

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 23rd JULY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 01622/2023

COMPLAINANT.....

**SHANKAR GANIGER
MIG II-17, HOUSING COLONY
MANTUR ROAD
MUDHOL-587313**

**DISTRICT: BAGALKOT
STATE: KARNATAKA**

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

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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Karnataka Real Estate Regulatory Authority,

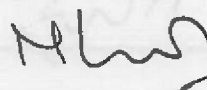
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30/7/2017 till 31/12/2022. The Authority has extended its registration for a further period of 9 months i.e. till 30/09/2023.

Brief facts of the complaint are as under:-

3. The complainant had purchased a flat bearing No.E402, 4th Floor, TOWER-E in the project Urbana Avenue forming part of the integrated township project Ozone Urbana developed by the respondent for a total sale consideration of Rs.57,08,745/- and entered into an agreement for sale dated 24/09/2019. The complainant had entered into tripartite agreement dated 26/09/2019 with HDFC and the respondent for availing housing loan. The respondent has confirmed the allotment of the above flat through their allotment letter dated 23/09/2019. The complainant has paid Rs.34,21,246/- to the respondent on various dates. The respondent was supposed to handover possession of the above flat to the complainant by December 2022 with a grace period of six months i.e. by June 2023. But the respondent has failed to handover the flat till date, despite receiving major portion of the total sale consideration. The complainant submits that he had purchased this flat with the intention of staying in his own house, but is bearing the rent and the loan liability due to the inordinate delay by the respondent in handing over the flat and that he is facing capital loss and rental impact. The complainant submits that his hard earned money is stuck with the respondent and is undergoing mental harassment due to the negligent actions of the respondent. Thus, the complainant has approached this Hon'ble Authority and prays for directions to the respondents to refund the entire amount with interest. 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 written submissions as under:



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5. The respondent denies all the allegations made in the complaint by the complainant as false. The respondent being desirous of purchasing a flat in the above project developed by the respondent approached them for allotment of a unit. Accordingly, the above flat was allotted to the complainant and agreement for sale dated 24/09/2019 was executed between the parties. The respondent submits that on coming to know the financial constraints of the complainant, they undertook to be part of tripartite agreement on 26/9/2019 with HDFC and the complainant to assist them in getting financial assistance from HDFC for the purchase of the above unit.

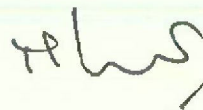
6. The respondent submits that the complainant has prayed for refund with interest. The respondent submits that they facilitated loan arrangement from HDFC whereby the builder has the liability to pay the PEML/Interests to the Bank until the last day of the said following month. But the borrower is not absolved from making payments in respect of the same as well and eventually the repayment liability as agreed upon is of the borrower itself as mentioned in Clause E of the tripartite agreement.

7. The respondent submits that they are liable to refund only the Own contribution made by the complainant. Therefore, the respondent prays the Hon'ble Authority to direct refund of Rs.34,21,246/- along with interest amounting to Rs.15,36,1524/- and dispose of the complaint in accordance with the tripartite agreement.

8. The respondent submits that the Hon'ble Authority may please take on record the calculation put-forth as under:-

- 1) Own contribution by the complainant – Rs.34,21,246/-
- 2) Interest payable to the complainant – Rs.15,36,524/-
- 3) Total amount payable to the complainant – Rs.49,57,770/-

9. The complainant in his written submission filed before the Hon'ble Authority has submitted that he had entered into agreement for sale dated



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24/9/2019 in respect of the above flat and that the total sale consideration of the unit was Rs.57,08,745/- including other costs and taxes. The complainant submits that he has paid a sum of Rs.34,21,246/- including housing loan of Rs.29,05,787/- disbursed by HDFC to the respondent. Though the respondent was obligated to handover possession of the flat along with occupancy certificate by June 2023 including six months grace period, has failed to deliver the flat within stipulated time. The complainant submits that even the amenities such as specialty hospital, multifunctional club, etc. which were promised are missing. The complainant has lost faith in the respondent and has approached this Hon'ble Authority for refund of entire amount with interest, to bear the EMI till such time the refund is not done and costs of the present proceedings.

10. *In support of their defence, the respondent has filed copies of documents such as agreement for sale, construction agreement, tripartite agreement and calculation sheet as on 14/02/2024.*

11. *In support of his claim, the complainant has produced documents such as copies of Agreement for Sale, tripartite agreement, allotment letter, payment receipts and Memo of calculation for refund with interest as on 12/02/2024.*

12. *This case was heard on 15/2/2024, 21/3/2024, 20/6/2024 and 10/7/2024. Heard arguments of both sides.*

13. **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?

14. 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

15. **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 and tripartite agreement to handover the above said flat to the complainant by December 2022 with a grace period of six months i.e. by the end of June 2023 and 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 within stipulated time as agreed.

16. 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 June 2023 including six months grace period. Having accepted substantial sale consideration, the respondent has failed to handover the flat to the complainant as agreed, certainly entitles the complainant herein for refund of entire amount with interest.

17. During the process of the hearing, the Hon'ble Authority has perused the written submissions filed by both the parties. 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 complied with the terms of the said agreement for sale. The Hon'ble Authority has noticed that there is no much difference in the amount claimed by both the parties towards refund with interest. The complainant has agreed and accepted the calculation of the respondent towards payment of refund with interest and also there is no difference in the principle amount given and accepted by the parties.

18. 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:

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"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."

19. 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 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."

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20. 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.

21. 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.

22. The complainant has claimed Rs.49,70,437/- (Rupees Forty Nine Lakh Seventy Thousand Four Hundred and Thirty Seven only) vide his memo of calculation as on 12/02/2024 towards refund with interest.

23. The respondent has claimed that they are liable to pay Rs.49,57,770/- to the complainant as refund with interest as on 14/02/2024. As discussed above, the complainant has accepted the calculation of the respondent.

24. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest of Rs.49,57,770/- as on 14/02/2024 calculated by the respondent.

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

Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST AS ON 14-02-2024	REFUND FROM PROMOTER	TOTAL BALANCE AMOUNT AS PER RESPONDENT'S CALCULATION
34,21,246	15,36,524	0	49,57,770

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

M/S

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27. 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.01622/2023** is hereby allowed.

The Respondent is directed to pay the amount of **Rs.49,57,770/- (Rupees Forty Nine Lakh Fifty Seven Thousand Seven Hundred and Seventy only) towards refund with interest** calculated at MCLR + 2% from 31/07/2019 to 14/02/2024 to the complainant within 60 days from the date of this order.

The interest due from 15/02/2024 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