

**PROCEEDINGS OF THE AUTHORITY BEFORE BENCH 5**

**Present**

**HON'BLE MEMBER G.R. REDDY, IRS**

**Dated 03<sup>rd</sup> August, 2023**

**COMPLAINT NO: CMP/UR/200117/0005244**

**COMPLAINANT...**

**KRISHNAN NAIR SUSHIL  
No. 50/1286A, Ayyankali Road,  
Poonithura,  
Ernakulam-682038.  
DISTRICT: ERNAKULAM  
STATE: KERALA**

**(In Person)**

**Vs**

**RESPONDENT.....**

**Nitesh Housing Developers Pvt Ltd.,  
7<sup>th</sup> Floor, Nitesh Times Square,  
No.8, M G Road,  
BANGALORE-560001.**

**(Mr. Siddharth Suman, Advocate)**

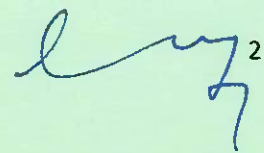
- 1.This complaint has been filed by the complainant under section 31 of the RERA Act against the project "**Nitesh Columbus Square Phase-2**" developed by M/s Nitesh Housing Developers Pvt Ltd., seeking for the relief of interest on delay period.
- 2.This project has been registered with RERA vide registration No. PRM/KA/RERA/1251/310/PR/180509/001673.



3.Said project is situated at Venugopal nagar, Hulimavu village, Arekere sub division, Bommanahalli zone.

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

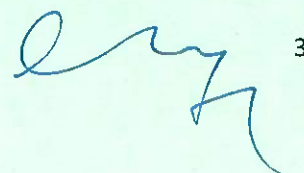
- 4.The complainant had purchased a flat in the project of respondent by entering into an agreement of sale dated 09/08/2011 and had paid the respondent an amount of Rs.69,48,263/- (Rupees Sixty Nine Lakhs Forty Eight Thousand Two Hundred and Sixty Three only) on various dates. As per sale agreement the respondent was under obligation to handover possession before the end of December 2015. Though more than eight years have been lapsed, the respondent has failed to complete the project as agreed and to handover the possession of the apartment to the complainant along with the Occupancy Certificate. Hence, the complainant had approached this Authority to direct the respondent to pay interest on delay period upto the possession. Hence, this complaint.
- 5.After registration of the complaint, in pursuance of the notices, the respondent has appeared before the Authority through its counsel and filed statement of objections as under.
- 6.The respondent has denied the entire allegation made against them by the complainant as false. The respondent states that the complainant has filed a complaint, that there is a delay in handover the possession of the flat by the respondent is absolutely false and baseless. There is no any delay has been caused in the construction of the project which can be squarely attributable to the respondent. Governmental delay, delay in approvals by statutory authorities, strikes, demonetisation and non-availability of river sand and delays owing to litigation

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initiated by mischievous elements against the respondent were the sole reasons for the delay, if any. On a mere glance at these issues faced shows that the construction was affected by events of force majeure over which the respondent could not have any reasonable foresight and which were not in their control. The respondent listed the reasons for delays are as under;

- a. Delay in obtaining Government and statutory approval from the B.D.A due to new rules or regulations enacted by the Government.
- b. A quality check of the apartment to be assessed by outside consultants which were appointed by the buyers.
- c. Due to demonetization of currency declared by the Central Government in the year 2016 there was major financial crises and there were no sufficient currencies with the banks for more than 6 months. The respondent was also affected financially and faced various issues to continue with the construction work in a smooth manner.
- d. The Cauvery water dispute and unrest, the respondent had to stop the construction work for a considerable period of time in Bangalore and also there is some strikes and roadblocks are affected.
- a. Due to curb on sand mining, there was strike by the sand suppliers in the past and hence, there was non-availability of good quality of sand, the respondent could not continue with the construction.
- e. Due to non-availability of labour, steel and good quality of sand on proper time the construction was stopped, the huge rainfall in Bangalore is also added upto the alleged delay.

7. On perusal of all the above, the respondent states that the complainant becomes evident that there lies several issues that have been faced that in no manner can be attributable to the respondent. An account of temporary injunction granted by the





Hon'ble City Civil Judge, Bengaluru against the builder by an Order dated 20-02-2018, in A.A No: 53 of 2018. The said order caused great hurdle to finish the project within the time frame. The complainant and respondent has mutually agreed and entered into agreements to refer the entire dispute arising from the transaction to dispute resolution through arbitrator as per the provision of Arbitration and conciliation Act. Hence, the respondent requested to dismiss the complaint.

8. In support of his claim, the complainant has produced documents such as copies of agreement of construction, email conversation with the respondent, payment receipts and memo of calculation as on 08-03-2023.

9. On the other hand, the respondent has furnished the statement of objection, certificate of change of name from NHDL to NHDPL.

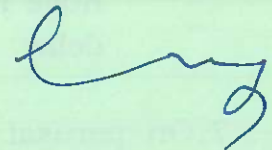
10. This matter is heard on 14-03-2023, 30-03-2023 and 20-06-2023.

11. **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?

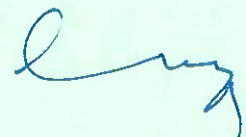
12. **My answer to the above points are as under:-**

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



### REASONS

13. **My answer to Point No. 1:-** It is undisputed that the respondent has failed to handover possession of the said flat to the complainants herein within agreed time even after receiving substantial sale consideration. As per the terms of agreement of sale between the parties, the possession of the apartment had to be handed over before the end of December 2015. When the respondent has failed to handover possession as agreed by them, the complainant has approached this forum for direction to the respondent for interest on delay period.
14. From the averments of the complaint and the copies of agreement between the parties, it is obvious that complainant has already paid substantial sale consideration to the respondent. Having accepted the said amount and failure to keep up promise to handover possession of the apartment even after eight years, certainly entitles the complainant herein for delay period interest. The complainant has claimed Rs.49,28,425/- (Rupees Forty Eight Lakhs Twenty Eight Thousand Four Hundred and Twenty Five only) as delay period interest vide their memo of calculation as on 08/03/2023 calculated from 08/12/2015 to 08/02/2023. Despite opportunities were given, the respondent has not filed his memo of calculation. Having regard to all these aspects, this Authority concludes that the complainant is entitled for delay period interest from 08/12/2015 to 08/02/2023 and later on.
15. The complainant has established his claim by producing supporting documents i.e. Agreement of Sale dated 26/08/2011, Payment receipts and Memo of Calculation.




16. A thorough verification of the documentary evidence submitted by the complainant reveals that his claim is genuine. Having regard to all these aspects, this Authority concludes that the complainant is entitled for interest on delay period as submitted vide his memo of calculation as on 08/03/2023.

Payment Details			
S.NO	TYPE	AMOUNT	DATE
1	TOTAL PAYMENT TILL POSSESSION	69,48,263	08/12/2015
2	TOTAL DELAYED INTEREST as on 08/03/2023	49,28,425	

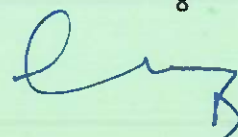
Interest Calculation						
S. NO	FROM DATE	TO DATE	NO. OF DAYS	MCLR RATE	INTEREST RATE	INTEREST
INTEREST CALCULATION FOR AMOUNT PAID TILL POSSESSION 69,48,425/-						
1	08-12-2015	08-01-2016	31		9	53,111
2	08-01-2016	08-02-2016	31		9	53,111
3	08-02-2016	08-03-2016	29		9	49,684
4	08-03-2016	08-04-2016	31		9	53,111
5	08-04-2016	08-05-2016	30		9	51,398
6	08-05-2016	08-06-2016	31		9	53,111
7	08-06-2016	08-07-2016	30		9	51,398
8	08-07-2016	08-08-2016	31		9	53,111
9	08-08-2016	08-09-2016	31		9	53,111



10	08-09-2016	08-10-2016	30		9	51,398
11	08-10-2016	08-11-2016	31		9	53,111
12	08-11-2016	08-12-2016	30		9	51,398
13	08-12-2016	08-01-2017	31		9	53,111
14	08-01-2017	08-02-2017	31		9	53,111
15	08-02-2017	08-03-2017	28		9	47,971
16	08-03-2017	08-04-2017	31		9	53,111
17	08-04-2017	08-05-2017	30		9	51,398
18	08-05-2017	08-06-2017	31	8.15	10.15 as on 01-05- 2017	59,897
19	08-06-2017	08-07-2017	30	8.15	10.15 as on 01-06- 2017	57,965
20	08-07-2017	08-08-2017	31	8.15	10.15 as on 01-07- 2017	59,897
21	08-08-2017	08-09-2017	31	8.15	10.15 as on 01-08- 2017	59,897
22	08-09-2017	08-10-2017	30	8.15	10.15 as on 01-09- 2017	57,965
23	08-10-2017	08-11-2017	31	8.15	10.15 as on 01-10- 2017	59,897
24	08-11-2017	08-12-2017	30	8.1	10.1 as on 01-11- 2017	57,680
25	08-12-2017	08-01-2018	31	8.1	10.1 as on 01-12- 2017	59,602

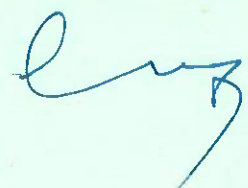


26	08-01-2018	08-02-2018	31	8.1	10.1 as on 01-01- 2018	59,602
27	08-02-2018	08-03-2018	28	8.1	10.1 as on 01-02- 2018	53,834
28	08-03-2018	08-04-2018	31	8.35	10.35 as on 01-03- 2018	61,078
29	08-04-2018	08-05-2018	30	8.35	10.35 as on 01-04- 2018	59,107
30	08-05-2018	08-06-2018	31	8.35	10.35 as on 01-05- 2018	61,078
31	08-06-2018	08-07-2018	30	8.45	10.45 as on 01-06- 2018	59,678
32	08-07-2018	08-08-2018	31	8.45	10.45 as on 01-07- 2018	61,668
33	08-08-2018	08-09-2018	31	8.45	10.45 as on 01-08- 2018	61,668
34	08-09-2018	08-10-2018	30	8.65	10.65 as on 01-09- 2018	60,821
35	08-10-2018	08-11-2018	31	8.7	10.7 as on 01-10- 2018	63,143
36	08-11-2018	08-12-2018	30	8.7	10.7 as on 01-11- 2018	61,106
37	08-12-2018	08-01-2019	31	8.7	10.7 as on 01-11- 2018	63,143



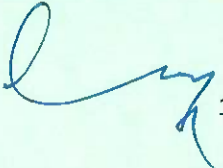


38	08-01-2019	08-02-2019	31	8.75	10.75 as on 10-12-2018	63,438
39	08-02-2019	08-03-2019	28	8.75	10.75 as on 10-01-2019	57,299
40	08-03-2019	08-04-2019	31	8.75	10.75 as on 10-02-2019	63,438
41	08-04-2019	08-05-2019	30	8.75	10.75 as on 10-03-2019	61,392
42	08-05-2019	08-06-2019	31	8.7	10.7 as on 10-04-2019	63,143
43	08-06-2019	08-07-2019	30	8.65	10.65 as on 10-05-2019	60,821
44	08-07-2019	08-08-2019	31	8.65	10.65 as on 10-06-2019	62,848
45	08-08-2019	08-09-2019	31	8.6	10.6 as on 10-07-2019	62,553
46	08-09-2019	08-10-2019	30	8.45	10.45 as on 10-08-2019	59,678
47	08-10-2019	08-11-2019	31	8.35	10.35 as on 10-09-2019	61,078
48	08-11-2019	08-12-2019	30	8.25	10.25 as on 10-10-2019	58,536
49	08-12-2019	08-01-2020	31	8.2	10.2 as on 10-11-2019	60,192

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50	08-01-2020	08-02-2020	31	8.2	10.2 as on 10-12-2019	60,192
51	08-02-2020	08-03-2020	29	8.2	10.2 as on 10-01-2020	56,309
52	08-03-2020	08-04-2020	31	8.15	10.15 as on 10-02-2020	59,897
53	08-04-2020	08-05-2020	30	8.05	10.05 as on 10-03-2020	57,394
54	08-05-2020	08-06-2020	31	7.7	9.7 as on 10-04-2020	57,242
55	08-06-2020	08-07-2020	30	7.55	9.55 as on 10-05-2020	54,539
56	08-07-2020	08-08-2020	31	7.3	9.3 as on 10-06-2020	54,881
57	08-08-2020	08-09-2020	31	7.3	9.3 as on 10-07-2020	54,881
58	08-09-2020	08-10-2020	30	7.3	9.3 as on 10-08-2020	53,111
59	08-10-2020	08-11-2020	31	7.3	9.3 as on 10-09-2020	54,881
60	08-11-2020	08-12-2020	30	7.3	9.3 as on 10-10-2020	53,111
61	08-12-2020	08-01-2021	31	7.3	9.3 as on 10-11-2020	54,881

62	08-01-2021	08-02-2021	31	7.3	9.3 as on 10-12- 2020	54,881
63	08-02-2021	08-03-2021	28	7.3	9.3 as on 10-01- 2021	49,570
64	08-03-2021	08-04-2021	31	7.3	9.3 as on 10-02- 2021	54,881
65	08-04-2021	08-05-2021	30	7.3	9.3 as on 10-03- 2021	53,111
66	08-05-2021	08-06-2021	31	7.3	9.3 as on 10-04- 2021	54,881
67	08-06-2021	08-07-2021	30	7.3	9.3 as on 15-05- 2021	53,111
68	08-07-2021	08-08-2021	31	7.3	9.3 as on 15-06- 2021	54,881
69	08-08-2021	08-09-2021	31	7.3	9.3 as on 15-07- 2021	54,881
70	08-09-2021	08-10-2021	30	7.3	9.3 as on 15-08- 2021	53,111
71	08-10-2021	08-11-2021	31	7.3	9.3 as on 15-09- 2021	54,881
72	08-11-2021	08-12-2021	30	7.3	9.3 as on 15-10- 2021	53,111
73	08-12-2021	08-01-2022	31	7.3	9.3 as on 15-11- 2021	54,881





74	08-01-2022	08-02-2022	31	7.3	9.3 as on 15-12-2021	54,881
75	08-02-2022	08-03-2022	28	7.3	9.3 as on 15-01-2022	49,570
76	08-03-2022	08-04-2022	31	7.3	9.3 as on 15-02-2022	54,881
77	08-04-2022	08-05-2022	30	7.3	9.3 as on 15-03-2022	53,111
78	08-05-2022	08-06-2022	31	7.4	9.4 as on 15-04-2022	55,471
79	08-06-2022	08-07-2022	30	7.5	9.5 as on 15-05-2022	54,253
80	08-07-2022	08-08-2022	31	7.7	9.7 as on 15-06-2022	57,242
81	08-08-2022	08-09-2022	31	7.8	9.8 as on 15-07-2022	57,832
82	08-09-2022	08-10-2022	30	8.0	10.0 as on 15-08-2022	57,109
83	08-10-2022	08-11-2022	31	8.0	10.0 as on 15-09-2022	59,012
84	08-11-2022	08-12-2022	30	8.25	10.25 as on 15-10-2022	58,536
85	08-12-2022	08-01-2023	31	8.35	10.35 as on 15-11-2022	61,078



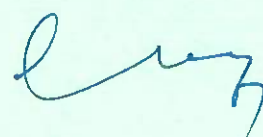
86	08-01-2023	08-02-2023	31	8.6	10.6 as on 15-12-2022	62,553
87	08-02-2023	08-03-2023	28	8.6	10.6 as on 15-01-2023	56,499
					TOTAL DELAYED INTEREST as on 08/03/2023	4,928,425

16. Accordingly the point raised above is answered in the Affirmative.

17. **My answer to point No.2:-** In view of the above discussion, I am of the opinion that this complaint deserves to be allowed. Hence, I 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/UR/200117/ 0005244** is hereby allowed. Respondent is directed to pay a sum of **Rs.49,28,425/- (Rupees Forty Nine Lakhs Twenty Eight Thousand Four Hundred and Twenty Five only)** towards delay period interest as on 08/3/2023 to the complainant within 60 days from the date of this order.



The interest due from 09/03/2023 up to the date of final payment will be calculated as per MCLR + 2% and paid to the complainant.

The complainant is at liberty to initiate action for recovery in accordance with law if the respondent fails to comply with the order of this Authority.

No order as to costs.

  
**(G R REDDY, IRS)**  
**Member, K-RERA**