

IN THE KARNATAKA REAL ESTATE APPELATE TRIBUNAL,
BENGALURU

DATED THIS THE 16TH DAY OF FEBRUARY, 2021

PRESENT

HON'BLE SRI JUSTICE B SREENIVASE GOWDA, CHAIRMAN

AND

HON'BLE SRI K P DINESH, JUDICIAL MEMBER

AND

HON'BLE SRI P S SOMASHEKAR, ADMINISTRATIVE MEMBER

APPEAL NO (K-REAT) – 20/2021 *

(K-REAT) FR NO.04/2020

BETWEEN:

✓ Nitesh Shetty,
Nitesh Columbus Square,
Nitesh Estates Limited Level 7,
Nitesh Timesquare,
No.8, M.G. Road,
Bengaluru – 560 001

:APPELLANT

(By Sri Shetty & Hegde Associates, Advocate)

AND

M. R. Satyanarayan,
No. 428, 4th Main Road,
HMT Layout,
Anandnagar Post Office,
Bengaluru – 560 024

:RESPONDENT

(M/s Rego & Rego, Advocate)

This Appeal is filed under Section 44 of the Real Estate (Regulation and Development) Act, 2016, before this Tribunal to set aside the order dated 05th September, 2018 in CMP/180321/0000603 passed by the Adjudicating Officer, RERA.

Corrected vide court order dated 23.03.2021

RERA-1004



This appeal coming on for hearing this day, the Chairman, passed the following:

JUDGMENT

The appellant-promoter has preferred this appeal challenging the order passed by the learned Adjudicating Officer, RERA, dated 5.9.2018 directing the promoter to return the amount of the allottee with interest.

2. Subsequent to filing of this appeal, the promoter and the respondent-allottee, after due deliberation and discussions of their dispute with reference to subject matter of the complaint and this appeal got the same settled amicably by reducing the terms of settlement into writing by way of filing a detailed compromise petition under Order XXIII Rule 3 read with Section 151 CPC. The said compromise petition signed by the appellant-promoter, respondent-allottee and the learned counsel appearing for them is taken on record.

3. The appellant has filed a Memo enclosing the receipt issued by the allottee acknowledging receipt of Rs.16,91,553/- (Rupees Sixteen Lakhs Ninety one thousand five hundred and fifty three only) by way of a Demand draft bearing No.002795 dated 11.2.2021 drawn on Bank of Baroda, CFS, Bangalore.

4. A memo signed by the respondent and learned counsel appearing for him is also filed acknowledging receipt of Rs.16,91,553/- (Rupees Sixteen Lakhs Ninety one thousand five hundred and fifty three



only) vide Demand draft bearing No.002795 dated 11.2.2021 drawn on Bank of Baroda, CFS, Bangalore, which was handed over to the allottee on 13.2.2021. Allottee has agreed to receive Rs.92,00,000/- (Rupees Ninety two lakhs) towards full and final settlement of his claim as settled between the appellant and himself after giving deduction of Rs.1,37,153/- (Rupees one lakh thirty seven thousand one hundred and fifty three) towards TDS. He has further prayed the Tribunal to order for release of Rs.73,71,294/- (Rupees seventy three lakhs seventy one thousand two hundred and ninety four) deposited by the appellant with this Tribunal while preferring the appeal in favour of the allottee.

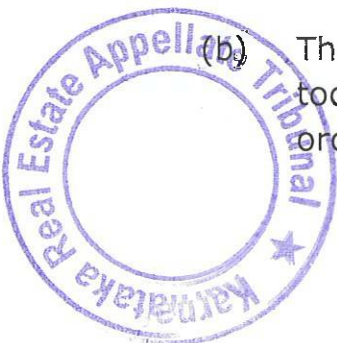
5. The compromise petition and the Memos are read over to the allottee and Mr Gopinath, Vice President (Legal) who is present in the court on behalf of the appellant, in presence of the learned counsel for the parties. Parties and the learned counsel appearing for them have jointly prayed the Tribunal to dispose of the appeal in terms of the compromise petition.

6. In view of the above, the following:

ORDER

(a) Appeal stands disposed of in terms of the compromise petition.

(b) The compromise petition and the Memos filed by the parties today are ordered to be treated as part and parcel of this order.



- (c) Registry is directed to release a sum of Rs.73,71,294/- (Rupees seventy three lakhs seventy one thousand two hundred and ninety four) deposited by the appellant with this Tribunal while preferring the appeal in favour of the respondent-allottee, along with interest, if any, accrued thereon, but by deducting permissible TDS within two weeks from the date of the respondent furnishing necessary documents.
- (d) Parties are hereby directed to fulfil the terms of compromise in order to give effect to the compromise petition and to avoid unnecessary litigation in future.
- (e) Registry is directed comply with the provisions of Section 44(4) of the Act and to return the records of RERA, if received.

In view of the disposal of the appeal in terms of compromise petition, pending I.As if any, stand disposed of as they do not survive for consideration.

**Sd/-
HON'BLE CHAIRMAN**

**Sd/-
HON'BLE JUDICIAL MEMBER**

**Sd/-
HON'BLE ADMINISTRATIVE MEMBER**

TRUE COPY



S. V. Suresh 28/3/2021
**SECTION OFFICER
KARNATAKA REAL ESTATE
APPELLATE TRIBUNAL
BENGALURU-560 027**

IN THE KARNATAKA REAL ESTATE APPELLATE TRIBUNAL, BENGALURU

MISC APP. 1/2021

IN

APPEAL (K-REAT) FR No. 4/2020

BETWEEN:

Sri. Nitesh Shetty
Nitesh Colombus Square
Nitesh Estates Limited, Level 7,
Nitesh Times square, No. 8,
MG Road, Bengaluru- 560001.

...APPLICANT

AND

Sri. M R Sathyanarayan
No. 428, 4th Main Road, HMT Layout,
Anandnagar Post Office,
Bengaluru- 560024.

...RESPONDENT

FILED IN THE COURT
ON: 28.01.2021

**COMPROMISE PETITION UNDER ORDER XXIII RULE 3 READ WITH
SECTION 151 OF THE CODE OF CIVIL PROCEDURE 1908.**

The Applicant and the Respondent abovenamed, jointly and severally, submit as under:

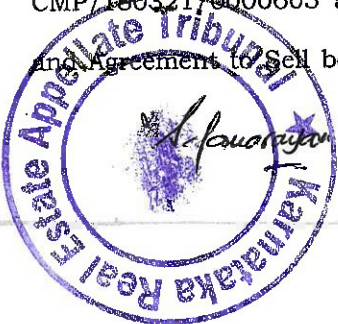
1. That the said Applicant and Respondent have this day resolved their differences and disputes relating to the above case amicably and have mutually agreed to the disposal of the above Miscellaneous Application upon receipt of the entire sum of money predicated for prompt and precise payment by the Applicant to the Respondent herein in the manner indicated hereunder and accepted by the Respondent and till then being without prejudice to his existing rights and claims and the various proceedings initiated by him arising out of and in respect of the Order dated 5/9/2018 passed by the Hon'ble Adjudicatory Officer, K-RERA and CMP/180321/0000603 on his file and subject to full and final settlement of these resulting dues of the Applicant to the Respondent duly restricted to a composite sum of Rs.92,00,000/- (Rupees ninety two lakhs only) as



(Handwritten signature)

against an amount of Rs.1,02,02,535/- determined payable as on 27/1/2021 in context of and vis a vis the aforesaid Order dated 5/9/2018 in CMP/180321/0000603 and further on the basis of the terms and conditions mentioned herein below.

2. That the Applicant and the Respondent in the above case confirm that the Respondent herein had entered into a Construction Agreement and an Agreement to Sell, both dated 31.12.2013, with the Applicant/'Nitesh Housing Developers Private Limited' for purchase of a flat bearing No.A-0804, Block A in a project known and called "Nitesh Columbus Square" and in pursuance of the said agreements had effected payment of a total sum of Rs.73,71,294/- as advances towards the monetary considerations payable under the aforesaid Agreements.
3. That on account of the failure of the Developer to convey, deliver and hand over the above mentioned Flat, the Respondent had instituted complaint bearing No.CMP/180321/0000603 before the Hon'ble Adjudicatory Officer, K-RERA at Bengaluru seeking refund of the said amounts paid by him along with interest thereon. The parties confirm that the Hon'ble Adjudicatory Officer, K-RERA vide judgment dated 05/09/2018 was pleased to direct the Applicant herein to refund the entire amounts paid to it by the Respondent being Rs.73,71,294/- along with interest thereon of 10.25% on the aforesaid amount computed from 1/5/2017 i.e. the date on which the RERA Act, 2016 came into force.
4. That the Applicant herein as against the liability arising from the judgment and Order dated 05/09/2018 passed in complaint bearing No. CMP/180321/0000603 and arising out of the Construction Agreement and Agreement to Sell both dated 31/12/2013 referred to herein supra,



has agreed to pay a composite and total sum of Rs. 92,00,000/- (Rupees Ninety Two Lakhs only) to the Respondent herein which the Respondent has agreed to receive in full and final settlement of his dues arising out of and under the aforesaid order.

5. The Applicant hereby undertakes to pay the aforesaid sum of Rs.92,00,000/- (Rupees Ninety two lakhs only) to the Respondent as follows:-

- a) Vide a demand draft favoring the Respondent drawn on a local Bank in a sum of Rs.18,28,706/- on or before 15/2/2021 (After deduction of TDS in favor of the Respondent)
- b) Vide a sum of Rs.73,71,294/- deposited before the Hon'ble Appellate Authority in the above case and for which agreed payment and release to the Respondent the Applicant confirms herein that he has absolutely no objections and does hereby unconditionally consent for the release of the same to the Respondent.

6. Applicant and Respondent confirm that notwithstanding the real dues of the Appellant vis-à-vis the Respondent herein and in context of the order dated 05/09/2018 in **CMP/180321/0000603** the parties thereto agree that upon receipt of a composite sum of Rs. 92 Lakhs paid as aforesaid neither of the parties hereto shall have any claim against the other in any manner whatsoever and if any such claims exist, the same are deemed to be waived and surrendered absolutely and forever by the respective party. Appellant and Respondent confirm that consequential to default in compliance with order dated 05/09/2018 the Respondent has initiated the following legal actions against the Applicant herein which the Respondent undertakes to withdraw fully and finally in all respects absolutely and forever upon receipt of the balance sum of Rs. 92 Lakhs indicated herein supra.



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- a. PCR No.11446/2020 (pending before 4th Additional Chief Metropolitan Magistrate Court)
- b. PCR No.13257/2019, (pending before 15th Additional Chief Metropolitan Magistrate Court)
- c. CCC/533/2020 (pending before the Hon'ble High Court of Karnataka)

7. The parties hereto confirm that in the event of any default in compliance with this Compromise fully and finally and on or before **15/02/2021** the consequential proceedings referred to herein supra shall stand revived and enforceable in all respects and no equity of any nature shall be construed to arise in favour of the Applicant for having conceded release of the amount of Rs.73,71,294/- in deposit in favour of the Respondent herein.
8. Further upon receipt of the total settlement amount mentioned above, the Respondent categorically assures that he shall have no claims/dues whatsoever against either the Applicant herein, NEL Holdings South Limited (Formerly known as NEL Holdings Ltd and Nitesh Estates Ltd) or NHDPL South Pvt Ltd (Formerly known as Nitesh Housing Developers Pvt. Ltd. and NHDPL Properties Pvt. Ltd.).
9. Appellant and Respondent submit that the Hon'ble High Court of Karnataka shall be duly apprised of the arrangement that has been arrived at between the Applicant and Respondent in **C.C. 533/2020** pending disposal before the Hon'ble High Court of Karnataka and the said proceedings shall not be affected in any manner whatsoever in the event of default of the part of the Applicant in performing his undertakings as per this Compromise Petition.



& *A. Srinivasan MR*

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10. The Respondent further confirms that he shall not institute any fresh litigation in respect of the present cause of action and withdraw all cases filed against the Applicant or related companies mentioned above, including the following;

- a. PCR No.11446/2020 (pending before 4th Additional Chief Metropolitan Magistrate Court)
- b. PCR No.13257/2019, (pending before 15th Additional Chief Metropolitan Magistrate Court)
- c. CCC/533/2020 (pending before the Hon'ble High Court of Karnataka)

11. The Respondent further agrees to execute necessary deed of cancellation of the Construction Agreement and Agreement to Sell dated 31/12/2013 before the Registry of the Hon'ble Appellate Authority (K-RERA), upon receipt of the total settlement amount.

12. The Respondent consents to maintain utmost confidentiality with respect to the settlement amount received through this compromise.

13. The Applicant and the Respondent consent for this Compromise and the parties herein are submitting this compromise petition/memo by signing it with a clear intent to settle all pending disputes and to resolve the issues amicably. The parties have entered into this settlement out of their own will and volition.

14. Each party shall bear its own costs.



WHEREFORE, the Applicant and the Respondent above named most humbly pray that this Hon'ble Tribunal may be pleased record the above terms of Agreement/ Compromise and pass a decree in accordance therewith, in the interest of justice and equity.

BANGALORE

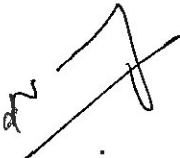
DATE: 28/01/21



ADVOCATE FOR APPELLANT



ADVOCATE FOR RESPONDENT



APPELLANT

(Nitesh Shetty)



RESPONDENT

(M.R. Sathyanarayan)

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SECTION OFFICER
KARNATAKA REAL ESTATE
APPELLATE TRIBUNAL
BENGALURU-560 027
28/1/2021

