

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

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/200220/0004080**

**DATED THIS 16<sup>th</sup> DAY OF FEBRUARY, 2023**

**COMPLAINANT.....**

**ANIL REBELLO,**  
1085, 3<sup>rd</sup> Cross,  
S H Layout,  
Dr. Ambedkar College Main Road,  
Bengaluru – 560032.

**(In person)**

**V/S**

**RESPONDENTS.....**

**NITESH HOUSING DEVELOPERS  
PRIVATE LIMITED.**

Nitesh Timesquare, 7<sup>th</sup> Floor,  
No. 8, MG Road,  
Bengaluru – 560001.

Now called as,  
**NHDPL PROPERTIES PRIVATE  
LIMITED,**  
No. 110, Level 1, Andrews Building,  
M.G. Road, Bengaluru – 560001.

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

**PROJECT NAME &  
REGISTRATION NO.**

**NITESH MELBOURNE PARK  
PRM/KA/RERA/1251/446/  
PR/170916/000224**

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12/8

**ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,**

**Karnataka Real Estate Regulatory Authority,**

# 1/14, 2nd Floor, Silver Jubilee Block, Unity Building Backside, CSI Compound,  
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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 refund with interest.

**Brief facts of the complaint are as under:-**

2. The complainant had booked a flat bearing No. D-0103 in the project of respondent wherein the complainant entered into an agreement for sale agreement on 28/10/2017 for the total sale consideration of Rs.92,60,116/- (Rupees Ninety Two Lakhs Sixty Thousand One Hundred and Sixteen only) and paid Rs.29,10,614/- (Rupees Twenty Nine Lakhs Ten Thousand Six Hundred and Fourteen only) which has been paid by the complainant to the respondent from 13/04/2017 to 28/02/2018. 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 and kept postponing the dates for refund by giving excuses. 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

*Ans*

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received consideration towards the purchase of apartment by the complainant.

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 31<sup>st</sup> March 2021. 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 7 documents such as copy of Sale agreement, Allotment Letter, Booking form, Floor plan, payment schedule, Email intimation 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





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private limited (Formerly NHDPL Properties Private Limited) at their meeting held on February 14, 2020.

11. Hearings were conducted on 29/04/2022, 27/05/2022, 01/07/2022 and finally on 12/12/2023.
12. Heard arguments of both sides.
13. **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?
14. **My findings on the above points is as under:-**
  1. In the Affirmative.
  2. As per final order for the following

**REASONS**

15. **My finding 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 28/10/2017. There seems to be no possibility of completing the project or handing over possession in near future.
16. 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*

*Ag*

## ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ,

### Karnataka Real Estate Regulatory Authority,

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*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 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."*

17. 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.
18. 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.
19. Therefore, it is incumbent upon the respondent to refund the amount with interest which is determined as under:-

*Asst*

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**INTEREST CALCULATION TILL 30/04/2017 (BEFORE RERA)**

S.NO	DATE	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	INTEREST @9%
1	13-04-2017	100,000	17	30-04-2017	419
2				TOTAL INTEREST ( I1 )	419

**INTEREST CALCULATION FROM 01/05/2017 (AFTER RERA)**

S.NO	DATE FROM 01/05/2017	AMOUNT PAID BY CUSTOMER	NO OF DAYS	NO OF DAYS TILL	MCLR INTEREST X%	INTEREST RATE X+2%	INTEREST @X+2%
1	04-05-2017	200,000	1856	03-06-2022	8.15	10.15 as on 01-05-2017	103,224
2	29-05-2017	400,000	1831	03-06-2022	8.15	10.15 as on 01-05-2017	203,667
3	01-06-2017	100,000	1828	03-06-2022	8.15	10.15 as on 01-06-2017	50,833
4	30-06-2017	700,000	1799	03-06-2022	8.15	10.15 as on 01-06-2017	350,188
5	16-08-2017	300,000	1752	03-06-2022	8.15	10.15 as on 01-08-2017	146,160
6	24-10-2017	35,487	1683	03-06-2022	8.15	10.15 as on 01-10-2017	16,608
7	28-02-2018	1,375,127	1556	03-06-2022	8.1	10.1 as on 01-02-2018	592,080
8	TOTAL AMOUNT	3,110,614				TOTAL INTEREST ( I2 )	1,462,760

**MEMO CALCULATION**

PRINCIPLE AMOUNT ( A )	INTEREST ( B = I1 + I2 + I3 ) AS ON 03-06-2022	REFUND FROM PROMOTER ( C )	TOTAL BALANCE AMOUNT ( A + B - C )
3,110,614	1,463,179	0	4,573,793

20. Considering all these facts, this Authority concludes that the complainant is entitled for the relief claimed.
21. Accordingly, the point raised above is answered in the Affirmative.
22. **My finding on point No.2:-** In view of the above discussion, the complaint deserves to be allowed. Hence, we proceed to pass the following

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## **ORDER**

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/200220/0004080 is hereby allowed

1. The respondent is directed to pay the amount of Rs.45,73,793/- (Rupees Forty Five Lakhs Seventy Three Thousand Seven Hundred and Ninety Three Only) towards refund with interest to the complainant within 60 days from the date of this order, calculated at 9% from 13/04/2017 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 03/06/2022.
2. The interest due from 04/06/2022 up to the date of final payment will be calculated likewise and paid to the complainant.
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.

No order as to costs.

  
(H.C. KISHORE CHANDRA)  
Chairman  
K-RERA







# ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ

Cmp.No: 4080

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ

Mr. Anil Rebello

Nitesh Melbourne Parks.

ಕಂಡಿಕೆ  
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಅದೇಶಗಳು

**CMP- 4080**

**21.06.2023**

As per the request of the complainant 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 complainant Mr. Anil Rebello and Sri. Harish Kumar M.D Authorized Signatory of the respondent present, in the pre-Lok-Adalat sitting held on 21.06.2023. 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, dated: 21.06.2023 entered between them filed during the pre Lok Adalat sitting. 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 respondent has handed over two separate DD's bearing Nos.: 037759 for sum of Rs. 29,00,000/- (Rupees Twenty Nine Lakhs Only) drawn in-favor of the complainant and 037760 for sum of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) drawn in-favor of the CFM Asset Reconstruction Private Limited, both dated: 21.06.2023 drawn HDFC Bank, Millers Road, Bengaluru in all for total amount of Rs. 49,00,000/- (Rupees Forty Nine Lakhs Only). The dispute in connection with execution proceedings in the above case is settled between the parties in the pre-Lok Adalat in terms of the joint memo dated: 21.06.2023 and Xerox copy of memorandum of settlement dated: 21.06.2023 annexed with joint memo. The matter referred to conciliators to pass award.

Received two DDs for a  
sum of Rs. 49 lakhs only

*(Anil & Rebello)*

For NIDPL South Private Limited  
*Nitesh*  
Authorised Signatory

*21/6/23.*  
Judicial Conciliator.

*S. J. K. H. H.*  
Advocate Conciliator.



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

**CMP/200220/0004080**

**BETWEEN:**

**Mr. Anil Rebello**

**.....Complainant**

**AND:**

**Nitesh Housing Developers Pvt. Ltd.,  
(Presently known as  
NHDPL South Private Limited)**

**....Respondent**

**JOINT MEMO**

The Complainant herein had filed the above mentioned Case before this Hon'ble Authority seeking refund of booking amount /advance amount in connection with the **Flat No.D-0103**, Nitesh Melbourne Park Project which came to allowed on **16<sup>th</sup> Feb, 2023**. Subsequently complainant has filed an execution petition for execution of above said order.

Subsequently, both Complainant 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 **21<sup>st</sup> June 2023** resolved and settled all the disputes and issues, and signed the Memorandum of Settlement.

For NHDPL South Private Limited

Authorised Signatory

  
ANIL J REBELLO




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.

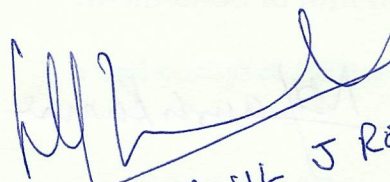
As per the terms of the above mentioned MOS, no claims, differences and/or disputes are pending between the Parties and no further claims or disputes will be raised by either party in connection with the issues arising in the present Case.

The respondent has handed over two separate DD's bearing Nos.: **037759** for sum of **Rs. 29,00,000/- (Rupees Twenty Nine Lakhs Only)** drawn in-favor of the complainant and **037760** for sum of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** drawn in-favor of the CFM Asset Reconstruction Private Limited, both dated: 21.06.2023 drawn HDFC Bank, Millers Road, Bengaluru in all for total amount of **Rs. 49,00,000/- (Rupees Forty Nine Lakhs Only)** to the Complainant towards full and final settlement of the claim involved in the above mentioned case.

The complainant herein has agreed and undertaken to settle the dues payable to India Bulls Housing Finance Limited bearing File A/C.NO **HHLBAG00414654** and to close the said account also undertakes to provide a copy of Bank Loan Closure letter to the Respondent herein.

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

For CFM Asset Reconstruction Private Limited  
  
Authorised Signatory

  
ANIL J REBELLO

In view of the above mentioned Memorandum of Settlement dated **21<sup>st</sup> June 2023** arrived at between the parties, the Parties to the Complaint request this Hon'ble Authority to record the above mentioned Memorandum of Settlement dated **21<sup>st</sup> June 2023** and dispose off the execution claim pending in the above Case as fully and finally settled as per this joint memo and to recall the RRC from the concerned DC Office if already issued.

**Place: Bengaluru**

  
**Complainant**

**Dated: 21.06.2023**

  
**Authorised Signatory Of**  
**Respondent**