

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಪ್ಲಾಟ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್ ಹಿಂಭಾಗ, ಸಿ.ಎಸ್.ಐ.ಕಾಂಪೌಂಡ್,
3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

BEFORE ADJUDICATING OFFICER, RERA

BENGALURU, KARNATAKA

Presided by Sri K Palakshappa

Adjudicating Officer

Date: 17th March 2020

Complaint No:	CMP/190724/0003645
Complainant :	Lynette Hyacinth Nazareth & Norbert Rajan Nazareth, No.305, Royal Heritage, Old Madras Road, Benniganahalli, K.R.Puram, Bengaluru-560016 Rep.by: Sri Rosal Perumal, Advocate
Opponent :	Nitesh Housing Developers Pvt. Ltd., Level 7, Nitesh Timesquare, No.8, M.G. Road Bengaluru -560001 The following address is as per the address given by the developer in his objection statement NHDPL Properties Private Limited at No.110, Level 1, Andrews Building, M.G. Road, Bengaluru-560001

"J U D G E M E N T"

1. Lynette Hyacinth Nazareth & Norbert Rajan Nazareth, the complainants have filed this complaint bearing complaint no.CMP/190724/0003645 under Section 31 of RERA Act against the project 'Nitesh Hyde Park Phase II' developed by "Nitesh Housing

Palakshappa
17/03/2020

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560 027.

Developers Pvt. Ltd.," where in the complainant has prayed for refund of her investment along with interest for failure to deliver apartment unit beyond due date.

2. In pursuance of the notice issued by this authority, the complainants have appeared through their advocate Shri. Rosal Perumal. The developer has appeared through his representative.
3. Hence, I have heard the arguments.
4. The points that arise for consideration is as to:
 - a. Whether the complainant is entitled for refund of amount as prayed in the complaint?
 - b. If so, what is the order?
5. My answer is affirmative for the following

REASONS

6. This complaint has been filed by the complainant against the developer for refund of the amount of Rs.46,41,564/- which was paid by the complainant to the developer towards purchase of flat bearing No.J005 in the ground floor.
7. The developer though admitted execution of the sale agreement but completely denied the case of the complainant with regard to refund. He has contended in his objection statement that the complainants had booked a flat bearing No.J005 ground floor at Nitesh Melbourne Park project of the respondent. The parties have executed agreement to sell dated 25/09/2016 and construction agreement dated 25/09/2016 respectively. The parties are governed by the terms and conditions agreed therein. In case of any dispute between the parties, the dispute

Denix
12/03/2016

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resolution should happen by Arbitration as agreed by the parties in the said documents. The complainant should have opted for arbitration. On this ground the complaint is not maintainable. Clause No.14 of agreement to sell and clause 15 of construction agreement. It is submitted that as per clause 4 of the construction agreement, the date agreed between the parties for the delivery of the possession of flat is 48 months from the date of execution of construction agreement with a grace period of additional six months. Accordingly, the respondent is under the obligation to handover the possession of the flat to the complainant within June 2021. Hence there is no cause of action for the complaint and the complaint is liable to be dismissed on this itself. It is further submitted that the complainant has not paid the entire cost of the flat as agreed in the agreement to sell and construction agreement referred above. As per clause 3.4 and 3.5 of the construction agreement, the respondent can demand the arrears of the due from the complainant and in the event of failure to pay the arrears of due by the complainant, the respondent is entitled to withhold 18% of the amount equivalent to amount received till such date and can refund the balance within a stipulated period or on resale of unit, whichever is later. Hence on this ground, the complainant is not entitled to for the refund of the balance amount till such time.

8. The stand taken by the developer has no force at all. Because the question of sending the record to the arbitration does not arise at all. Since S.18 of the Act directs the authority either to grant for compensation or for refund of the amount when the developer has failed to comply with the terms of the agreement of the sale. In this case, the developer has agreed to complete the project within 54 months from the date of the agreement including the grace period.

Devi
17/03/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560 127.

It means the date of completion would be March 2021, but the complainant has filed this complaint in the month of July 2019 which is much earlier to due date. It further means that the developer has not violated S.18 of the Act. But the complainant has filed this complaint based upon the information given by the developer himself which is very much important to decide this case. On 7th February 2020 the developer has sent a mail, which reads as under:

Dear customers,

At the outset, we regret the delay in writing to you. However we would like to update you that GH Infinite who was in talks with us to take over the project has encountered some liquidity issue as the bank/NBFC who had committed the monies have gone back on their commitments. They are now venturing on alternate measures to raise the required capital to facilitate this deal.

In the meanwhile we are also in discussions with the landowner to look at some kind of an arrangement so that the customer refunds can be paid back as soon as possible.

We would take this opportunity to thank you for your patience and further request you to give us time till 15th March 2020 which is another month's time for all these discussions to conclude and we will share a concrete plan definitely by then.

We are also in the next 30 days working on refunding 72 customers who initially opted to cancel."

P. S. S. S.
12/6/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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9. Further the complainant has produced some mail exchanges which gives an impression on this authority that the developer has made up his mind to refund the amount who wants to go out of the project.
10. I would say that the above paragraph makes it clear that the developer is not going to complete the project for the reasons as said in his mail copy. S.19(4) of the Act says that for any reason if the project is not completed by the developer then either he has to give compensation or to refund the amount, the same situation is arisen here. Even though as said by the developer in his agreement of sale 54 months is not yet completed, but the expression made by the developer as to not completing the project attract S.19(4) of the Act and therefore, the developer shall refund the amount to the complainant.
11. The complainant has filed a memo of calculation stating that he has paid Rs.46,08,676/- of his own fund. Later he has calculated interest @ 18% per annum which is not permissible. Further he claimed Rs.20 lakhs as compensation which has no any basis. Rule 16 prescribes the rate of interest. Further the developer has said in his objection statement that he has paid Rs.5,54,991/- to the GST which is not liable for refund. It is not correct to say so, because the developer can take back the said amount from the department or he can adjust the same when he going to sell the unit involved in this complaint. However, the said amount is ordered to be return to the complainant separately.

Devi
17/03/2020

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12. Before passing the final order I would like to say that as per section 71(2) of RERA the complaint shall be disposed off by the Authority within 60 days from the date of receipt of the complaint. The said 60 days to be computed from the date of appearance of the parties. This complaint was filed on 24/07/2019. In this case the parties were present on 24/09/2019. After hearing arguments of the parties, the matter came up for judgment. With this observation, I proceed to pass the following.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190724/0003645 is hereby allowed.
- b. The developer is hereby directed to refund Rs.40,53,685/-.
- c. The developer is hereby directed to pay simple interest @ 9% on the respective amount paid on the respective date till 30/04/2017 and @ 2% above MCLR of SBI as on today on the respective amount paid on the respective date after 01/05/2017 till realisation of entire amount.
- d. The developer is hereby directed to pay GST amount of Rs.5,54,991/- to the complainant with a direction to take back the same from the concern department.
- e. The developer shall also pay Rs.5,000/- as cost of the petition.
- f. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 17/03/2020).

(K.PALAKSHAPPA)
Adjudicating Officer



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Cmp. No: 3645

ಮಟ ಸಂಖ್ಯೆ

ವಿಷಯ Lynette Hyacinth Nazareth & Another

Nitesh Melbourn Park.

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP- 3645

02.06.2023

As per the request of the Mr. Arpan B Pattanashetti, Advocate who is an Authorised person for 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 Mr. Arpan B Pattanashetti, Advocate who is an Authorised person for complainants and Sri. Harish Kumar M.D Authorized Signatory of the respondent present, in the pre-Lok-Adalat sitting held on 02.06.2023, the dispute between the parties with regard to the execution proceedings has been settled between the parties. The Authorised person Mr. Arpan B Pattanashetti, has filed authorization copy and complainant have forwarded e-mail informing that they have authorised Mr. Arpan B Pattanashetti as their authorised person to settle the execution proceedings in the above case. The settlement entered between the parties is voluntary and legal one and as per which the complainants & the respondent have no further claim against each other whatsoever in the case.



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp. No: 3645


ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Lynette Hyacinth Nazareth & Another
Nitesh Melbourne Park.

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಅದೇಶಗಳು


Therefore in view of aforesaid settlement entered in the pre-Lok Adalat in terms of the joint memo dated:01.06.2023, signed by the parties, the execution proceedings in connection with above case are closed. The RRC issued against the respondent is hereby recalled and office is directed to issue intimation accordingly to the concerned DC. The matter referred to conciliators to pass award.


Arpan B. Patil
Authorized person
to the complainants


Judicial Conciliator.


Advocate Conciliator.

For NHDFL South Private Limited


Authorized Signatory
RESPONDENT

NOT AN OFFICIAL COPY

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

CMP/190724/0003645

BETWEEN:

**Mrs. Lynette Hyacinth Nazareth
and Mr. Norbert Rajan Nazareth**
Rep. by. *Smt. Rosa Paramel*, Advocate

.....Complainants

AND:

Nitesh Housing Developers Pvt. Ltd
(Now known as NHDPL South Private Ltd.)

....Respondent

JOINT MEMO

The Complainants herein had filed the above mentioned Case before this Hon'ble Authority seeking refund of booking amount / advance amount which came to allowed on **17th March, 2020**. Subsequently complainants have filed an execution petition for execution of above said order.

Subsequently, both Complainants 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 out of the court.

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.

In view of the the Parties to the Complaint request this Hon'ble Authority to record settlement and dispose off the execution claim pending in the above Case as fully and finally settled and to recall the RRC from the concerned DC Office in the interest of Justices

PLACE: Bangalore

DATED: June 1, 2023

COMPLAINANTS

L. Nazareth
N. Rajan Nazareth
RESPONDENT

Authorised Signatory