

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/181114/0001633

Date: 11th FEBRUARY 2019

Complainant : MOHANDAS HASYAGAR
149(B), Sobha Malachite, Sobha Ultima
Campus, Jakkur Plantations, Bellary Road,
Bengaluru- 560064

AND

Opponent : Nitesh Napa Valley,
Nitesh Housing Developers Private Limited.,
and Others
7th Floor, Nitesh Timesquare, No. 8,
M.C. Road, Bengaluru - 560080

J U D G E M E N T

1. This complaint has been filed by the complainant under section 31 of Real Estate Regulatory Authority, Act seeking the refund of Rs. 1,61,28,532. It means the complainant is seeking refund of the entire amount paid to the developer. The gist of the complaint is as under:

The Complainants entered into a Sale Agreement and a Construction Agreement both dated 26.05.2014 in respect of ?Nitesh Napa Valley?, a villa project conceived by Nitesh Housing Developers Pvt Ltd (The Company) at Vadeyarapura Village, Yelahanka Hobli, Bangalore North Taluk. The Sale Agreement was in respect of 3551.50 sq. ft. of undivided share, right, title and interest in the said property and the construction agreement, was in respect of a villa bearing no. C-076 ad

measuring 2712 sq. ft. of built up area, Type C on the said property. 2. Under the Agreements, the Complainants were liable to pay a total sum amounting of Rs.3,22,57,063/- inclusive of all taxes. The Complainants have paid a total sum of Rs.1,61,28,532/- which has been duly acknowledged by the Company. The Company had agreed and undertaken to deliver possession of the Villa fully constructed as per the specifications stated in the agreements, on or before 31st December, 2015 with a grace period of an additional six (6) months. 3. Despite receiving Rs.1,61,28,532/- under the agreements, no progress has been made in construction over the last three years. There is a tertiary storm water drain passing through the project and the BBMP has further notified that the tertiary storm water drain which is passing through the project has been encroached by the Company. The villa agreed to be purchased by the Complainants is next to the storm water at a distance less than 25mtrs and the said distance on measurement is 14 mtrs. 4. The plan approved by the statutory authorities was valid only till 06.03.2015 and in view of the orders of the National Green Tribunal stating that the buffer zone for tertiary storm water drain is 25m from the edge of the storm water drain, even the said plan approved on 07.03.2013, cannot be acted upon and the Company has not taken any steps to mitigate the Complainants' rights and interest in respect of the villa agreed to be purchased by them.

Relief Sought from RERA : Refund of entire amount with interest compensation

2. After registration of the case notice has been issued to the developer. In pursuance of the same the parties have appeared on 23 November 2018. The complainant also has filed his documents in support of his claim. I have heard the arguments on the dispute.
3. It is the case of the complainant that he has paid Rs.1,61,28,532/- towards purchase of villa from the developer. In this regard the complainant has given the details in para number 5 of his complaint which reads as under;

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11/02/19

The complainant submits that despite receiving the initial amount of Rs.1,61,28,532/- (Rupees One Crore sixty one lakhs Twenty Eight Thousand Five Hundred and Thirty Two) under the terms of the agreements, the construction of the villa is still in the nascent stage and no progress has been made over the last three (3) years. The complainants further submit that they had contracted to build the villa no.C-076 in type C and the complaints have noticed that there is a tertiary storm water drain passing through the project as per the storm water drain maps published by the Government of Karnataka. The complainants submit that the BBMP has further notified that the tertiary storm water drain which is passing through the project has been encroached by the First Respondent. The complaints submit that the villa agreed to be purchased by them is next to the storm water drain and the distance between the tertiary storm water drain and the complainants' proposed villa is less than 25mtrs and the said distance on measurement is 14 mtrs.

4. Per Contra developer has said in his objections admitting that the complainant has entered into agreement to purchase villa. The construction agreement has been executed on 26/05/2014.
5. The developer has taken a contention in his objection statement to the effect that the complainant is not eligible to terminate the agreement because the delay has been caused only on account of Force Majeure. In support of the same the developer has contended in para number 7 of his objection statement which reads as under:

It is further submitted that in case of cancellation of agreement by the complainant as per clause 3.5 the Respondent is entitled to forfeit/withhold 18% of the amount received towards administrative charges and the balance will be refunded within 180 days or upon resale of the villa, whichever is later. Since the complainant has sought for cancellation and refund of the amount the same will be considered as per the agreement and upon resale of the villa the balance amount will be refunded to the complainant. A copy of the Construction Agreement is herewith produced as Document No.1

6. As per construction agreement the developer was expected to deliver the possession of the villa on or before June 2016 including the grace period. But till today the developer has failed to complete the project and failed to deliver the villa in favour of the complainant. Therefore the complainant has approached this authority with prayer to terminate the agreement by refunding the amount paid by him along with interest at the rate of 24 % per annum. As per section 18 of Act it is the desire of the complainant either to go with the project or to go away from the project.
7. In this case the complaint wanted to go out of the project because the developer has failed to complete the project as agreed in the agreement. It is a fact that the developer has not been able to complete the project within the time mentioned in the agreement. In addition to it, the complainant has decided to go away from the project on the ground that the developer has put up the project and the flat purchased by the complainant is very nearer to storm water drain which is against to the order of the NGT. It means the complaint wanted to say that the project itself is not constructed on the land where the developer is having good title. As per section 18(2) the consumer can go out of the project in case there is a defective title. I would say that the allegation made by the complainant has not been disproved by the developer but admitted in his objection statement stating that he will resolve the issue with the BBMP. In this connection the developer has contended in his objection statement at Para No. 5 with reads as under;

It is submitted that the Respondent has taken all the necessary steps ensure that the rights and interest of the complainant in the villa are protected. The construction work in the project is in progress and the Respondent is committed to complete the same as per the timeline agreed before this Authority. Further the Respondent has made arrangements to resolve the matter with the BBMP regarding the encroachment of the storm water drain.

8. At the time of argument counsel for the complainant submit that the developer has suppressed the material facts with respect to encroachment of government land and the project has been constructed on the prohibited area.
9. Per Contra the learned counsel for the developer submit that the project will be completed in the month of July 2020. The progress of the project is in continuous process and the developer is able to deliver the goods as the date given in the RERA. The sum and substance of the argument of the developer is that the complainant is not entitled for the refund of the amount because there is a class for forfeiture. Secondly if at all the complainant wanted to go out of the project his amount will be refunded only after the sale of all the units till then he has to wait.
10. This submission has been strongly opposed by the complainant on the ground that he is entitled for refund of the amount without any deduction on the ground that the project itself is not on the land where the developer is having good title. The suppression of the material facts leads to the complainant to withdraw from the project.
11. The points raised by the parties it is clear that the developer has failed to give the possession as per the agreement. In addition to it the flat purchased by the complainant is nearer to drain is also a good reason for him to go away from the project. What ever the contention taken by the developer is not acceptable in view of the above facts.
12. Before passing the final order I would say that as per S.71 (2) RERA, the complaint will have to be closed within 60 days from the date of filing. In this case the complaint was filed on 14/11/2018. As per SOP 60 days shall be computed from the date of appearance of the parties. In the present case, the parties have appeared on 23/11/2019. Hence the complaint is being disposed of with some delay. With this observation I proceed to pass following order.

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11/02/19

ORDER

1. The Complaint No. CMP/181114/0001633 has been allowed by directing the developer to refund the amount of Rs.1,61,28,532/-.
2. The developer is also directed to pay simple interest @9% P.A on the respective amount on the respective date up to April 2017 and @10.75% P.A from May 2017 till the realization of entire amount.
3. The developer is hereby directed to hand over the necessary documents to the complainant in case he has paid GST to the Government to enable the complainant to take back that amount.
4. The complainant is hereby directed to execute the cancellation deed in favour of the Developer after the entire amount has been realized.
5. The developer also directed to pay Rs.5,000/- as cost of this petition.

Intimate the parties regarding the Order.

(Typed as per Dictated, Verified, Corrected and
Pronounced on 11/02/2019)

(K.PALAKSHAPPA)
Adjudicating Officer



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ಕಡತ ಸಂಖ್ಯೆ Comp. No: 1633

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Mohandas Hasyagar

Nitesh Narya Vally

ಕಂಡಿಕೆ
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ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP- 1633

03.05.2023

As per the request of the Advocate for the complainants Sri. M.C. Thimmaiah 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 Advocate for complainants Sri. M.C. Thimmaiah and Sri. Harish Kumar M.D Authorized Signatory of the respondent present, in the pre-Lok-Adalat sitting held on 03.05.2023, the dispute between the parties with regard to the execution proceedings has been settled between the parties. The complainants have already been paid the agreed amount settled between them towards full and final satisfaction of their claim in connection with the execution proceedings in the aforesaid complaint and a joint memo dated: 03.05.2023 is being filed to this effect by the learned Advocate for the complainants and the Authorised signatory of the respondent. 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 aforesaid settlement entered in the pre-Lok Adalat in terms of the joint memo dated: 03.05.2023, the execution proceedings in connection with above case are closed. The RRC issued against the respondent Nitesh Housing Developers Pvt. Ltd., presently known as NHDPL South Pvt. Ltd., is hereby recalled. Issue intimation to concerned DC about the recall of the RRC in this case. The matter referred to conciliators to pass award.

M.C. Thimmaiah
M.C. THIMMAIAH
Adv for Complainants.

[Signature]
Judicial Conciliator.

[Signature], 44,
Advocate Conciliator.

[Signature]
For NHDPL South Private Limited
(HARISH KUMAR, M.D)
Authorized Signatory of
Respondent

Before the Lokadalath - K-RERA

Before the Hon'ble Adjudicating Officer
K-RERA at Bengaluru

CMP/181114/0001633

Between

Mohandas Hasyar & Ann.

..... Complainant

And

NHDPL South Pvt Ltd
(Previously known as
Nitesh Housing developers Pvt Ltd)

..... Respondent

JOINT MEMO

3/5
The Counsel for the Complainant & Respondent respectfully submit that in view of M/s True Blue Realty Pvt Ltd having paid the amount of Rs 2,54,00,000/- in full and final settlement of all amounts due and liable to the Complainant under order dated 11.02.2019 passed in CMP/181114/0001633, the Complainant had filed a Memo reporting the same on 12/07/2022. Copy of the said Memo is attached hereto as Annexure 'A'.

Hence the requisition filed by the Respondent dated 06/04/2023 may be allowed.

Pray for order accordingly.

Bangalore.

Date: 03/05/2023.

[Signature]

ADVOCATE FOR COMPLAINANTS
CM.C. THIMMAIAH.

[Signature]

~~ADVOCATE~~ RESPONDENT BY ITS

AUTHORISED SIGNATORY MK.

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

COMPLAINT NO.1633/2018

BETWEEN:

MR. MOHANDAS HASYAGAR
AND ANOTHER

..... COMPLAINANT

AND

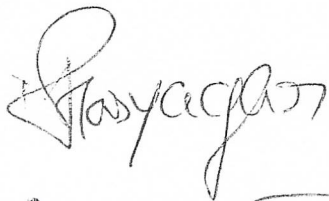
NITESH HOUSING DEVELOPERS
PRIVATE LIMITED AND OTHERS

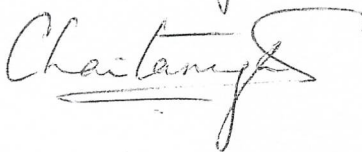
..... RESPONDENTS

**MEMO REGARDING RECEIPT OF AMOUNTS FROM M/S TRUE
BLUE REALTY PRIVATE LIMITED**

The Complainants herein respectfully submit that they had approached the Hon'ble High Court Karnataka by filing Writ Petition No. 9078/2020 (GM - RES) wherein RERA was arrayed as First Respondent. Pursuant to Order dated 05/10/2020 passed by this Authority, in PRM/KA/RERA/1251/309/PR/181031/002104 - Nitesh Napa Valley, approving the transfer of the Nitesh Napa Valley Project to M/s True Blue Realty Pvt. Ltd., the Complainants approached the Hon'ble High Court of Karnataka vide Writ Petition No. 42/2021. This authority was arrayed as First Respondent in Writ Petition No. 42/2021 also.

Based on the affidavits filed by us and M/s. True Blue Realty Pvt. Ltd., the aforesaid Writ Petitions came to be disposed off vide Order dated 20.04.2021. Print out of the Order dated 20.04.2021 taken from the website of the Hon'ble High Court of Karnataka is attached hereto as Annexure 'A'.





APPROVED

DATE

BY

Accordingly, M/s True Blue Realty Pvt. Ltd. have paid us a sum of Rs. 2,54,00,000/- and we have accepted the same as full and final settlement of all amounts due to us under Order dated 11.02.2019 passed by RERA in Complaint No. CMP/181114/0001633.

However, Nitesh Housing Developers Private Limited have not yet ensured closure of Crime No. 83/2019 pending before the Hon'ble X ACMM at Mayo Hall, Bangalore as submitted by them before the Hon'ble High Court of Karnataka.

The Complainants were awaiting the closure of Crime No. 83/2019 as submitted / undertaken by the Respondents, before informing this Hon'ble Authority of the above.

Place: Bangalore

Date: 15.06.2022.

Prasanna Chaitanya

COMPLAINANTS

M. Himmat

ADVOCATE FOR COMPLAINANTS

12/7/2022
Received
12/7/2022
12/7/2022