

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/210312/0007784

DATED THIS 16th DAY OF FEBRUARY, 2023

COMPLAINANTS.....

1. **SHRIKANT SARDA &**
2. **NAMRATA SARDA,**
B1409/10, Five Gardens,
Near Jagtap Dairy, Pimple Saudagar,
Pune - 411017.

(In person)

V/S

RESPONDENTS.....

**NITESH HOUSING DEVELOPERS
PRIVATE LIMITED.**

Nitesh Timesquare, 7th 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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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 complainants had booked a flat bearing No. E0107 in the project of respondent wherein the complainant entered into an agreement for sale agreement on 22/06/2016 for the total sale consideration of Rs.84,28,183/- (Rupees Eighty Four Lakhs Twenty Eight Thousand One Hundred and Eighty Three only) and paid Rs.16,31,474/- (Rupees Sixteen Lakhs Thirty One Thousand Four Hundred and Seventy Four only) which has been paid by the complainant to the respondent from 17/05/2014 and 18/05/2016. 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 for last 20 months. 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

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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 21/06/2020. 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 4 documents such as copy of Sale 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



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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 finding to 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 22/06/2016. 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

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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:-

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 | 17-05-2014 | 300,000 | 1079 | 30-04-2017 | 79,816 |

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| S.NO | DATE | AMOUNT PAID BY CUSTOMER | NO OF DAYS | NO OF DAYS TILL | INTEREST @9% |
|------|------------|-------------------------|------------|-----------------------|--------------|
| 2 | 18-05-2016 | 1,331,474 | 347 | 30-04-2017 | 113,923 |
| 3 | | | | TOTAL INTEREST (I1) | 193,739 |

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 | 01-05-2017 | 1,631,474 | 1855 | 30-05-2022 | 8.15 | 10.15 AS ON 01-05-2017 | 841,583 |
| 2 | TOTAL AMOUNT | 1,631,474 | | | | TOTAL INTEREST (I2) | 841,583 |

MEMO CALCULATION

| PRINCIPLE AMOUNT (A) | INTEREST (B = I1 + I2 + I3) AS ON 30-05-2022 | REFUND FROM PROMOTER (C) | TOTAL BALANCE AMOUNT (A + B - C) |
|------------------------|--|----------------------------|------------------------------------|
| 1,631,474 | 1,035,322 | 0 | 2,666,796 |

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

ORDER

In exercise of the powers conferred under Section 31 of the Real Estate (Regulation and Development) Act, 2016, the complaint bearing No. CMP/210312/0007784 is hereby allowed

1. The respondent is directed to pay the amount of Rs.26,66,796/- (Rupees Twenty Six Lakhs Sixty Six Thousand Seven Hundred and Ninety Six Only) towards refund with interest to the

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complainant within 60 days from the date of this order, calculated at 9% from 17/05/2014 to 30/04/2017 and at SBI MCLR+2% from 01/05/2017 till 30/05/2022.

2. The interest due from 31/05/2022 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



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ಕಡತ ಸಂಖ್ಯೆ Comp.No: 7784

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Shrikant Sarda & Another

Nitesh Melbourne Park

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CMP- 7784

23.05.2023

As per the request of the Authorised person of 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. Mr. Suhas Fitwe, Authorised person of complainants and Sri. Harish Kumar M.D Authorized Signatory of the respondent present, in the pre-Lok-Adalat sitting held on 23.05.2023 and complainant joined in pre Lok Aadalat through WhatsApp video call, 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. 26,66,796/- (Rupees Twenty Six Lakhs Sixty Six Thousand Seven Hundred and Ninety Six 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 Mr. Suhas Fitwe, Authorised person of complainants and the Authorised signatory of the respondent. The authorized signatory of the respondent has handed over two separate DD's (Manager's Cheque) bearing Nos.187659 and 187660 respectively drawn in the name of complainant No.1 & 2 both dated:22.05.2023 for a sum of Rs.13,33,398/- (Rupees Thirteen Lakhs Thirty Three Thousand Three Hundred And Ninety Eight Only) each, to Mr. Suhas Fitwe, Authorised person of complainants. The complainants have authorised Mr. Suhas Fitwe, Authorised person



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Shrikant Sarda & Another

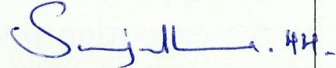
Nitesh Melbourne Park.

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of complainants to collect DD's for the settled amount and the complainants have e-mailed authorization letter dated: 19.05.2023. 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 dated: 23.05.2023, the execution proceedings in connection with above case are closed. The matter referred to conciliators to pass award.


23/5/23,
Judicial Conciliator.


Advocate Conciliator.

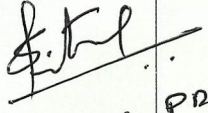
PRABHAKAR FITWE)

23.05.2023

For Nitesh Melbourne Park Private Limited

Authorised Signatory

Received
Separate
two separate
DDs for sum
of Rs. 13,33,398
each



(SUMAS

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

COMPLAINT NO: CMP/210312/0007784

COMPLAINANTS : 1. Mr. Shrikant Sarda
2. Mrs. Namrata Sarda

-Vs-


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

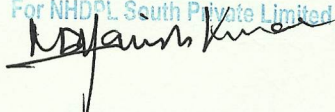
JOINT MEMO

The Mr. Suhas Fitwe, Authorised person of 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 Mr. Suhas Fitwe, Authorised person of 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 Mr. Suhas Fitwe, Authorised person of complainants has agreed to receive today a sum of **Rs. 26,66,796/- (Rupees Twenty Six Lakhs Sixty Six Thousand Seven Hundred and Ninety Six Only)** by way of two separate Demand Drafts (Manager's cheque) bearing Nos.187659 and 187660 respectively drawn in the name of complainant No.1 & 2 both dated:22.05.2023 for a sum of Rs.13,33,398/- (Rupees Thirteen Lakhs Thirty Three Thousand Three Hundred And Ninety Eight Only) each.


(SUHAS PRABHAKAR FITWE)

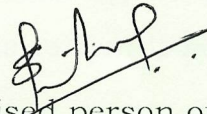
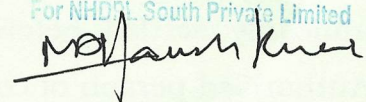
For NHDPL South Private Limited

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.

4. Mr. Suhas Fitwe, Authorised person of complainants and Authorised signatory of the respondent request that this settlement be recorded in the National Lok-Adalat to be held on 08.07.2023.

Place: Bengaluru

Date: 23.05.2023


Authorised person of
Complainants/Allottees
(SUHAS PRABHAKAR FITWE)
For NHDFL South Private Limited

Authorized Signatory of
Respondent/ Promoter