

**SC/29/CC/1/2024**

Date of filing: 29.11.2023  
Date of disposal: 31.07.2025

**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES  
REDRESSAL COMMISSION, BENGALURU (PRINCIPAL BENCH)**

**DATED: 31<sup>ST</sup> DAY OF JULY 2025**

**PRESENT**

**CORAM: HON'BLE Mr. JUSTICE T.G. SHIVASHANKARE GOWDA  
– PRESIDENT**

**and**

**Mrs. DIVYASHREE M – LADY MEMBER**

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Ms. A. Padmavathy,  
D/o. Arjunan Jogher,  
R/at: Ebony, B701,  
Saarpuria, Greenage, Hosur Road,  
Next to Oxford ENG College,  
Bommanahalli, Begur,  
Bengaluru South,  
Bangaluru, Karnataka-560 068.

**(Sri. Nitin Goel, Advocate)**

**.....Complainant/s.**

**- V/s -**

1) Ozone Urbana Infra Developers  
Private Limited, Through its  
Authorized Signatory,  
Mahesh Gowda C.S, Registered  
Office at: No.38, Ulsoor Road,  
Bangalore, Karnataka-560042.

**(Sri.Deepak Bhaskar, Advocate)**

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2) State Bank Of India,  
Registered Office At:  
RACPC SHANKAPURAM,  
3<sup>rd</sup> Floor, 13/1 Bull Temple Road,  
Opp. Sri Ramakrishna Mutt,  
Basavangudi, Bengaluru,  
Karnataka-560004.

**(Sri.R.N.S.P.Achanta, Advocate) .....Opposite party/s.**

**O R A L O R D E R**

**(PER: HON'BLE Mr. JUSTICE T.G. SHIVASHANKARE GOWDA,  
PRESIDENT)**

This complaint is filed Under Section 35 R/W Section 36 of the Consumer Protection Act, 2019.

02. The brief facts of the complainant's case is that, opposite party No.1 is a Builder. He has published that, project has been undertaken in the name of "Urbana Avenue" situated at Kannamangala Village, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural District. After seeing the advertisement the complainant has approached the opposite party No.1 and booked the flat bearing No. F-902, 9<sup>th</sup> Floor, Tower 'F', 2 BHK, measuring super built-up area of 1320 sq. ft. for a total consideration of Rs.94,48,818/-. Out of the said amount the complainant has paid Rs.22,00,000/- personally and borrowed Rs.75,00,000/- from opposite party No.2 - Bank who had a Tripartite

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Agreement with opposite party No.1. Entire sale consideration was paid to the OP No.1. Agreement of Sale was executed between the complainant and opposite party No.1 on 07.09.2022 and there was a Tripartite Agreement between the complainant and opposite party Nos.1 & 2 regarding disbursement of the loan. As per the terms of the Sale agreement the opposite party No.1 is required to complete the project and to deliver the possession to the complainant by September 2023 with a grace period of 06 months. In-spite of completion of grace period the project was not completed and possession of the flat was not delivered.

03. Since the sale deed was not executed, the complainant could not pay the EMIs to the opposite party No.2 - Bank, Bank has initiated action against the complainant, the same has been challenged before the Hon'ble High Court of Karnataka by filing Write Petition. Notice was caused to the opposite party No.1 to adhere to the terms of the Agreement of Sale. Since the opposite party No.1 has committed deficiency of service complaint came to be filed.

04. The opposite party No.1 though filed the version it was filed belatedly and it was not taken on record. On behalf of opposite party No.2 version was filed in time, their contention is either the complainant or the opposite

party No.1 shall discharge the loan and they have to execute the equitable mortgage of the flat after execution of the sale deed.

05. On behalf of the complainant, the complainant has filed her affidavit evidence and marked 08 documents as per Exhibit-C.1 to C.8. On behalf of the opposite party No.1 the Company Secretary has filed his affidavit Evidence as RW-1 and 03 documents came to be marked as Exhibit R.1 to R.3. On behalf of the opposite party No.2 affidavit evidence of the Chief Manager of the Bank is filed as RW-2 and 08 documents came to be marked as Exhibits - R.4 to R.11.

06. We have heard the arguments of Learned Counsel for the complainant and the Learned Counsel for the opposite party No.2. On behalf of opposite party No.2 written arguments is also filed. There is no argument addressed on behalf of the opposite party No.1.

07. The point that arise for our consideration is that:-

**“Whether the complainant is able to demonstrate deficiency in service on the part of the opposite party No.1?”**

08. The contention of the Learned Counsel for the complainant is that, the opposite party No.1 has entered

into an understanding with the opposite party No.2 for lending loan to the flat buyers. Accordingly a Tripartite Agreement was entered into between the complainant and opposite party Nos.1 & 2 and Sale Agreement was entered into between the complainant and opposite party No.1. Physical delivery of completed flats was September-2023 + 06 months, but within time flats were not delivered.

09. It is further contended that, the complainant having paid Rs.22,00,000/- personally and borrowed loan of Rs.75,00,000/- from opposite party No.2 is made to suffer due to the act of the opposite party No.1 and she had sought for direction to the opposite party No.1 for refund of the amount paid by her along with interest and also to discharge the loan amount borrowed from opposite party No.2.

10. The Learned Counsel for the opposite party No.2 has contended that, the Bank has advanced the loan to complainant. In view of Tripartite Agreement either the complainant or the opposite party No.1 if discharges the loan they are satisfied.

11. The grievance of the opposite party No.2 is that, since the project was not completed, sale deed was not executed in favour of the complainant, he is unable to execute the

equitable mortgage of the flat to secure the loan advance. Learned Counsel for opposite party No.2 seeks direction to the opposite party No.1 to execute the sale deed in favour of the complainant so that, the opposite party No.2 can take equitable mortgage to secure the loan.

12. We gave our anxious consideration to the arguments addressed by the Learned Counsels and perused the affidavit averments, version filed by opposite party No.2, affidavit evidence of both the parties and the materials on record.

13. It is an undisputed fact is that, opposite party No.1 has started construction of a multistoried flat in the name of "URBANA AVENUE" at Kannamangala Village, Kasaba Hobbli, Devanahalli Taluk, Bangalore Rural District. The complainant has booked the flat No. F-902, 9<sup>th</sup> Floor, Tower 'F', 2 BHK, measuring super built-up area of 1320 sq. ft. for a total consideration of Rs.94,48,818/-. Since there is a Tripartite Agreement between the complainant and the opposite party Nos.1 & 2, opposite party No.2 has lent Rs.75,00,000/- as loan to the complainant and same was fully released to the opposite party No.1. As rightly argued by the Leaned Counsel for the complainant that, the bulk release of Rs.75,00,000/- in favour of opposite party No.1 put the complainant in to trouble as the project was not

completed, if the Bank had released the loan amount in installment basis the project could have been completed.

14. On perusal of the terms of the Sale Agreement at Exhibit-C.3 the opposite party No.1 is required to complete the project and deliver the possession by September-2023 with an outer limit of another 06 months, but the project either completed nor possession was delivered. When the opposite party No.1 is unable to complete the project in terms of the Agreement of Sale they are bound to return back the consideration that has been received from the complainant and also from the opposite party No.2.

15. Since the version of opposite party No.1 was not accepted, even considering the affidavit evidence filed on behalf of opposite party No.1 we are unable to reconcile the contention taken by the opposite party No.1. No explanation is offered for the delay in completion of the project. No explanation is offered how the entire amount of Rs.75,00,000/- was released by opposite party No.2 to an in-completed project. Hence the conduct of opposite party No.2 is also under the lens.

16. We are persuaded that, opposite party No.1 has failed to adhere to the terms of the Agreement and the opposite party No.2 for having released the loan amount in bulk in favour of the opposite party No.1, it is also liable to recover

the same from opposite party No.1. Accordingly we hold that, the conduct of the opposite party No.1 is sufficient cause for deficiency of service.

17. The consideration was paid to the opposite party No.1 under the agreement dated: 07.09.2022 on subsequent dates. The complainant was made to suffer for more than three years. Hence the money that was paid by the complainant personally to an extent of Rs.22,00,000/- has to be returned back with interest. Having regard to the Bank rate of interest it should be not less than 9% for the deficiency of service by the opposite party No.1 the complainant has to be compensated by awarding compensation and also the litigation cost. In the result, we pass the following:-

**ORDER**

- (i) The complaint is allowed-in-part.**
- (ii) The opposite party No.1 is directed to refund Rs.22,00,000/- to the complainant along with interest at the rate of 9% per annum from the date of payments made by the complainant till the date of deposit.**
- (iii) The opposite party No.1 is directed to discharge the Bank loan of Rs.75,00,000/- with interest and other liability in favour of opposite party No.2.**
- (iv) The complainant is awarded with compensation of Rs.10,00,000/- and litigation cost of Rs.1,00,000/-.**

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**(v) The above order shall be complied within three months.**

**(vi) Provide free copy of this order to both parties to the complaint.**

Sd/-

**(T.G.SHIVASHANKARE GOWDA)  
PRESIDENT**

Sd/-

**(DIVYASHREE M)  
LADY MEMBER**

| <b><u>ANNEXURES</u></b> |  |
|-------------------------|--|
| 01.                     | <b><u>Witnesses examined on behalf of complainant:-</u></b>  |
|                         | CW.1                      Ms. A. Padmavathy.   |
| 02.                     | <b><u>Documents marked on behalf of complainant:-</u></b>  |
|                         | Exhibit-C.1              Copy of payment receipts amounting to Rs.22,00,000/- paid by the complainant. |
|                         | Exhibit C.2                Copy of Agreement for Sale dated: 07.09.2022.                               |
|                         | Exhibit-C.3                Copy of the Tri-Partite Agreement dated: 07.09.2022.                        |
|                         | Exhibit-C.4                Copy of Arrangement Letter.   |
|                         | Exhibit-C.5                Copy of Loan A/c statement of the Complainant.                              |
|                         | Exhibit-C.6                Copy of legal Notice dated: 07.10.2023.                                     |
| 03.                     | <b><u>Witnesses examined on behalf of opposite party</u></b>   |
|                         | <b><u>No.1:-</u></b>   |
|                         | RW-1                        Sri. Mahesh Gowda C.S.   |
| 04.                     | <b><u>Documents marked on behalf of opposite party</u></b>   |
|                         | <b><u>No.1:-</u></b>   |
|                         | Exhibit.R.1                Copy of board resolution dated: 18.01.2023                                  |
|                         | Exhibit.R.2                Copy of Sale Agreement dated: 07.09.2022.                                   |
|                         | Exhibit.R.3                Copy of Tri-Partite Agreement.  |
| 05.                     | <b><u>Witnesses examined on behalf of opposite party</u></b>   |
|                         | <b><u>No.2:-</u></b>   |
|                         | RW-2                        Mr. Basavaraja Nagappa Kolar.  |
| 06.                     | <b><u>Documents marked on behalf of opposite party</u></b>   |
|                         | <b><u>No.2:-</u></b>   |
|                         | Exhibit R.4                Arrangement letter  |
|                         | Exhibit R.5                Loan Application  |
|                         | Exhibit R.6                Memorandum of Loan Agreement  |
|                         | Exhibit R.7                Affidavit in favour of complainant  |

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| Exhibit R.8  | Agreement to Mortgage |
| Exhibit R.9  | Deed of Undertaking   |
| Exhibit R.10 | Tripartite Agreement  |
| Exhibit R.11 | Agreement of Sale     |

**Sd/-****(T.G.SHIVASHANKARE GOWDA)  
PRESIDENT****Sd/-****(DIVYASHREE M)  
LADY MEMBER**

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