

**Execution Order :**

**CMP - 3645**

Complaint under Section 31 of RERA Act has been initiated by the complainant Mr.Lynette Hyacinth Nazareth & Norbert Rajan Nazareth who is the buyer under the project “Nitesh Melbourne Park” which is developed by “Nitesh Housing developer Pvt. Ltd.,” This complaint was filed by the complainant claiming refund. After hearing the parties, order was passed on 18/03/2020 by directing the developer to refund the amount of Rs.40,53,685,- together with simple interest @ 9% per annum on the respective amount paid on the respective dates till 30/04/2017 and @ 2 above the MCLR of SBI commencing from 01/05/2017 till the realization of entire amount.

The developer is hereby directed to pay GST amount of Rs.5,54,991/- to the complainant with direction to take back the same from the concerned department.

The developer shall also pay Rs.5000/- as cost of the petition.

The complainant has calculated the amount paid by him. According to him from 19/03/2015 to 10/02/2017 he had paid total amount to the builder is Rs.23,59,720/- from

19/03/2015 to 30/04/2017 he as calculated on the respective amount paid on respective dates with interest of @ 9% per annum on the said amount, which interest totally comes to Rs.1,55,559/-.

The complainant has calculated the amount paid by him was on 01/05/2017 is Rs.23,59,720/- with interest @9.30% per annum above the MCLR of SBI on the said amount paid by him from 01/05/2017 to 05/01/2021 which comes to Rs.8,08,673/-.

The complainant has calculated the amount paid by him. According to him from 21/07/2017 to 31/05/2018 he had paid total amount to the builder is Rs.16,93,965/- from 21/07/2017 to 05/01/2021 he as calculated on the respective amount paid on respective dates with interest of @ 9.30% per annum on the said amount, which interest totally comes to Rs.4,83,694/-.

Therefore the total interest payable by the developer from 19/03/2015 to till 05/01/2021 Rs.14,47,926/-.

Total amount due from the developer is Rs.60,61,602/-.

The complainant has given a representation with memo of calculation since the developer

failed to comply with the same. There is no appeal. Objections called for but not filed.

As per Rule 25 of the Karnataka Real Estate (Regulation and Development) Rules, 2017 the recovery of the amount due is to be considered as arrears of land revenue. In support of the same the authority is taking the shelter under Section 40 of the RERA Act which reads as follows;

*Sec 40(1): "if a promoter or an allottee of a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the regulatory authority or the appellate authority, as the case may be, under this Act or the rules and regulations made there under, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue"*

When Sec. 40 read with Rule 25, the Deputy Commissioner is empowered to execute the order dated 18/03/2020 considering this amount as arrears of land revenue and has to be recovered from the developer. Hence the following.

## **ORDER**

By acting under Section 40 of the RERA Act, read with Rule 25, the amount payable of Rs. Rs.60,61,602/- which is treated as arrears of land revenue from the developer “Nitesh Housing developer Pvt. Ltd.,” and the same has to be recovered by sending the file to Deputy Commissioner for recovery as arrears of land revenue. The same amount shall be deposited in the office Account.

The above amount has been calculated up 05/01/2021.

Office is hereby directed to mention in the recovery warrant

a. As to the recovery of future interest on the amount of Rs.40,53,685 /- @9.30% p.a. simple interest whenever it falls due, from 6<sup>th</sup> January 2021 to till realization.

(I.F BIDIRI)  
**Adjudicating Officer**

