ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Cmp.No : 3914 ಪುಟ ಸಂಖ್ಯೆ .....

ವಿಷಯ Mr. Vasantha V Shetty

Nitesh Hyde Park.

ಕಂಡಿಕೆ ಸಂಖ್ಯೆ	ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP- 3914

13.10.2023

As per the request of the complainant and Ms. Shraddha Krishnan Authorized Signatory of the respondent, the execution proceedings in the above case is taken-up for amicable settlement, in the National Lok Adalat to be held on 09.12.2023.

The complainant Mr. Vasantha V Shetty joined phone call and Ms. Shraddha Krishnan Authorized Signatory of the respondent present, in the pre-Lok-Adalat sitting held on 13.10.2023. The authorised person of the respondent has filed the copy of the authorization. The dispute in connection with execution proceedings in the above case is settled as per the joint memo, stating that matter has been settled between the parties in terms of the joint memo dated: 13.10.2023 and entered between them filed during the pre Lok Adalat sitting on 13.10.2023. The settlement entered between the parties is voluntary and legal one and as per which the complainant has no further claims against the respondent whatsoever in the above case. The dispute in connection with execution proceedings in the above case is settled between the parties in the pre-Lok Adalat sitting in terms of the joint memo dated:13.10.2023. The execution proceedings in connection with above case are closed, as settled in the Lok Adalat. The RRC issued against the respondent is hereby recalled and office is directed to issue intimation accordingly to the concerned DC. The matter referred to conciliators to pass award.

13/10/23

Judicial Conciliator.

Vikitha

Advocate Conciliator.

Shraddha Krishnan

For NORTHROOF VENTURES PVT. LTD

Authorised Signatory

BEFORE THE HON'BLE KARNATAKA REAL ESTATE REGULATORY AUTHORITY, AT BANGALORE

CMP/190820/0003914

BETWEEN:

Mr. Vasantha V Shetty **...Complainants**

AND:

Nitesh Housing Developers Pvt Ltd [now known as Northroof Ventures Pvt Ltd]
No. 110, Level 1, Andrews Building,
M.G Road, Bengaluru – 560 001 **...Respondents**

JOINT MEMO

The Complainant herein had filed the above mentioned Case before this Hon'ble Authority seeking delay compensation in regard with the **Flat Bearing No. F 0403,** Nitesh Hyde Park Project which came to allowed vide Order dated **23rd December, 2019**

Subsequently, both Complainants and Respondents discussed between themselves with the spirit of arriving at an amicable resolution. After discussing all the issues and disputes, both parties have arrived at an amicable settlement.

Both parties, have now, resolved and settled all the disputes and issues, as the **Flat Bearing No. F 0403** has been handed over and registered vide Sale Deed as on 30.09.2023. The same has been treated as the full and final settlement thereof.

No claims, differences and/or disputes are pending between the Parties and no further claims or disputes will be raised by either party in connection with the issues arising in the present Case.

The Respondents have handed over the **Flat Bearing No. F 0403** at Nitesh Hyde Park and the same has been registered before the Sub Registrar as the full and final settlement.

Both the parties to the proceedings have no further claim whatsoever against each other in respect of the subject matter in connection with the above case before any forum or court relating to the subject matter of the above complaint. If there is any claim by either of the

For NORTHROOF VENTURES PVT.

Authorised Signatory

parties, parties have agreed that the same be disposed off as settled by filing an appropriate memo in such cases.

In view of the handover and the settlement of **Flat Bearing No. F 0403** at Nitesh Hyde Park Project the Parties to the Petition request this Hon'ble Court to record the same and dispose off the Petition pending in the above Case as fully and finally settled

PLACE: Bengaluru **COMPLAINANT**

DATED: 13.10.2023. **RESPONDENT**

For NORTHROOF VENTURES PVT. LTD

Authorised Signatory

BEFORE THE HON'BLE KARNATAKA REAL ESTATE REGULATORY AUTHORITY, AT BANGALORE

CMP/190820/0003914

BETWEEN:

Mr. Vasantha V Shetty ...Complainants

AND:

Nitesh Housing Developers Pvt Ltd [now known as Northroof Ventures Pvt Ltd]
No. 110, Level 1, Andrews Building,
M.G Road, Bengaluru – 560 001 ...Respondents

MEMO FOR WITHDRAWAL

The Complainants herein have settled their disputes with the Respondent out of the court as the possession of the Flat has been handed over to the Petitioner herein. The Respondent has completed and handed over the **Flat Bearing No. F 0403** and thereafter also registered the Flat as on 30.09.2023

Both the parties to the proceedings state that they have no further claims whatsoever against each other in respect of the subject matter in connection with the above case before any forum or court relating to the subject matter of the above Complaint. If there is any claim by either of the parties, parties have agreed that the same be disposed off as settled by filing an appropriate memo in such cases.

In view of the compromise arrived at between the parties, the Complainant requests this Hon'ble Court to dispose off the above case as settled in the interest of justice and equity.

PLACE: Bengaluru **COMPLAINANT**

DATED: 13.10.2023 **RESPONDENT**

For NORTHROOF VENTURES PVT. LTD

Authorised Signatory

Complaint No. 3914

09.12.2023

Before the Lok-Adalat

The execution proceedings in this case are taken up before the pre-Lok-Adalat held on 13.10.2023. The joint memo dated: 13.10.2023 in the pre Lok Adalat sitting by both the parties is hereby accepted. Hence, the dispute in connection with the execution proceedings of this complaint is settled before the Lok-Adalat as per joint memo dated: 13.10.2023. The joint memo filed by the parties shall be part and parcel of award/order.

The execution proceedings in this complaint referred above stands disposed off accordingly.

Judicial Conciliator.

Advocate Conciliator.

KARNATAKA STATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT BENGALURU

DATED: 09TH DAY OF DECEMBER 2023

: CONCILIATORS PRESENT:

Sri. I. F. Bidari ..... Judicial Conciliator

AND

Ms. Likitha A ..... Advocate Conciliator

COMPLAINT NO: CMP/190820/0003914

Between

Mr. Vasantha V Shetty ..... Complainant

AND

M/s. Nitesh Housing Developers Private Limited
Presently known as NHDPL South Pvt. Ltd.,
Now changed as Northroof Ventures Pvt. Ltd., ...Respondent

Award

The dispute between the parties with regard to execution proceedings in the above case having been referred for determination to the Lok Adalat and the parties having compromised/settled the dispute in connection with execution proceedings in the matter, as per the joint memo dated:13.10.2023 filed during the pre-Lok Adalat sitting on dated:13.10.2023, same is accepted. The settlement entered between the parties is voluntary and legal one.

The execution proceedings in the case stands disposed off as per the joint memo: 13.10.2023 and said joint memo is ordered to be treated as part and parcel of the award.

9/12/23
Judicial conciliator

Likitha
Advocate conciliator

54

BEFORE ADJUDICATING OFFICER RERA
BENGALURU, KARNATAKA
Presided by:- Sri K.PALAKSHAPPA
Adjudicating Officer.
Complaint No.CMP/190820/0003914
DATE 23rd DECEMBER 2019

Complainants : Vasantha V Shetty
141, 4th Cross, 1st Main 2nd Stage
Arekere, Mico Layout
Bengaluru-560 076
Rep. by Sri G.Vikram, Advocate

AND

Opponent : Nitesh Housing Developers Private Limited, No.8, 7th Floor, Nitesh Timesquare, Mahatma Gandhi Road
Bengaluru-560 001
NHDPL Properties Pvt.Ltd.,
Having its registered office at No.110, level-I, Andrews building, M.G.Road,
Bengaluru-560001
(This address is mentioned as per the address given by the respondent in his objection statement)

JUDGEMENT

1. Vasantha V Shetty has filed this complaint under Section 31 of RERA Act against the project " NITESH HEDE PARK PHASE 11" developed by Nitesh Housing Developers Private Limited,, (NHDPL Properties Pvt.Ltd.,) bearing Complaint no. CMP/190820/0003914. The facts of the complaint is as follows:

23/12/19

53

The complainants submit that the complaint has to be filed online in the prescribed format. The fields provided for, in the online application, does not permit the complaint to be filed jointly although the agreement of sale and construction agreement have been executed jointly in favor of the complainants. In the said circumstances, the fathers name, age, Telephone No., email id and the identification card uploaded, in the fields provided for in the online application is that of the first complainant. The first complainant is the father of the second complainant and is aged about 75 years. The Tel No. of the second complainant is 9880236772 and his name is RAKESH SHETTY.K 2. The complainants submit that M/s NSL SEZ (Hyderabad) Private Limited along with the respondent entered into an agreement of sale dated 31.01.2015 with the complainants with respect to 0 .32% undivided share, right, title, interest (620.65 sq. ft) in the converted non ? agricultural residential land formerly bearing Sy No. 49, and presently bearing Bruhat Bengaluru Mahanagara Palike Khatha No. 1225/49 situated at Hulimavu Village, Begur Hobli, Bangalore South Taluk measuring 05 Acres 17 guntas. Copy of the agreement of sale is produced herewith as Document No.1 3. The respondent has also executed a construction agreement dated 31.01.2015 in favor of the complainants pursuant to the aforesaid agreement of sale for constructing a residential apartment bearing No.0-0403 in 4th Floor, O Block (previously known as Block F), in Wing ?II?, within the project ?Nitesh Hyde Park? measuring 168.42 sq mtrs or 1,813 sq. feet of super built up area together with right to use One top covered car parking space. A copy of the construction agreement is produced herewith as Document No. 2 4. The complainants have paid a sum of on Rs. 1,08,19,555/- (Rupees One Crore Eight Lakhs Nineteen Thousand Five Hundred and Fifty five only) under the agreement of sale and construction agreement: The receipts issued by the respondent acknowledging the receipts of the aforesaid amount is produced herewith as Document No. 3 5. The complainants submit that Clause 6 of the Construction agreement provides that the possession of the apartment will be delivered by the respondent to the complainants after completion of construction as far as possible on or before 31.12.2015 with six months grace period additionally. Therefore, in any event the possession of the apartment ought to have been delivered to the respondent on or before 30.6.2016. 6. The complainants submit that although the respondent have received and acknowledged the

23/6/19

aforesaid payments both under the agreement of sale and construction agreements, the respondent has not delivered possession till date in spite of repeated requests. 7. The complainants submit that clause 3 of the agreement of sale provides that separate agreement would be entered into with the builder for the construction of an apartment and use of common areas. However default in any one agreement shall be construed as default of all other agreements and the rights and obligations of the parties shall be determined as per what is mentioned in both agreements. It further provides that the sale agreement cannot be independently enforced in isolation of agreement of even date executed for the construction of apartment. 8. The complainant submits that the respondent vide its email dated 12 June, 2019 has informed the complainant and other allottees of F Block, that M/s NCCCL has given its final consent and quote to take up tower F and complete the internal block work, internal and external plastering, completion of all floors, common areas, lobbies, lift landings etc. The respondent further informed that 90 to 120 days is the completion time. A copy of the email dated 12th Jun?19 is produced herewith as Document No. 4. 9. The respondent has vide its email dated 3rd Jul?19 has informed the complainants and others that the respondent has signed the contract with NCCL to carry out the works. By this it is clear that the respondent has acknowledged the fact that the construction is incomplete and the possession of the apartment is not yet delivered as on the date of filing the complaint. A copy of the aforesaid email is produced herewith as Document No. 5. 10. The complainants at this stage do not intend to withdraw from the project. The complainants have filed this complaint seeking interest for every month of delay till the handing over of the possession. 11. The complainants are entitled to interest @ 15% p.a. which is 2% above the State Bank of India highest marginal cost of lending as provided under Rule 16 of the Karnataka Real Estate (Regulation and Development) Rules, 2017. The complainant is entitled to interest @ 15% p.a. on Rs. 1,08,19,555/- (Rupees One Crore Eight Lakhs Nineteen Thousand Five Hundred and Fifty five only) from 01.07.2016. The interest payable by the respondent as on 1st August 2019 is Rs.50,04,044/- (Rupees Fifty lakhs four thousand and forty four only). The respondent is further liable to pay the interest of Rs. 1,35,244/- @ 15% p.a for every month of delay, till the date of payment. 12. The complainants submit that the following complaints have been filed against the respondent and that this Hon?ble authority, while allowing the applications have directed the respondent to pay compensation. 1 CMP/180522/0000848 09-11-2018 MOHIT

23/11/19

51

MATHAI 2 CMP/180521/0000846 16-11-2018 Vinod Kumar V 3 CMP/180811/0001131 28-11-2018 Nirvikar Singh 4 CMP/181010/0001440 14-12-2018 Reghu Kadavath and Rekha K. Nair 5 CMP/180817/0001152 17-12-2018 Nirmal Tengarai Sankaranarayana

Relief Sought from RERA :Interest for every month's delay in delivery of ap

2. In pursuance of the summons issued by this authority the complainant was present through her advocate Sri .G.Vikram, who filed the vakalath on her behalf. The developer has appeared through his representative.

3. Heard the arguments after filing objections to the averments made in the complaint.

4. The point that arisen for my consideration was:
   a. Is the complainant entitled for the relief as sought in her complaint ?
   b. If so what is the order?
5. My answer is affirmative for the following

REASONS

6. The complainant has filed this complaint U/s 31 of the RERA Act claiming for delay compensation. The respondent Developer has appeared through his representative and filed objections.

7. The complainant has booked the flat bearing No.O-0403. In this regard, the parties have entered into agreement on 31.01.2015. As per the agreement the Developer was expected to complete the project on or before 30.06.2015 including the grace period.

23/12/19

8. The learned counsel for the complainant submitted that the complainant has paid a total sum of Rs.1,08,19,555/- towards purchase of the flat. It is the case of the complainant that Developer has failed to complete the project within due time as agreed in the agreement. It is the submission that as per Sec.18 of the RERA Act, the Developer has to compensate the complainant for the delay caused in completing the project.

9. The respondent has filed its objection statement denying the case of the complainant. Of course, the respondent Developer has taken so many contentions in his objection statement. It is his submission that delay was caused because he had terminated the services of the Contractor who filed suit and obtained the order of injunction. He has also stated that there was a transporters strike, there is delay in giving electricity connection. Further he also stated that he found rocks at the time of excavation work. For these reasons it is the case of the Developer that the delay was not intentional and all of them are founded on reasonable and excusable reasons.

10. I would say that till today, the Developer has not received Occupancy Certificate. The due date was in the month of June 2015. More than four years is already elapsed, even then the Developer is not able to get the Occupancy certificate means his project is not completed as on the date of the filing of this complaint and also even today. Therefore, as per the observation made by the Hon'ble Supreme Court in Pioneer Case, the delay in more than two years from the due date, then automatically the complainant is entitled for delay compensation.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 12238/2018,
Pioneer Urban Land & Infrastructure Ltd.
V/s
Govindan Raghavan

49.

which reads as under:

Para 6.1:In the present case admittedly, the appellant builder obtained the occupancy certificate almost two years after the date stipulated in the apartment buyer's agreement. As a consequence, there was failure to handover possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28/08/2018 during the pendency of the proceedings before the National Commission. In LDA v. M.K.Gupta, this court held that when a person hires the services of a builder or a contractor, for the construction of a house or a flat, and the same is for consideration, it is a "service" as defined by Section 2(1)(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In Fortune Infrastructure v. Trevor D'Lima, this court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with the compensation.

11. The above decision is verymuch helpful to the complainant to seek the relief as sought in the complaint and hence, question of dismissing the complaint for the reasons stated by the Developer holds no water.

23/12/19

12. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 20/08/2019. 60 days be computed from the date of appearance of the parties. In the present case, the parties have appeared on 04/10/2019. After taking the objection statement the argument was heard and posted for judgment. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

ORDER

a. The complaint no. CMP/190820/0003914 is allowed.
b. The developer is hereby directed to pay delay compensation in the form of interest towards purchase of flat @ 9% on the total amount paid up to July 2015 till 30.04.2017 and also @ 2% above the MCLR of SBI on the total amount paid by the complainant commencing from May 2017 till the possession is delivered after obtaining the occupancy certificate.
c. The Beloper is also directed to pay cost of Rs.5,000/-

Intimate the parties regarding this order.

(Typed as per dictated, corrected, verified and pronounced on 23/12/2019).

23/12/19

(K.Palakshappa)
Adjudicating Officer