

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 22nd NOVEMBER 2024

PRESIDED BY HON'BLE MEMBER SMT.NEELMANI N RAJU

COMPLAINT NO.: 00173/2024

COMPLAINANT.....

**A HANUMANTHA CHAR
FLAT NO.2, SRI GURU MANOR
3RD CROSS, AMARJYOTHI LAYOUT
SANJAYNAGAR
BANGALORE-560094.**

(BY MR. AKASH R BANTIA, ADVOCATE)

Vs

RESPONDENTS.....

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

2.VASUDEVAN SATHYAMOORTHY

3.SATHYA MOORTHY SAI PRASAD

**NO.32, NORRIS ROAD
RICHMOND TOWN
BANGALORE-560025.**

**(BY MR. DEEPAK BHASKAR &
ASSOCIATES, ADVOCATES)**

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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 "URBANA AVENUE" developed by M/S. OZONE URBANA INFRA DEVELOPERS PRIVATE LIMITED situated at Ozone Urbana NH-7,



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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 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. The proposed project completion date has been expired.

3. During the process of the hearing on 26/6/2024, the complainant has filed an application 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.

Brief facts of the complaint are as under:-

4. The complainant had initially purchased a flat bearing No.401, 4th Floor, Block-B for a total sale consideration of Rs.72,19,586/- and entered into an agreement for sale 15/3/2018. When the complainant visited the flat, he felt that it may have inadequate light and air. Hence he requested for change of flat. On the basis of the choices made available by the respondents, the complainant opted to switch over to Flat No.403, Block-P for a total sale consideration of Rs.76,18,990/-. The complainant has made all the payments as stipulated amounting to Rs.66,81,915/- as on 24/11/2018. Since the project was getting delayed than scheduled, the complainant requested the respondents for change of flat in the block which is expected to be completed earlier than Block-P. Again on the basis of the choice made available, the complainant switched over to Flat No.D-502, 5th Floor, Block-D at a total cost of Rs.78,26,737/- and entered into agreement for sale dated 22/01/2021. The

(Handwritten signature)

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respondents were supposed to handover possession of the above said flat to the complainant by June 2023 but till date the respondents have not handed over the flat to the complainant. The complainant submits that he has invested all his retirement benefits for purchasing the flat and living peacefully in his own house in a pollution free green belt area. With an inordinate delay caused by the respondents in handing over possession of the flat, has shattered his dreams of living in his own house. 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.

5. After registration of the complaint, in pursuance of the notice, the respondents have appeared before the Hon'ble Authority through their counsel/representative and have submitted their written submission/statement of objections as under:

6. The respondent No.1 denies all the allegations made in the complaint by the complainant as false. The respondent No.1 submits that the complainant desirous of purchasing the above said flat has entered into agreement for sale dated 22/01/2021 according to which the total sale consideration of the flat was Rs.78,26,737/-. The respondent No.1 submits that they are liable to refund the "Own contribution" of Rs.66,81,914/- plus interest of Rs.41,60,322/-.

7. The respondent No.1 submits that the Hon'ble Authority may please take on record the MOC put forth by the respondent as shown below:-

1. Complainant's own contribution – Rs.66,81,914/-
2. Interest payable to the complainant – Rs.41,60,322/-
3. Total amount payable to the complainant – Rs.1,08,42,236/-



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8. The R-1 prays the Hon'ble Authority to allow the relief as above and dispose of the complaint accordingly.
9. 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 Urbana Infra Developers 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.
10. 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 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).
11. 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.
12. 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

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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.

13. 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 and R-3.

14. 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.

15. In support of their defence, the respondents have filed copies of documents such as agreement for sale, memo of citations and calculation sheet as on 26/10/2024.

16. In support of his claim, the complainant has produced copies of documents such as Agreement for Sale, payment receipts and Memo of calculation for refund with interest as on 24/06/2024.

17. This case was heard on 26/6/2024, 4/7/2024, 21/8/2024 and 7/11/2024. Heard arguments of both sides.

18. **On the above averments, the following points would arise for my consideration:-**

1. Whether the complainant is entitled for the relief claimed?

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2. What order?

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

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

REASONS

20. **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 complainant by June 2023 and receiving total sale consideration, the respondents have failed to abide by the terms of the agreement and have failed to handover the possession of the above said flat to the complainants till today.

21. From the averments of the agreement entered into between both the parties it is evident that the respondents even after receiving total sale consideration have failed to handover possession of the above said flat to the complainant within stipulated time, which certainly entitles the complainant herein for refund of entire amount with interest.

22. During the process of the hearing, the Hon'ble Authority has perused the written submissions 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 respondents have 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 written submissions/statement of objections. The Authority has also not accepted the

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contentions of the respondents No.R2 & R3 that they are not liable to this complaint and that the complaint against them should be dismissed.

23. The complainant in his written submission has stated that despite changing three flats and paying the sale consideration as per timeline, the respondents have not handed over possession of the above said flat. The respondents have colluded to cheat and mislead him having no regard to the financial hardship and age. The complainant submits that there is no bank loan and that he has invested his lifetime earnings for the purchase of the above said flat.

24. The complainant submits that there is no permanent water or electricity connection and taking his old age, the respondents are forcing him to take possession of the flat. The respondents have refused to register the sale deed in favour of the complainant. The complainant has lost faith in the respondents and has decided to take refund with interest and costs of this present complaint.

25. 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

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seek refund of the amount with interest at such rate as may be prescribed in this behalf."

26. 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."

27. 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

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with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

28. 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.

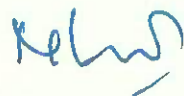
29. The complainant has claimed Rs.1,08,58,718/- (Rupees One Crore Eight Lakh Fifty Eight Thousand Seven Hundred and Eighteen only) vide his memo of calculation as on 24/06/2024 towards refund with interest.

30. The respondents in their calculation sheet as on 24/06/2024 have claimed that they are liable to pay Rs.1,08,42,236/- to the complainant as refund with interest. During the process of the hearing, the complainant has accepted the amount claimed to be paid as above by the respondents.

31. Having regard to all these aspects, this Authority concludes that the complainant is entitled for refund with interest as submitted by the respondent i.e. Rs.1,08,42,236/- (Rupees One Crore Eight Lakh Forty Two Thousand Two Hundred and Thirty Six only).

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

Memo Calculation as per Respondents calculation		
PRINCIPLE AMOUNT (A)	INTEREST AS ON 24-06-2024	TOTAL BALANCE AMOUNT (A + B - C) TO BE REFUNDED BY THE RESPONDENTS AS PER THEIR CALCULATION AS ON 24-06-2024
66,81,914	41,60,322	1,08,42,236



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

34. **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.00173/2024** is hereby allowed.

The Respondents No.1, 2 & 3 are directed to pay the amount of **Rs.1,08,42,236/- (Rupees One Crore Eight Lakh Forty Two Thousand Two Hundred and Thirty Six only)** towards **refund with interest** calculated at MCLR + 2% as on 24/06/2024 to the complainant within 60 days from the date of this order.

The interest due from 25/06/2024 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