

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Complaint No. CMP/180920/0001296

Date: 19th JANUARY 2019

Complainant : S.K AKBAR ALI
A 205 Scintilla Apartment
Yelahanka New town, Bengaluru
Karnataka - 560064

AND

Opponent : Nitesh Estate Limited,
Nitesh Columbus Square Phase II
Level 7, Nitesh Timesquare,
8 MG Road, Bengaluru,
Karnataka - 560001

"J U D G E M E N T"

1. **S.K AKBAR ALI** Complainant filed complaint bearing complaint no. CMP/180920/0001296 has filed this complaint under Section 31 of RERA Act against the project "**Nitesh Columbus Square Phase II** developed by Nitesh Estates Limited as the complainant is the consumer in the said project. The complaint is as follows:

"Sir, As per the agreement Nitesh Estate supposed to hand over my flat(A 801) in Nitesh Columbus Square on or before 30th June 2014 with six month grace time additionally. Also, as per the agreement Nitesh Estate suppose to reimburse the Pre-EMI till they hand over the

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19/01/19

flat to me. But even after repeated written and verbal communication, Nitesh Estate has not completed and hand over the flat till date and not reimbursing the Pre-EMI.

Relief Sought from RERA : I sought my flat and money as per the agreement”

2. On 9/10/2018 the complaint was present in person, the developer was represented through Shivraj. Later the representation of developer remained absent.
3. The complainant has sought for completion of the project. The developer has agreed to deliver the possession in the month June 2014 with grace period means, December 2014 but failed to do so. The complainant has filed a Memo stating that he has booked the flat A – 801 on 11/06/2013, the same was allotted on 19/06/2013, he has paid Rs. 11,97,642/- on 8/07/2013. HDFC bank disbursed the amount of Rs. 53,92,350/- on 3/9/2013 and 1,98,214 on 11/12/2013. Again the complainant paid Rs. 1,65,750 on 7/11/2014 and Rs. 77,773/- on 22/11/2014. According to the complainant, the relief sought is as under:

“ 1. I have paid whatever has been asked by the builder to make sure there is no stopping on the progress of the project. We were dreaming having our own flat but because of the delay we are literally homeless with paying almost the full amount. We are running under a tremendous financial pressure, mentally stressed and depressed. I seek the help of RERA to get the handover of my flat A 801 in Nitesh Columbus Square with all the amenities by 31st December 2018 with:

- a. Occupancy and other related certificate from relevant government authorities.

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- b. Government electricity, water and sewage connection from authorities like BESCOM, BBMP, etc.
- c. Gas connection from the relevant authority.
- d. Readiness of the underground covered parking and passage.
- e. Readiness of the club house and other facilities.
- f. Vertical garden.
- g. Lift and other shared facilities with authorized certificate.

2. Re-imbusement of the rest of the amount pending.

3. An interest of 18% on the Pre- EMI money pending with Nitesh.

4. Compensation at rate of Rs. 2 per square ft. i.e., Rs. 2652 for the area of 1326 Sq ft. for the flat A 801 from the date of June 2014 till date.

5. I can't bear the financial stress and mental pressure any more. This is also ruining my family. In the event, Nitesh Estate is unable to complete the project by 31st Dec 2018, I seek refund of all the payment made to Nitesh with 18% compound interest.

I also request PERA court to:

Make sure the chairman and the board of directors of Nitesh Estate not to escape the boundary of Indian border till the enquiry is over.

4. I would like to say that as per Sec. 18 of the Act, if any person.....

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5. As per Section 18 of the RERA Act, it is the wish of the consumer to be with the project or to go out of the project. The wordings used in Section 18 are as under:

“ in case the allottee wishes to withdraw from the project, 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”

6. By reading the above, it is clear that the Act does not make specific ground to go out of the project. However the parties have entered into agreement with number of clauses, they are all binding upon each other.
7. From the above position of law it is clear that the Authority will have to take the notice of Section 72 along with Section 18. The section 18 of the Act says that interest to be paid as prescribed which is as per rule 16.
8. The complainant has produced the mail correspondences that on dated 09/10/2013 the developer has stated as under;

The delay compensation will be addressed at the time of project hand over.

9. This proves the claim of the complainant is true one. The complainant has paid Rs.11,97,642/- on 08/07/2013. Bank has disbursed an amount of Rs.55,90,567/-. This gives to show that the seriousness of case of the complainant. The project was to be completed by the end of 2014.

10. Now we have completed year 2018 also. Therefore the complainant is entitled for delay compensation, but however it is as per S.18 read with Rule 16 alone but not as per the claim. Rule 16 has already fixed the rate of interest and as such I have to give the delay compensation.
11. As per S.71(2) RERA, the complaint shall be closed within 60 days from the date of filing. This complaint was presented on 20/09/2018. As per the SOP the 60 days be computed from the date of appearance of parties. In this case the parties have appeared on 09/10/2018 and hence, there is some delay in disposing of the case. With this observation I proceed to pass following order.

ORDER

1. The Complaint No. **CMP/180920/0001296** is allowed.
2. The developer is hereby directed to pay the delay compensation on the amount paid by the complainant with regard to purchase of flat No.A-801 in the form of interest @ 9% as per KCFA commencing from January 2015 till 30/04/2017 and @10.75% P.A simple interest from 01/05/2017 till the realization of the entire amount.
3. The developer is also directed to complete the project and handover the possession with O/C by completing the amenities

Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and Pronounced on 19/01/2019)

(K.PALAKSHAPPA)

Adjudicating Officer