

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 25<sup>th</sup> MARCH 2024**

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

**COMPLAINT NO.: CMP/220121/0008845**

**COMPLAINANT.....**

**ANUPKUMAR SHETTY  
ESTEEMPARK APARTMENTS  
DAISY 302, 3/6  
ROSE GARDEN ROAD  
J.P. NAGAR 5<sup>TH</sup> PHASE  
BANGALORE-560078.**

**(BY MR.POORNACHANDRA B  
PATTAR, ADVOCATE)**

**V/S**

**RESPONDENT.....**

**M/S. OZONE REALTORS 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 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 with interest.

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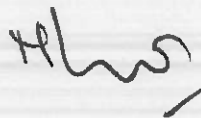
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2. This project is registered under RERA bearing registration No.PRM/KA/RERA/1251/309/PR/171015/000386 valid till 31/03/2021. The Hon'ble Authority has given covid extension for 9 months i.e. valid till 31/12/2021.

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

3. The complainant had booked a flat bearing B-1401, PH-1, 14<sup>th</sup> Floor, Tower-B in the project of the respondent and entered into agreement for sale and construction agreement on 14/6/2017 and has paid an amount of Rs.1,16,05,863/- (Rupees One Crore Sixteen Lakh Five Thousand Eight Hundred and Sixty Three only) to the respondent on various dates. As per the agreement the respondent was supposed to handover the flat by June 2020 with a grace period of six months i.e. latest by December 2020.
4. The complainant had also entered into tripartite agreement dated 14/7/2017 with the respondent and IHFL for housing loan. The complainant submits that in case of cancellation of the flat, clause 17 of the agreement requires the respondent to refund the total amount due to IHFL. Subsequently, the complainant executed buyback agreement dated 14/7/2017 with guaranteed profits on the date of expiry of the buyback agreement. The respondent was supposed to make payment of committed profit value of Rs.41,20,354/- if the complainant invoke the buyback option. The complainant vide his email dated 18/12/2019 had notified the respondent of his intent to invoke the buyback option. However, the respondent failed to execute the cancellation of the sale agreement but also failed to refund the amount initially paid along with the committed profit value.
5. The complainant did not intend to proceed with the project and wants to withdraw from the purchase of the flat and sent cancellation request dated 3/3/2020 to the respondent. Thus, the complainant has approached this



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Hon'ble Authority and prays for directions to the respondent to refund the entire amount with interest, payment of outstanding dues to IHFL, closure of loan and cost of the present proceedings. Hence, this complaint.

6. After registration of the complaint, in pursuance of the notice, the respondent appeared before the Authority through its counsel and have submitted their written submission as under:-
7. The respondent denies all the allegations made in the complaint by the complainant. The respondent submits that the complainant was desirous of purchasing a flat in their project and accordingly a flat bearing B-1401, PH-1, 14<sup>th</sup> Floor, Tower-B was allotted to him and agreement for sale/construction agreement dated 14/6/2017 was executed and that they were supposed to handover the flat to the complainant by 31/12/2021.
8. The respondent submits that the delay in handing over possession of the flat was due to Covid-19 pandemic which caused financial difficulties to all business including real estate. The respondent prays that the delay in completion of the project may be condoned and time be granted for completion of the project and handover possession of the flat to the complainant.
9. The respondent submits that the complainant has sought relief for withdrawal from project and compensation as per the agreement. The respondent submits that the prayer is improper and vague. The complainant seeks for delay compensation along with interest but relief sought is for withdrawal from project and compensation as per agreement. The relief specified is a bunch of statements instead of a case made out for delay or refund. The respondent contends that the prayer is liable to be dismissed in limine as both reliefs cannot be claimed together. The respondent prays the Hon'ble Authority to reject the prayer sought by the complainant and dismiss the complaint.

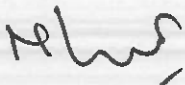


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10. The complainant in his rejoinder to the memo of calculation filed by the respondent submits that according to memo of calculation for refund with interest as on 5/2/2023 filed by him as per RERA format is Rs.1,74,87,461/-, whereas the respondent in their calculation sheet as on 30/9/2022 have shown that the refund amount is Rs.1,06,94,169/-. In their revised calculation sheet as on 5/2/2023, the respondent has claimed that the refund amount payable to the complainant is Rs.18,77,664/-. The complainant further submits that all the amount paid by him to the respondent is also mentioned in the respondent's calculation sheet and as such there is no dispute regarding the amount paid by the complainant to the respondent.
11. The complainant submits that as per clause 4 of the tripartite agreement, the respondent was obligated to pay PEMI till liability period. However, after few months the respondent stopped paying PEMI and the complainant has paid the PEMIs, which the respondent has not considered in their calculation and hence, the difference in the principal amount paid by the complainant. The complainant submits that the respondent has included the PEMI paid to the bank as refund towards the principal amount. It is pertinent to mention that the respondent had undertook to pay PEMI as per the tripartite agreement and as such, the PEMI paid to the bank cannot be considered as refund towards the principal amount of the complainant.
12. The complainant also contends that the respondent without providing any proof have mentioned six refunds in their calculation sheet which is not accepted by the complainant. The complainant submits that he has submitted the memo of calculation as per RERA format, whereas the respondent have not submitted their calculation as per RERA.
13. In support of their defence the respondent has submitted calculation sheet as on 30/9/2022 and revised calculation sheet as on 5/2/2023.



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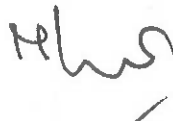
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14. In support of his claim, the complainant has produced copies of documents such as agreement of sale, construction agreement, tripartite agreement, buyback agreement, email dated 4/1/2020 invoking buyback option, loan account statements issued by IHFL, statement of account issued by ICICI for having made payments to the respondent, Payment receipts and memo of calculation as on 22/10/2022 and revised memo of calculation as on 05/02/2023.
15. This case was heard on 28/6/2022, 15/9/2022, 18/10/2022, 13/12/2022, 9/2/2023, 12/4/2023, 21/6/2023, 27/7/2023, 16/8/2023, 5/10/2023, 6/12/2023 and 21/2/2024. Heard arguments of both sides.
16. 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?
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 the respondent in spite of entering into an agreement of sale, construction agreement, tripartite agreement, buyback agreement and receiving housing loan from IHFL as sale consideration amount from the complainant, the respondent has failed to handover possession of the flat to the complainant by June 2020 with a grace period of six months i.e. latest by December 2020.
19. From the averments of the complaint and the copies of agreement between the parties, it is obvious that the complainant has not received possession of the flat till today. The failure on the part of the respondent in



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not handing over possession of the flat as agreed, certainly entitles the complainant herein for refund with interest.

20. During the process of the hearing, the Hon'ble Authority has perused the written submissions filed by the respondent and written submission/objections filed by the complainant. The complainant wanted to submit revised complaint. The Hon'ble Authority gave time to the complainant to file revised complaint and accordingly accepted the same on 27/7/2023.

21. During the hearing, the respondent claimed that there is duplication of entries in the memo of calculation filed by the complainant. The complainant filed revised memo of calculation as on 5/2/2023 along with bank statements to justify the entries made in his calculation.

22. 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 of sale. Therefore, the Authority has not accepted the contentions of the respondent made in their written submission.

23. 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*

*AP/...*

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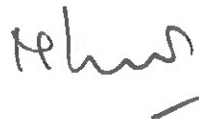
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*allottee/home buyer holds an unqualified right to seek refund of the amount with interest at such rate as may be prescribed in this behalf."*

24. 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."*

25. 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.





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26. 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.

27. The complainant has filed his memo of calculation as on 05/02/2023 claiming an amount of Rs.1,74,87,461/- (Rupees One Crore Seventy Four Lakh Eighty Seven Thousand Four Hundred and Sixty One only) as refund with interest. A thorough verification of the documentary proof submitted by the complainant reveals that his claim is genuine. The respondent in their revised calculation sheet as on 5/2/2023 have claimed that the amount refundable to the complainant is Rs.18,77,664/- which was not accepted by the Hon'ble Authority as the respondent has failed to handover the flat, pay PEMIs to the financial institution as agreed. The complainant has submitted supporting documents to substantiate his claim.

28. Having regard to all these aspects, the Hon'ble Authority concludes that the complainant is entitled for refund with interest as calculated in his memo of calculation as on 05/02/2023.

29. Therefore, it is incumbent upon the respondent to refund the amount 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	29/04/2017	1,00,000	1	30/04/2017	24
2		1,00,000		TOTAL INTEREST ( I1 )	24



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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	1,00,000	2106	05/02/2023	8.15	10.15 as on 01-05-2017	58,564
2	01/05/2017	1,00,000	2097	05/02/2023	8.15	10.15 as on 01-05-2017	58,564
3	10/05/2017	1,00,000	2096	05/02/2023	8.15	10.15 as on 01-05-2017	58,313
4	11/05/2017	1,00,000	2096	05/02/2023	8.15	10.15 as on 01-05-2017	58,286
5	11/05/2017	5,00,000	2096	05/02/2023	8.15	10.15 as on 01-05-2017	2,91,430
6.	11/05/2017	1,00,000	2096	05/02/2023	8.15	10.15 as on 01-05-2017	58,286
7.	11/05/2017	1,00,000	2096	05/02/2023	8.15	10.15 as on 01-05-2017	58,286
8.	11/05/2017	1,00,000	2096	05/02/2023	8.15	10.15 as on 01-05-2017	58,286
9.	12/05/2017	2,00,000	2095	05/02/2023	8.15	10.15 as on 01-05-2017	1,16,516
10.	13/05/2017	2,00,000	2094	05/02/2023	8.15	10.15 as on 01-05-2017	1,16,460
11.	15/05/2017	2,00,000	2092	05/02/2023	8.15	10.15 as on 01-05-2017	1,16,349
12.	15/05/2017	3,00,000	2092	05/02/2023	8.15	10.15 as on 01-05-2017	1,74,524
13.	15/05/2017	50,000	2092	05/02/2023	8.15	10.15 as on 01-05-2017	29,087
14.	18/05/2017	10,177	2089	05/02/2023	8.15	10.15 as on 01-05-2017	5,911

M/S

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15.	25/07/2017	73,92,161	2021	05/02/2023	8.15	10.15 as on 01-05-2017	41,54,424
16.	24/08/2020	2053,525	895	05/02/2023	8.15	10.15 as on 01-05-2017	4,68,288
17.	TOTAL AMOUNT	1,16,05,863				TOTAL INTEREST (I2)	58,81,574

Memo Calculation			
PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 ) AS ON 05-02-2023	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
1,16,05,863	58,81,598	0	1,74,87,461

30. Accordingly, the point raised above is answered in the Affirmative.

31. **My answer to Point No.2:-** In view of the above observation, I proceed to pass the following –

**ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing **No.CMP/220121/0008845** is hereby allowed.

Respondent is directed to pay the amount of **Rs.1,74,87,461/- (Rupees One Crore Seventy Four Lakh Eighty Seven Thousand Four Hundred and Sixty One only)** towards refund with interest calculated at 9% from 29/04/2017 to 30/04/2017 and MCLR + 2% from 01/05/2017 till 05/02/2023 to the complainant within 60 days from the date of this order.

*[Handwritten Signature]*

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The interest due from 06/02/2023 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 Raja)  
Member, K-RERA

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