

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 V

PRESIDED BY SHRI G.R. REDDY, HON'BLE MEMBER

Dated 03rd April 2025

COMPLAINT NO: CMP/00754/2024

COMPLAINANTS...

**Abhishek Reddy Gujjala & Geetha
Darapureddi
No. 722, 4th 'B' Cross,
1st Block, HRBR Layout,
Bengaluru-560043.
STATE: KARNATAKA.**

(In-person)

Vs

RESPONDENTS.....

**1. M/s Ozone Urbana Infra Developers
Pvt. Ltd.,
No. 38, Ulsoor Road,
Bangalore-560042.
(Mr. Deepak Bhaskar, Advocate)**

JUDGEMENT

1. This complaint is filed under section 31 of the RERA Act against the project "Southend" developed by M/s. Ozone Urbana Infra Developers Pvt. Ltd., for the relief of refund with interest.
2. This project has been registered with RERA vide registration No. PRM/KA/RERA/1250/303/PR/200604/003445 valid till 30-09-2024.
3. This project is situated at, 90/P1, 90/H9, 107/2, 108, 129 and 151, Kannamangala Village, Devanahalli, Bengaluru Rural.

Brief facts of the complaint are as under:-

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4. The complainants have booked a plot bearing No. 76 situated in the project "Southend" of respondent M/s Ozone Urbana Infra Developers Pvt. Ltd., in the year 2021. The complainants and the respondent have entered into an agreement of sale on 06-08-2021 for total sale consideration of Rs.1,20,01,008/-(Rupees One Crore Twenty Lakhs One Thousand and Eight only). The respondent was supposed to complete the project and handover the possession of their plot in July 2024. At the time of entering into an agreement of sale, the complainants have paid the substantial sale consideration of Rs.24,00,202/-(Rupees Twenty Four Lakhs Two Hundred and Two only) to the respondent. However, the respondent had failed to complete the project till date and there seems to be no positive progress towards completion of the project as agreed. After receiving the substantial sale consideration, the respondents have failed to complete the construction work and hand over the possession. The complainants have cancelled their booking and requested to refund their amount, the respondent has promised and he had agreed to refund within 15th of August 2024. But the respondent has failed to refund their money. Hence, this complaint.

5. After registration of the complaint, this Authority had issued notice to both the parties to appear before this Authority. In pursuance of the notices, the complainants have appeared before the Authority through their counsel and filed documents.

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The respondent had appeared before the Authority through his counsel and he had filed statement of objections as under.

6. The respondent had denied the each and every allegation made against them by the complainants as false. He contend that the complainant was desirous of purchasing an apartment in one the respondent residential projects and have executed various agreement towards the purchase of the same. The respondent states that the complainants have requested for cancellation of the unit with the respondent through an e-mail. However, the respondent denies the contents of the email referred to above. It is further submitted that, as the complainants have relied on the e-mail mentioned above, it is pertinent to determine the veracity of the contents of the e-mail, which is a question to be determined in trail. Therefore the respondent requested to this Hon'ble Authority to exercises jurisdiction summarily as provided under Rule 30(h) of the Karnataka Real Estate (Regulation and Development) Rules 2017, determine the veracity of the contents of the email. Hence, this complaint is not maintainable and prays to dismiss the complaint.

7. In support of their claim, the complainants have produced documents such as copies of agreements of sale, payment receipts and memo of calculation as on 01-12-2024.

8. The respondent had produced a copy of agreement of sale.

9. This matter is heard on 17-12-2024, 29-01-2025, 29-01-2025 and 06-02-2025.

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10. 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?

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

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

REASONS

12. My answer to Point No.1:- The complainants have approached this forum seeking relief of refund along with interest on the grounds that the respondents have not completed the project as agreed i.e., in July 2024 and not handed over plot of the complainant.

13. Same is resisted by the respondents on the grounds of veracity of contends of email dated 04-07-2024 sent by the complainants to the respondent for cancellation of his plot.

14. From the materials available on record, it is apparent that in spite of entering into agreement of sale dated 06-08-2021 having received a substantial sale consideration from the complainants, the respondents have not completed the project and not handed over possession of the plot as agreed in the month of July 2024. The respondents have neither handover the plot nor refund their money. The complainants had tried to contact the respondent to handover the possession, but there is

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no response from their end. Hence, the complainants have decided to come out of this project.

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

Section 18(1) of the Act spells out the consequences if the promoter fails to complete or is 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 of 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.

16. Further, the judgement reported in Civil Appeal No.3581-3590 of 2020 at para No.23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and 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

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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 to 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 proviso to section 18(1). The case of Himanshu Giri came under the letter 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."

17. As per section 18(1) of RERA Act, 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.

18. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only if the promoter fails to complete or provide

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possession of an apartment etc., in accordance with sale agreement.

19. From the averments of the complaint and the copies of agreements between the parties, it is obvious that the complainants have already paid substantial sale consideration amount. Having accepted the said amount and failure to keep up promise to handover possession of the apartment certainly entitles the complainants herein for refund along with interest. The complainants have filed their memo of calculation as on 21-12-2024 claiming an amount of Rs.1,34,49,412/-(Rupees One Crore Thirty Four Lakhs Forty Nine Thousand and Four Hundred and Twelve only) as refund along with interest. Despite opportunities being given to all respondent, he has not filed his memo of calculation.

18. A thorough verification of the documentary evidence submitted by the complainants reveals that their claim is genuine. Having regard to all these aspects, this Authority concludes that the complainants are entitled for refund with interest as submitted vide their memo of calculation as on 01-12-2024.

19. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under –

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Memo Calculation			
PRINCIPLE AMOUNT (A)	INTEREST (B = I1 + I2 + I3) AS ON 18- 04-2024	REFUND FROM PROMOTER (C)	TOTAL BALANCE AMOUNT (A + B - C)
24,00,202	7,46,283	0	31,46,485

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

21. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I proceed to pass the following:

ORDER

22. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. **CMP/00754/2024** is hereby allowed.

i) The Respondent is directed to pay a sum of Rs. 31,46,485/- (Rupees Thirty One Lakhs Forty Six Thousand and Four Hundred and Eighty Five only) towards refund with interest, calculated at MCLR + 2% from 03-05-2021 till 01-12-2024 to the complainant within 60 days from the date of this order.

ii) The interest due from 02-12-2024 up to the date of final payment will be calculated likewise and paid to the complainant.

iii) The complainants are hereby directed to cooperate with the respondent for cancellation of agreement of

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sale dated 06-08-2021 on receipt of entire amount as directed to be refunded by the respondent.

iv) 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 costs.

(G R REDDY)
Member, K-REERA

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