



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp. No: 7063

ಮಟ ಸಂಖ್ಯೆ

ವಿಷಯ Mrs. Merilen Stanley & another
Nitesh Melbourne Pook.

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-7063

08.02.2023

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 present and Sri. Harish Kumar MD Authorized Signatory of the respondent present, in the pre Lok-Adalat sitting held on 08.02.2023, the dispute with regard to execution proceedings is settled as per joint memo. 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: 08.02.2023. The authorised signatory of the respondent handed over a DD bearing No.187158 dated: 08.02.2023 drawn on HDFC Bank, K G Marg, Bengaluru in the joint name of the complainants. The RRC, if any, issued against the respondent be recalled. The matter referred to conciliators to pass award.

Received original
DD bearing no 187158

(Signature)

(Signature)

(Signature)
Judicial Conciliator.

(Signature)
Advocate Conciliator.

For NHDPL South Private Limited

(Signature)

Authorised Signatory

Complaint No. 7063


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 dated: 08.02.2023 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. The 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.

**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/201115/0007063

Between

1. Mrs. Merilin Stanley
2. Mr. Stanley Francis
(In Person)

..... Complainants

AND

M/s. Nitesh Estates Ltd.,
Presently known as NHDPL South Pvt. Ltd.,
(By: Mr. Harish Kumar M D,
Authorized Signatory of the Respondent)

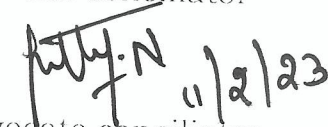
..... Respondent

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 filed during the pre Lok Adalat sitting on dated:08.02.2023, 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 and joint memo is ordered to be treated as part and parcel of the award.


Judicial conciliator


Advocate conciliator

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Karnataka Real Estate Regulatory Authority,
1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,
3rd Cross, Mission Road, Bengaluru-560027

PROCEEDINGS OF THE AUTHORITY BEFORE BENCH - 4

PRESENT:

SHRI. H.C. KISHORE CHANDRA, HON'BLE CHAIRMAN

COMPLAINT NO.: CMP/201115/0007063

DATED THIS 24th DAY OF JANUARY, 2023

COMPLAINANTS.....

**MERILIN STANLEY &
STANLEY FRANCIS**

No. 1051, Sobha Garrison,
Tumkur Road, Nagasandra,
Bengaluru – 560073.

(In person)

V/S

RESPONDENTS.....

**NITESH HOUSING DEVELOPERS
PRIVATE LIMITED.**

Nitesh Timesquare, 7th Floor,
No. 8, MG Road,
Bengaluru – 560001.

**(Rep. by. Sri. Siddharth Suman,
Advocate)**

1. This complaint is filed under section 31 of the RERA Act against the project “Nitesh Melbourne Park” developed by “M/s. NHDPL Properties Pvt. Ltd.,” for the relief of direction to the respondent to execute the sale deed in favour of the complainant.

Asst

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Brief facts of the complaint are as under:-

2. The complainant had booked a flat bearing No. H-0204 in the project of respondent wherein the complainant entered into an agreement for sale agreement on 20/11/2017 for the total sale consideration of Rs.1,02,28,692/- (Rupees One Crore Two Lakhs Twenty Eight Thousand Six Hundred and Ninety Two only) and paid Rs.29,54,284/- (Rupees Twenty Nine Lakhs Fifty Four Thousand Two Hundred and Eighty Four only) which has been paid by the complainant to the respondent from 30/04/2017 to 30/11/2017. The project was stalled and scrapped by Nitesh. The respondent had delayed the project and recently communicated that they are not going ahead with it. The respondent has not refunded the amount or given any compensation for the delay and breach of agreement. Hence, this complaint.
3. After registration of the complaint, in pursuance of the notice, the respondent has appeared before the Authority through his counsel and filed objections.

Objections of the respondent are as under:-

4. The respondent has denied all the allegations made against it by the complainant as false. It contends their name was changed to M/s. NHDPL Properties Pvt. Ltd., as per the order of Registrar of Companies dated 26/06/2019. Therefore, their name is changed to NHDPL South Private Limited, as per the order of Registrar of companies dated 22/04/2020. The Respondent is represented by its vice president – legal Sri. Gopinath K.S.
5. The complaint should be dismissed for non-joinder of the necessary parties. The landowners have not been parties to the complaint. Landowners have received consideration towards the purchase of apartment by the complainant.

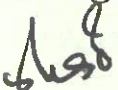
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6. It is submitted that as agreed in Clause – 7.1 of the sale agreement, if the delay in the project has caused due to the reason of act of god / force majeure / any unforeseen happening in such event it was agreed by the complainant that respondent developer will have the right to extend the time period for the delivery of the constructed flat. The agreed date of the possession of the apartment is 31st March 2022. As agreed in clause 7.5 of the sale agreement, if the purchaser cancels / withdraw his allotment in the project, the developer is entitled to forfeit a sum equivalent to 20% of the total sale consideration.
7. It is further submitted that, due to COVID-19 pandemic and shortage of labour and storage of raw materials the construction of the project was delayed. The complainant is requesting for the refund of deposit amount without any valid reason and the date of handing over of the questioned flat is not over and hence, the complainant is stopped from cancelling the booking of the flat at this juncture causing inconvenience and irreparable loss to the respondent.
8. Further, the complainant has not made full payment of consideration towards the purchase of apartment. The complaint should be directed to pay full consideration towards the purchase of the apartment. Hence, prayed to dismiss the complaint.
9. In support of their claim, the complainant has produced in all 5 documents such as copy of Sale agreement, Tripartite Agreement, Allotment Letter, Payment details and memo of calculation.
10. On the other hand, the respondent has produced in all 2 documents such as copy of Company incorporation certificate and certified true extract of the schedule of Authority approved by the board of directors of NHDPL south private limited (Formerly NHDPL Properties Private Limited) at their meeting held on February 14, 2020.
11. Heard arguments of both sides.



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12. **On the above averments, the following points would arise for my consideration:-**

1. Whether the complainant is entitled for the relief claimed?
2. What order?

13. **My answer to the above points is as under:-**

1. In the Affirmative.
2. As per final order for the following

REASONS

14. **My findings on point No. 1:-** From the materials available on records, it is apparent that in spite of entering into an sale agreement to handover the possession of an apartment, the builder has not completed the project as per agreement and has delayed the project. Hence, the builder has failed to abide by the terms of the sale agreement dated 20/11/2017. There seems to be no possibility of completing the project or handing over possession in near future.

15. In the judgement reported in Civil Appeal No. 3581-3590 of 2020 at para No. 23 between M/s. Imperia Structures Ltd., V/s. Anil Patni and another by the Hon'ble Supreme court it is held that,

"In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In

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that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment."

16. Therefore, as per section 18(1) of the Act, the promoter is liable to return the amount received along with interest and compensation only as the promoter fails to complete or provide possession of an apartment etc., in accordance with sale agreement.
17. From the averments of the complaint and the copy of agreement between the parties, the complainant has already paid substantial sale consideration. Having accepted the said amount and failure to keep up promise to handover possession of apartment certainly entitles the complainant herein for refund with interest.
18. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.
19. Accordingly, the point raised above is answered in the Affirmative.
20. **My answer to point No.3:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following

ORDER

1. In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/201115/0007063 is hereby allowed

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2. The respondent is hereby directed to pay Rs.29,54,284/- (Rupees Twenty Nine Lakhs Fifty Four Thousand Two Hundred and Eighty Four Only) towards refund with interest at the rate of SBI MCLR+2% from 30/10/2017 to till the date of entire realisation.
3. The complainant is at liberty to enforce the said order in accordance with law if the respondent fails to comply with the above order.



(H.C. Kishore Chandra)

Chairman
K-RERA