

KARNATAKA STATE LEGAL SERVICES AUTHORITY
BEFORE THE LOK ADALAT
IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU

DATED: 11TH DAY OF FEBRUARY 2023

: CONCILIATORS PRESENT:

Sri. I. F. Bidari

..... Judicial Conciliator

AND

Smt. Preethi N

..... Advocate Conciliator

COMPLAINT NO: CMP/220307/0009084

Between

1. Mrs. Dsouza Prakash
2. Mr. Hazel Leena George

..... Complainants

AND

M/s. Nitesh Housing Developers Pvt. Ltd.,

Presently known as NHDPL South Pvt. Limited.,


.....Respondent

(By: Authorized Signatory of the 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: 06.12.2022 filed in the record of the case, 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 dated: 06.12.2022 and said joint memo is ordered to be treated as part and parcel of the award.


Judicial conciliator


Advocate conciliator

Complaint No. 9084

11.02.2023

Before the Lok-Adalat

The above case in connection with execution proceedings is taken up before the Lok-Adalat. The joint memo filed by both the parties is hereby accepted. Hence, the dispute in connection with execution proceedings is settled before the pre Lok-Adalat as per joint memo dated: 06.12.2022. The said joint memo filed by the parties shall be part and parcel of award/order.

The execution proceedings in the case stands disposed off accordingly.


Judicial Conciliator.


Advocate Conciliator.

AUTHORITY, AT BANGALORE

CMP/220307/0009084

BETWEEN:

Mr.D'Souza Prakash
Mrs.Hazel Leena George

....Complainants

AND:

NHDPL South Private Limited
(Earlier Known as
Nitesh Housing Developers Private Limited)

....Respondent

JOINT MEMO

The Complainants herein had filed the above mentioned Case before this Hon'ble Authority seeking refund of booking amount /advance amount which came to allowed on 15th October, 2022.

Subsequently, both Complainants and Respondent 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, vide Memorandum of Settlement dated **2nd December 2022** resolved and settled all the disputes and issues, and signed the Memorandum of Settlement.

As per the terms of the above mentioned MOS, 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 Respondent has paid **Rs.19,04,045/- (Rupees Nineteen Lakhs Four Thousand Forty-Five only)** vide DD No. **186904** dated **30th November 2022** drawn on HDFC Bank, Kasturba Gandhi Marg Bengaluru - 560 001 to the Complainants as a full and final settlement towards the claim involved in the above mentioned case.

For D'Souza Prakash

Hazel

For NHDPL SOUTH PRIVATE LIMITED

In view of the above mentioned Memorandum of Settlement dated **2nd December 2022** arrived at between the parties, the Parties to the Complaint request this Hon'ble Authority to record the above mentioned Memorandum of Settlement dated **2nd December 2022** and dispose off the execution claim pending in the above Case as fully and finally settled.

PLACE: *Bengaluru*

DATED: 6/12/2022

for. D'Souza Prakash
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COMPLAINANTS

For NHDPL SOUTH PRIVATE LIMITED

RESPONDENT

Authorised Signatory



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp. No : 9084

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Mr. D'souza Prakash & Another
Nitesh Melbourne Parks.

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-9084

05.01.2023

As per the request of the complainants and Sri. Harish Kumar MD 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 11.02.2023.

The complainants joined over phone call and Sri. Harish Kumar MD Authorized Signatory of the respondent present, in the pre Lok-Adalat sitting held on 05.01.2023, the dispute with regard to execution proceedings is settled as per the joint memo dated: 06.12.2022 already filed in the record of the case. The settlement entered between the parties is voluntary and legal one and as per which the complainants have no further claims against the respondent whatsoever in the case. Therefore in view of the submission of the complainants, the execution proceedings in the above case have been closed as settled between the parties in the Lok Adalat in terms of the joint memo dated: 06.12.2022. The matter referred to conciliators to pass award.

For NHDPL South Private Limited

Majumdar Kumar
Authorized Signatory
(Harish Kumar M.D.)

5/1/23
Judicial Conciliator.

5/1/23
Advocate Conciliator.

KARNATAKA REAL ESTATE REGULATORY AUTHORITY, BENGALURU

FIFTH ADDITIONAL BENCH

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**SHRI.D.VISHNUVARDHANA REDDY
HON'BLE MEMBER-1**

COMPLAINT NO.CMP/220307/0009084

DATED THIS 15TH DAY OF OCTOBER, 2022

COMPLAINANTS : Mr.Dsouza Prakash &
Mrs.Hazel Leena George
C/o Mr.George, No.3, Harmain Enclave
Flat No.G2, Sindhi Colony, 1st Cross,
Frazer Town, Bangalore : 560 005

RESPONDENT / : M/s.Nitesh Housing Developers Pvt Ltd.
PROMOTER Nitesh Timesquare, 7th Floor,
No.8, M.G.Road, Bangalore : 560 001

PROJECT NAME & : NITESH MELBOURNE PARK
REGISTRATION NO. PRM/KA/RERA/1251/446/PR/
170916/000224

J U D G E M E N T

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project NITESH MELBOURNE PARK praying for a direction to Refund the amount paid with Interest.

BRIEF FACTS OF THE COMPLAINT ARE AS UNDER:-

1. The complainants have entered into an agreement of sale on 06.09.2017. The project completion date as per agreement was

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30.03.2020. The complainants have paid an amount of Rs.18,85,193/- (Rupees Eighteen lakhs eighty five thousand one hundred ninety three only) to the respondent till date. Since there was delay in handing over the apartment, the complainants have sent several email communication to the promoter expressing their intention to exit from the project and requested to refund the advance amount paid with interest. The Promoter has sent a mail addressed to all customers that the claims of the complainants would be honoured by 31st October, 2019. Despite the promise made by the Respondent and several requests of the complainants, the respondent has failed to refund the amount paid by the complainants and hence, the complainants have filed the above complaint before the Authority praying for refund of the amount paid together with interest.

2. On a perusal of the construction agreement, it is seen that the completion date is agreed as 30 months, with a grace period of six months. Accordingly the promoter-respondent was required to complete the project and hand over possession of the apartment by September, 2020, which includes the grace period of six months. Since the respondent-promoter has failed to complete or unable to handover the possession of the apartment to the allottee, this complaint is admissible for relief in accordance with Section 18 of the Act.
3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through its counsel and undertaken to submit the resolution of the complaint and arranging for refund with interest sought by the complainant. However, neither any written submissions are filed nor any proposal for payment of refund

Signature

with interest is submitted before the Authority. The complainants have submitted their memo of calculation for refund with interest.

4. In support of their claim, the complainants have produced email communications of the complainant and mail of the Respondent.
5. From the materials placed on record by the complainants, it is apparent that the promoter has agreed to refund the amount as per their email communication, but failed to refund the amount with interest as on date.
6. As per Section 18 of RERA Act, in case the allottee wishes to withdraw from the project the promoter is liable 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.
7. Therefore, as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.
8. From the averments made in the complaint and the copies documents produced by the complainants, it is obvious that complainants have paid the advance sale consideration amount and are entitled to get their amount paid along with interest as per the memo of calculation submitted by the Complainants. The Promoter-Respondent has not submitted any memo of calculation.
9. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

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Memo of Calculation by the Complainant as on 16-07-2022

Principle amount (A) Rs.	Interest (B) As on 16.7.2022 Rs.	Refund from Promoter (C)	Total Balance Amount (A+B) Rs.
18,85,193	9,29,934	NIL	28,15,127

And accordingly the Authority passes the following:

ORDER

In exercise of the powers conferred under Section 31 read with section 18 of the Real Estate (Regulation and Development) Act, 2016, the complaint Bearing **No.CMP/220307/0009084** is hereby allowed. Respondent is directed to pay a sum of **Rs. 28,15,127/- (Rupees Twenty eight lakhs fifteen thousand one hundred twenty seven only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated from 01/05/2017 till 16.07.2022.

The interest due from 17.07.2022 up to the date of final payment will be calculated likewise and paid to the complainants. The complainants are at liberty to initiate action for recovery in accordance with law if the respondent fails to pay the amount as per the order of this Authority.


(D.VISHNUVARDHANA REDDY)
MEMBER-1
FIFTH ADDITIONAL BENCH
K-RERA