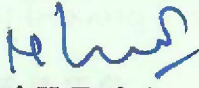
25/06/2024 to the complainant within 60 days from the date of this order.

The interest due from 26/06/2024 up to the date of handing over possession of the flat by the respondent to the complainant will be calculated likewise and paid to the complainant.

2. Further, the respondent is directed to complete the project Ozone Urbana Prime situated at Urbana Prime NH-7, Kannamangala Village, Devanahalli, Bengaluru North, Bengaluru Urban District and handover the flat bearing No.1604, 16th Floor, Tower-B in the above project to the complainant along with occupancy certificate within 60 days from the date of this order.

The complainant is at liberty to initiate action for recovery and other direction in accordance with law if the respondent fails to comply with the order of this Authority.

No order as to the costs.



(Neelmani N Raju)
Member, K-RERA