KARNATAKA REAL ESTATE REGULATORY AUTHORITY, BENGALURU

FIFTH ADDITIONAL BENCH

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

COMPLAINT NO.CMP/201004/0006697

DATED THIS 15TH DAY OF OCTOBER, 2022

COMPLAINANTS	: Mr.Aanchal Agarwal & Mr.Abhishek Kumar 1092, Sobha Marvella Green Glen Layout, Bellandur, Begaluru:560 103
RESPONDENT / PROMOTER	: M/s.INESA Ventures LLP No.1966, South End 'D' Main, 9th Block, Jayanagar, Bengaluru:560041
PROJECT NAME & REGISTRATION NO.	: NITESH CAPE CODE PHASE-I PRM/KA/RERA/1251/446/PR/ 180509/001674

JUDGEMENT

This complaint is filed under Sec-31 of the Real Estate (Regulation and Development) Act, 2016 before this Authority against the project NITESH CAPE COD PHASE-I 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 28.01.2013. The project completion date as per agreement was 30.08.2015. The complainants have paid an amount of Rs.21,95,144/- (Rupees Twenty one lakhs ninety five thousand one hundred forty four only) to the respondent till date. Since there was delay of more than seven years in handing over the apartment, the

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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 document submitted by the Complainant, it is seen that the completion date is agreed as 30.08.2015. The promoter-respondent was required to complete the project and hand over possession of the apartment by 30.08.2015. 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 Authorised Representative and submitted orally before the Authority on the date of hearing on 7.6.2022 that efforts are also being made by the Respondent-promoter to refund the amounts with interest sought by the complainant. The Respondent has not filed any statement of objections before the Authority. However, it is seen from the records the Respondent has filed statement of objection before the Adjudicating Officer wherein the respondent has produced a copy of the SLP filed before the Hon'ble Supreme Court of India on the same cause of action. In the said Special Leave Petition, the Hon'ble Supreme Court of India has not passed any order / stay. Hence, the Authority hereby allows the complaint filed by the complainant under Section 18 of the Act read with Rule-5 of the Rules for refunding the amounts paid with interest. The Respondent has not submitted any computation of delay period interest. The complainant submitted summary of complaint, cost of apartment as per agreements, details of payment made with receipts and computation of delay period interest calculation.

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4. From the materials placed on record by the complainants, it is apparent that the promoter has to deliver the apartment on or before 30.08.2015, but failed to handover possession of the apartment. 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.

5. Therefore, as per Section 18 of the Act, the promoter is liable to refund the amount received along with interest.

6. From the averments made in the complaint and the copies documents produced by the complainants, it is obvious that complainant has 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.

7. 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 12-07-2022

Principle amount (A) Rs.	Interest (B) As on 12.7.2022 Rs.	Refund from Promoter (C)	Total Balance Amount (A+B) Rs.
21,95,414	19,77,904	NIL	41,73,318

And accordingly the Authority passes the following:

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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/201004/0006697** is hereby allowed. Respondent is directed to refund a sum of **Rs. 41,73,318/- (Rupees Twenty fortyone lakhs seventy three thousand three hundred eighteen only)** towards refund with interest to the complainants within 60 days from the date of this order, calculated from 01/05/2017 till 12.07.2022.

The interest due from 13.07.2022 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

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