

KARNATAKA REAL ESTATE REGULATORY AUTHORITY, BENGALURU

FIFTH ADDITIONAL BENCH

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

COMPLAINT NO.CMP/220309/0009097

DATED THIS 15TH DAY OF OCTOBER, 2022

COMPLAINANTS : Mr.Chetan Anand &
Mrs.Narinder Kaur Anand
No.B-3/446, PASCHIM VIHAR,
New Delhi : 110 063

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 and construction agreement on 24-03-2017 and have paid an amount of Rs.29,54,986/- (Rupees Twenty Nine Lakhs Fiftyfour thousand nine

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hundred eighty six only) to the respondent till date. Since there was delay in handing over the apartment, the complainants have sent several email communications to the promoter expressing their intention to exit from the project and requested to refund the advance amount paid with interest. Since there was no response from the Promoter, the complainant has issued a Legal Notice dated 1.2.2022 calling upon the Promoter to refund the amount paid with interest. Despite several requests 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 47 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 October 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 with interest is submitted before the Authority. The complainants have submitted their memo of calculation for refund with interest.

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4. In support of their claim, the complainants have produced documents such as copies of Agreement for Sale, Construction Agreement, email communications, RERA registration certificate and Legal Notice.
5. 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.
6. Therefore, as per Section 18 of the Act, the promoter is liable to return the amount received along with interest.
7. 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.
8. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:

Memo of Calculation by the Complainant as on 13-06-2022

Principle amount (A) Rs.	Interest (B) As on 13.06.2022 Rs.	Refund from Promoter (C)	Total Balance Amount (A+B) Rs.
29,54,986	19,16,187	NIL	48,71,173


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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/220309/0009097** is hereby allowed. Respondent is directed to pay a sum of **Rs. 48,71,173/- (Rupees Forty eight lakhs Seventy one thousand one hundred seventy three only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated from 07.07.2014 till 13.06.2022.

The interest due from 14.06 .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



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ಕಡತ ಸಂಖ್ಯೆ Cmp. No: 9097

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ವಿಷಯ Mr. Chetan Anand & Another

Nitesh Melbourne Park.

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CMP- 9097

23.05.2023

As per the request of the Advocate for 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 08.07.2023.

The Ms. Soundarya Ganesan Advocate for complainants and Sri. Harish Kumar M.D Authorized Signatory of the respondent present, in the pre-Lok-Adalat sitting held on 23.05.2023, the dispute between the parties with regard to the execution proceedings has been settled between the parties. The complainants have agreed to receive an amount Rs. 38,50,000/- (Rupees Thirty Eight Lakhs Fifty Thousand Only) settled between the parties towards full and final satisfaction of the claim of the complainants in connection with the execution proceedings in the aforesaid complaint and a joint memo dated: 23.05.2023 is being filed to this effect by the Ms. Soundarya Ganesan, Advocate for complainants and the Authorised signatory of the respondent. The authorized signatory of the respondent has handed over a DD (Manager's Cheque) bearing No.187658 dated:22.05.2023 for a sum of 38,50,000/- (Rupees Thirty Eight Lakhs Fifty Thousand Only) to Ms. Soundarya Ganesan. The complainants have authorised Advocate for the complainants including Ms. Soundarya Ganesan to collect DD for the settled amount and the complainants have e-mailed authorization letter dated: 23.05.2023. The settlement entered between the parties is voluntary and legal one and as per which the complainants have no further claim against the respondent whatsoever in the case. Therefore in view of aforesaid settlement entered in the pre-Lok Adalat in terms of the joint memo



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dated: 23.05.2023, the execution proceedings in connection with above case are closed. 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.

For NRI/SL South Finance Limited

Authorised Signatory

Judicial Conciliator.

Advocate Conciliator.

Received add (original)
for INR 38,50,000/-

SOUNDARYA CANESAN
KAR/1492/19
23-05-2023

NOT AN OFFICIAL COPY

BEFORE LOK ADALAT IN
THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY,
AT BENGALURU

COMPLAINT NO: CMP/220309/0009097

COMPLAINANTS : Mr. Chetan Anand &
Mrs. Narinder Kaur Anand

-Vs-

RESPONDENT : M/s. Nitesh Housing Developers Pvt. Ltd.,
Presently known as NHDPL South
Private Limited.,

JOINT MEMO

The Ms. Soundarya Ganesan, Advocate for complainants and the respondent in connection with execution proceedings in the above complaint jointly submit as under:

1. During the pendency of the execution proceedings in the above case the Ms. Soundarya Ganesan, Advocate for complainants/allottees and the respondent/promoter after due deliberation have got their dispute pertaining to the execution proceedings in the above complaint subject matter settled amicably before the Lok Adalat.

2. In view of the same, they jointly requested the Lok Adalat to dispose off the execution proceedings in the above complaint as amicably settled before the Lok Adalat since the complainants have agreed to receive today a sum of **Rs. 38,50,000/- (Rupees Thirty Eight Lakhs Fifty Thousand Only)** by way of Demand Draft (Manager's cheque) bearing No.187658 dated 22.05.2023 of HDFC bank Kasturba Gandhi Marg, Bengaluru-560001 and the respondent has agreed to provide the same. The complainants have authorised Advocate for the complainants including Ms. Soundarya Ganesan to collect DD for the settled amount and the complainants have e-mailed authorization letter dated: 23.05.2023.

Soundarya

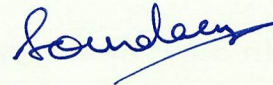
For NHDPL South Private Limited
Narinder Kaur Anand
Authorised Signatory

3. The claim of the complainants in the above complaint is being fully satisfied and complainants have no further claim against respondent in connection with the execution proceedings in the above complaint. Both parties to the proceedings have no claim whatsoever against each other in respect of the subject matter of the above complaint. If there is any claim by either of the parties to this complaint against the other before any forum or Court relating to the subject matter of the above complaint, they have agreed that the same be disposed of as settled by either party filing an appropriate memo in such cases. In view of the above settlement arrived between the parties, the parties request this Hon'ble Authority to dispose off the execution claim pending in the above mentioned complaint and to recall the RRC warrant from the concerned DC office in the interest of justice.

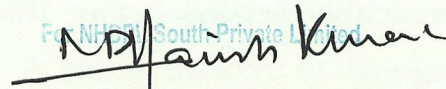
4. Parties further request that this settlement be recorded in the National Lok-Adalat to be held on 08.07.2023.

Place: Bengaluru

Date: 23.05.2023



Advocate for Complainants/Allottees



Authorized Signatory of
Respondent/Promoter