

BEFORE ADJUDICATING OFFICER, RERA
BENGALURU, KARNATAKA

Complaint No. CMP/191002/0004380

Presided by Sri K Palakshappa
Adjudicating Officer

Date: 4th of JANUARY 2020

Complainant : MALYAJ KALONI
1A-302, Soul Space Arista
Doddanekundi Outer Ring Road,
Bangalore-560037
Rep. by: Sri. Aswin Prabhu S.D, Advocate.

AND

Opponent : Nitesh Housing Developers Pvt. Ltd.,
Nitesh Time square, M G Road,
Opposite Adigas Restaurant,
Yellappa Garden, Yellappa Chetty Layout,
Sivanchetti Gardens,
Bengaluru-560 001
NHDPL Properties Pvt.Ltd.,
Having its registered office at No.110,
level-I, Andrews building, M.G.Road,
Bengaluru-560001
(This address is mentioned as per the address
given by the respondent in his objection
statement)

"J U D G E M E N T"

1. MALYAJ KALONI Complainant has filed this complaint bearing complaint No. CMP/191002/0004380 under Section 31 of RERA Act against the project 'Nitesh Columbus Square Phase II' developed

Deer
04/01/2020

by "Nitesh Housing Developers Pvt Ltd." as the complainant is the consumer in the said project has prayed for refund of his amount due to non completion of project. The complaint is as follows:

We, namely Ms. Anshika Khaitan and Mr. Malayi Kaloni have executed agreements with NHDPL for construction and sale of one apartment (No. A-0505) measuring 1326 sqft (super built up area) in "Nitesh Columbus Square" project located at Survey No.174/4, 175/2, Kattigenahalli, North Taluk., Ballary Road, Bagalur Main Road, Next to Brindavan Eng.College., Bengaluru, Karnataka 560063. These agreements are namely: 1. Agreement for sale dated 27th September 2013 2. Agreement to construct dated 27th September, 2013. As per the above agreements, NHDPL was supposed to handover the completed apartment by 30th June 2014. Even after including the grace period of 6 months which was available to NHDPL under the agreement, NHDPL should have handed over the apartment to us no later than 31st December 2014. As buyers we have completed all our obligations till date, by releasing 95% of the sale agreement value based on slab wise completion of the apartment. Total sale consideration is Rs 71,40,824 and we have released Rs 67,82,235 so far. Out of the amount released so far, Rs 52,23,249 has been released by HDFC and Rs 15,58,986 has been our contribution. Details of the payments made so far are as hereunder: Own contribution - 1) Rs 2,00,000 vide cheque no. 848607 drawn on ICICI Bank 2) Rs 7,00,000 vide cheque no. 848609 drawn on ICICI Bank 3) Rs 5,28,149 vide cheque no. 420231 drawn on Citibank 4) Rs 1,30,737 vide NEFT from Citibank on 17/02/2014. NEFT reference no. CITIN14412233167 Total own contribution - Rs 15,58,886 Loan disbursement by HDFC 1) Rs 47,84,368 vide DD/Cheque no. 163253 drawn on HDFC Bank 2) Rs 2,85,633 vide DD/Cheque no. 482096 drawn on HDFC Bank 3) Rs 1,53,248 vide DD/Cheque no. 308817 drawn on HDFC Bank Total disbursement by HDFC - Rs 52,23,249 Further, at the time of purchase of the apartment, NHDPL had agreed to reimburse us the interest component of the EMI that we pay to HDFC, while we will bear the principal amount, till possession. NHDPL has reimbursed Rs 7,37,814/- and the last reimbursement was made in September 2015. On the other hand we have paid Rs 24,71,603 in interest to HDFC upto December 2018. Therefore NHDPL owes us Rs 17,33,789 in interest as on December 2018. In June 2017, I lost my job hence I am unable to pay bank EMI post December 2018. If the flat was completed on time and handed over to us, we could have either shifted there to save on rent or we could have sold it and bailed ourselves out this difficult situation. Due to inordinate delay and continuing breach of the agreement, we are unable to entrust NHDPL with any more funds and have no faith in their intent or ability to complete the project. Hence we want NHDPL to refund all the monies paid by us so far with interest, as well as outstanding bank loan, unpaid EMI with interest and penalty as per attached calculation sheet. The refunds are namely: 1. Refund of downpayment 2. Refund of EMIs (after accounting for interest component reimbursed by builder) 3. Refund of outstanding principal and accrued EMIs with interest & penalty to bank 4. Compensation for mental agony 5. Costs towards legal fees We have calculated total compensation due to us as Rs 1.57 Crores. However it is to be noted that the bank dues


04/01/2020

are increasing every month on account of unpaid EMI, interest and penalty. For details please refer the calculation sheet. We have used simple interest of Rs 18% for all calculations.

Relief Sought from RERA : Refund of Rs 1.57 Cr as per attached calculations

2. In pursuance of the notice issued by this authority, the complainant along with his wife have appeared through their advocate and Sri Prasad representative of respondent was present and filed objections.
3. Hence, I have heard arguments of the complainant and the developer.
4. The points that arise for consideration is as to:
 - a. Whether the complainants are entitled for refund of their amount as prayed in complaint?
5. My answer is affirmative for the following

REASONS

6. It is the case of the complainant that he had booked an apartment bearing No.A-0505 in block A 5th floor. In this regard, the developer has executed agreement on 27.09.2013 wherein the developer has agreed to complete the project by 30th June 2014. The complainant has till date paid Rs.67,82,235/- to the developer. It is submitted that even after the lapse of more than 4 years the developer neither completed the project nor returned the amount.
7. In this regard it is the stand of the developer that the complainant cannot terminate the agreement on the ground of delay since the said delay was only out of Force majeure circumstances. In case, the complainant wants to terminate the agreement then 18% of the amount will be deducted and rest of the amount will be returned to them within 180 days or upon the sale of their unit. Of course, the developer has also given some excuses stating that due to bad


04/01/2020

situation in the market he could not able to complete the project and also he submitted that there was an injunction from the City Civil Court by the virtue of the Arbitration petition filed by the land lord.

8. I would say that till today, the Developer has not received Occupancy Certificate. The due date was in the month of June 2014. More than four years is already elapsed, even then the Developer is not able to get the Occupancy certificate means his project is not completed as on the date of the filing of this complaint and also even today. Therefore, as per the observation made by the Hon'ble Supreme Court in Pioneer Case, the delay is more than two years from the due date, then automatically the complainant is entitled either for delay compensation or refund of his amount.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No. 12238/2018,
Pioneer Urban Land & Infrastructure Ltd.
V/s
Govindan Raghavan

which reads as under:

Para 6.1: In the present case admittedly, the appellant builder obtained the occupancy certificate almost two years after the date stipulated in the apartment buyer's agreement. As a consequence, there was failure to handover possession of the flat to the respondent flat purchaser within a reasonable period. The occupancy certificate was obtained after a delay of more than 2 years on 28/08/2018 during the pendency of the proceedings before the National Commission. In LDA v. M.K. Gupta, this court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for consideration, it is a "service" as defined by Section 2(1)(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In Fortune Infrastructure v. Trevor D'Lima, this court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with the compensation.

[Handwritten signature]
08/01/2020

9. The above decision is very much helpful to the complainant to seek the relief as sought in the complaint and hence, question of dismissing the complaint for the reasons stated by the Developer holds no water.

10. Further the learned counsel for the complainant also has given some decisions which are also helpful to him to get back his amount.

a) *Kolkata West International City Pvt. Ltd., V. Devasis Rudra II (2019) CPJ 29 (SC)*

A buyer cannot be made to wait indefinitely for possession of the apartment. A delay of more than 6 years cannot be considered reasonable.

b) *Aftab Singh & ors V. Emaar MGF Land Ltd., III (2017) CPJ 270 (NC)*

Where statutory enactments for adjudication of dispute to subserve a public purpose exist, such disputes are not arbitrable.

c) *Order in CMP/181021/0001473-Ravi Kumbhat V. Nitesh Housing Developer Pvt. Ltd.,*

11. I would say that the reasons given by the developer are not acceptable and he cannot forfeit the case, because, the project was to be completed in the year 2014 itself. His right to forfeit the amount as stated by him cannot be availed since there is an inordinate delay in completion of the project. In view of the above discussion made by the Hon'ble High court the developer has no defence as against the case made out by the complainant. The reasons given by the developer will not absolve him from the liability. He is bound to return the amount as per Sec.18 of the Act.

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. In this case the complainant was presented on 02/10/2019. The limitation of 60 days may be computed from the date of appearance

[Signature]
04/01/2020

of the parties and here the parties have appeared on 06/11/2019 means the present complaint is being disposed off today is well within the limitation. With this observation, I pass the following

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/191002/0004380 is hereby allowed
- b. The developer is hereby directed to return a sum of Rs.15,58,886/-.
- c. The developer is also directed to pay interest @ 9% on the respective amount paid on the respective date till 30/04/2017.
- d. The developer is also directed to pay interest on Rs, 15,58,886/-@ 2% above the MCLR of SBI commencing from 01/05/2017 till realization of the same.
- e. The developer is also directed to discharge loan amount with its interest, EMI if any, EMI if any is paid by complainant and any other statutory charges.
- f. The complainant is directed to execute cancellation agreement of sale, after whole amount is recovered.
- g. The developer is hereby directed to pay Rs.5,000/- as cost of the petition.

Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 04/01/2020).

K. PALAKSHAPPA
Adjudicating Officer