

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 JULY 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00019/2024

COMPLAINANTS.....

**BHARATKUMAR RAVISHANKAR SHARMA
& SONALI SHARMA
B 101, AQUA, OZONE URBANA
NEAR INTERNATIONAL AIRPORT
DEVANAHALLI
BANGALORE-562110.**

**DISTRICT: BANGALORE URBAN
STATE: KARNATAKA**

**(BY MR.M.D. RAJ KUMAR &
MR.SHARAN K.J., ADVOCATES)**

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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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 complainants had purchased a flat bearing No.B 1001, 10TH Floor, Tower-B 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.66,17,808/- and entered into agreement for sale dated 04/12/2019. The complainants have paid Rs.56,28,790/- to the respondent on various dates. The complainants submit that the respondent was supposed to handover the flat by December 2022 with a grace period of six months i.e. latest by June 2023. The complainants submit that the respondent has constantly kept postponing the handing over possession date and is not furnishing any updates on the project and has also stopped communicating with them. The complainants submit that they have paid huge amount to the respondent while living in a rental accommodation. The respondent is not in a position to confirm when the possession of the flat can be handed over. As such, the complainants have decided to withdraw from the project. Thus, the complainants have approached this Hon'ble Authority and pray for direction to the respondent 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 submission as under:

5. The respondent denies all the allegations made in the complaint by the complainants are false. The respondent submits that the complainants have prayed for refund of the entire amount with interest. The respondent submits that the complainants were desirous of purchasing a flat in their project.

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Accordingly the above flat was allotted to them and an agreement for sale dated 04/12/2019 was executed.

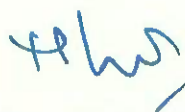
6. The respondent submits that the complainants have prayed for refund of entire amount with interest. The respondent submits that they are liable to refund only the own contribution of Rs.37,74,274/- made by the complainants plus interest of Rs.16,56,581/- and dispose of the complaint accordingly.

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

1. Complainants own contribution – Rs.37,74,274/-
2. Interest payable to the complainants – Rs.16,56,581/-
3. Total amount payable to the complainants – Rs.54,30,855/-

8. The complainants in their written submission have submitted that the respondent has failed to handover the possession of the above said flat as agreed and stopped responding to all forms of communication with them. The complainants submit that they have been to live in the rental accommodation despite having paid huge amount to the respondent. The respondent is not able to justify the untenable delay in handing over possession of the flat and thus they have chosen to withdraw from the project and seek refund with interest.

9. The complainants in their rejoinder to the written submissions filed by the respondent have submitted that Section 18(1) of the RERA Act captures that in the event of withdrawal from the project by the allottee, the entire sale consideration shall be refunded by the promoter with interest. The entire sale consideration includes the home buyers own contribution and bank loan disbursement, as it is clear that not all allottee's are in a position to make



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payment of the entire sale consideration and avail housing loan offered by various banks to purchase a home of their own.

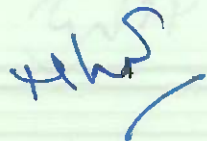
10. The complainants submit that they have made payment of Rs.37,74,274/- as own contribution and Rs.18,54,516/- as bank disbursement totally amounting to Rs.56,28,790/-. They have submitted statement of accounts issued by HDFC Bank and Citi Bank as proof of payments made to the respondent.

11. The complainants submit that they have closed the entire housing loan with HDFC Limited outstanding as on 06/12/2022 and have produced copy of the email to that effect sent by HDFC Limited for returning original documents to them.

12. The complainants contend that the respondent's selective choosing to admit only the own contribution as the total amount paid without considering the bank loan prove that they have not come before the Hon'ble Authority with clean hands. Therefore, the complainants pray the Hon'ble Authority that the complaint filed by them may please be allowed and grant the relief of refund with RERA prescribed interest on the entire amount paid by them including the bank loan amount.

13. In support of their defence, the respondent has filed copies of documents such as agreement for sale and revised calculation sheet as on 24/03/2024.

14. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, statement of accounts issued by HDFC and Citibank for having made payment to the respondent, email sent by HDFC Ltd. and Memo of calculation for refund with interest as on 24/03/2024.



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15. This case was heard on 26/3/2024, 27/6/2024 and 3/7/2024. Heard arguments of both sides.

16. **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?

17. **My answer to the above points are as under:-**

1. In the Affirmative.
2. As per final order for the following -

REASONS

18. **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 above said flat to the complainants 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 above said flat till today.

19. From the averments of the complaint and the copies of the agreement between the parties, it is obvious that complainants were 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 complainants as agreed, certainly entitles the complainants herein for refund of entire amount with interest.

20. During the process of the hearing, the Hon'ble Authority has perused the written submission filed by the respondent and written submission/rejoinder filed by the complainants. The agreement of sale is a key instrument which

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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 and has not handed over possession of the flat as agreed. Therefore, the Authority has not accepted the contentions of the respondent made in their written submission and has disagreed with the contentions of the respondent that the complainants are entitled to receive refund with interest on payments made in respect of their own contribution, as the complainants have produced documentary proof for having closed housing loan and statement of accounts from HDFC Ltd and Citi Bank for having made payments to the respondent.

21. 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."

22. 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."

23. 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.

24. 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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25. The complainants have claimed Rs.82,58,652/- (Rupees Eighty Two Lakh Fifty Eight Thousand Six Hundred and Fifty Two only) vide their memo of calculation as on 24/03/2024 towards refund with interest.

26. The respondent vide their calculation sheet as on 24/03/2024 have claimed that the refund amount with interest payable to the complainants amounts to Rs.54,30,855/-. The Hon'ble Authority has not agreed with the claim of the respondent as they had failed to handover possession of the above said flat within stipulated time as agreed. The amount from the housing loan has been disbursed to the respondent (as per proof submitted by the complainants). Moreover, the complainants have closed the housing loan account on their own and the respondent has to refund the entire amount with interest to the complainants.

27. 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 24/03/2024.

28. Therefore, it is incumbent upon the respondent to pay refund 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	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
	01/05/2017						

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1	01/05/2017	0	2519	24/03/2024	8.15	10.15 as on 01-05-2017	0
2	01/03/2019	50,434	1850	24/03/2024	8.75	10.75 as on 10-02-2019	27,479
3	13/03/2019	9,07,812	1838	24/03/2024	8.75	10.75 as on 10-03-2019	4,91,424
4	06/06/2019	4,72,818	1753	24/03/2024	8.65	10.65 as on 10-05-2019	2,41,842
5	22/08/2019	4,73,886	1676	24/03/2024	8.45	10.45 as on 10-08-2019	2,27,389
6	19/11/2019	19,65,000	1587	24/03/2024	8.2	10.2 as on 10-11-2019	8,71,458
7	19/11/2019	5,71,201	1587	24/03/2024	8.2	10.2 as on 10-11-2019	2,53,322
8	22/11/2019	50,000	1584	24/03/2024	8.2	10.2 as on 10-11-2019	22,132
9	25/11/2019	20,000	1581	24/03/2024	8.2	10.2 as on 10-11-2019	8,836
10	20/12/2019	11,17,639	1556	24/03/2024	8.2	10.2 as on 10-12-2019	4,85,980
11	TOTAL AMOUNT	56,28,790				TOTAL INTEREST (12)	26,29,862

Memo Calculation

PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2) AS ON 24-03-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
56,28,790	26,29,862	0	82,58,652

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

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30. 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.00019/2024** is hereby allowed.

The Respondent is directed to pay the amount of **Rs.82,58,652/- (Rupees Eighty Two Lakh Fifty Eight Thousand Six Hundred and Fifty Two only)** towards **refund with interest** calculated at MCLR + 2% from 01/03/2019 to 24/03/2024 to the complainants within 60 days from the date of this order.

The interest due from 25/03/2024 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