

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru
ನಂ: 1/14, ನೆಲಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, 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: 11th February 2020

Complaint No:	CMP/UR/190918/0004223
Complainant :	ASHOK SRINIVASAN & RAMYA GONUR SUBBANNA Flat No.115, Block A, Komarla Brigade Apartment, No.51, Uttarahalli Main Road, Bengaluru-560061 Rep.by: Sri C. K. Nandakumar, Advocate
Opponent :	Nitesh Hyde Park Phase II M/s Nitesh Housing Developers Pvt. Ltd., Level 7, Nitesh Timesquare, No.8, M.G. Road Bengaluru -560001 The following address is mentioned as per the address given by the respondent in his objection statement NHDPL Properties Pvt. Ltd. Office No. 110, level-1, Andrews building, M.G. Road Bengaluru-560001.

"J U D G E M E N T"

1. ASHOK SRINIVASAN AND RAMYA GONUR SUBBANNA, Complainants jointly have filed complaint bearing complaint no.CMP/190918/0004223 under Section 31 of RERA Act against

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11/02/2020

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the project 'Nitesh Hyde Park Phase II' developed by "Nitesh Housing Developers Pvt Ltd." as the complainants are the consumers in the said project have prayed for refund of investment along with interest for failure to deliver apartment unit beyond due date. The complaint is as follows:

The complainants, being desirous to purchase a residential unit in the project 'Nitesh One Hyde Park', and pursuant to an application made by the complainants dated 04.10.2013, the complainants by way of a letter dated 04.10.2013 was allotted a residential unit bearing apartment no. O P 0005, measuring 1642 sq. ft along with one cover car park. The total consideration for the allotted residential unit was Rs. 1,04,78,926/-. The respondent had also included a slab wise payment schedule that was to be adhered by the complainants. A copy of the application dated 29.09.2013, allotment letter dated 04.10.2013 along with the slab wise payment schedule is produced herewith as Document No. 1, and Document No.2 respectively. ii. The Complainants paid the respondent a sum of Rs. 3,00,000/- towards the booking advance of the residential unit as stipulated under the payment schedule provided by the respondent. After the expiry of 20 days from the date of allotment, an additional sum of Rs. 17,95,785/- was made by the complainants in compliance with the payment schedule. The respondent by its letter dated 04.10.2013 acknowledged receipt of a sum of Rs. 20,95,785/- paid by the complainants as booking advance towards apartment no. O P 0005. The respondent in the said letter dated 04.10.2013 requested the complainants to pay the balance sum of Rs. 17,81,418/- on or before 30.10.2013. A copy of the letter dated 04.10.2013 is produced herewith as Document No.3. iii. The sum of Rs. 17,81,418/- was requested to be paid by the complainants, as the respondent had informed that the project had progressed to the casting of the fourth floor. Therefore, the complainants in compliance with the payment schedule was to pay a sum of Rs. 17,81,418/- towards the project. The complainants in adherence with the payment schedule on 23.10.2013 paid a sum of Rs. 17,81,418/-. The respondent by its letter dated 23.10.2013 acknowledged receipt of the same. A copy of the letter dated 23.10.2013 is produced

Done by
11/10/2013

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herewith as Document No. 4. iv. Pursuant to the allotment letter dated 04.10.2013, the complainants and the respondent entered to a Construction Agreement dated 01.10.2013 and Agreement to Sell dated 01.10.2013. The complainants, was allotted a residential apartment unit bearing No. O - 0005 in the Ground Floor, of Block ?O? in Wing ?II? within the project ?Nitesh One Hyde Park? measuring 1642 sq. ft. of super built up area and proportionate share in common areas such as passages, lobbies, lifts, staircases and other areas of common use together with right to use one covered car parking space. The complainants was also entitled to 0.29% of undivided share, right, title interest and ownership in the larger part of the property, measuring up to 562.11 sq. ft. of share in the land (Schedule Property). A copy of the Construction Agreement dated 01.10.2013 and the Agreement to Sell dated 01.10.2013 is produced as Document No. 5 and Document No. 6 respectively. v. The respondent, subsequently, issued various demand notes from October 2013 to April 2016 calling upon the complainants to make payments as stipulated under the payment schedule, as progress threshold as mentioned under the payment schedule were completed. The complainants, with utmost faith in the respondents? progress report, duly made payments to the respondent as demanded in the various demand notes that were issued by the respondent. Copies of the demand notes from October 2013 to April 2016 along with receipt of payment from the complainants is produced as Document No. 7 collectively. vi. The complainant for the purpose of purchasing the allotted residential unit bearing O ? 0005, approached HDFC bank and availed a bank loan to the tune of Rs. 86,00,000/- (Rupees Eighty Six Lakhs only). Pursuant to availing the bank loan from HDFC, the complainant, respondent and HDFC bank entered into a tripartite agreement dated 06.11.2013. A copy of the tripartite agreement dated 06.11.2013 is produced herewith as Document No. 8. vii. As per the Clause 6.1 of the construction agreement entered into between the complainants and the respondent, the respondent was to deliver complete and peaceful possession of the completed apartment bearing No. O ? 0005 along with all amenities on or before 31.12.2014, with a grace period of six months. Accordingly, the extended date for delivery of the completed apartment unit was on or before 31.06.2015. viii. The Respondents, being obligated to hand over possession of the completed apartment

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unit bearing O ? 0005 on or before 31.12.2014 extendable by six months i.e. 31.06.2015, the respondent till date has not delivered the apartment unit. Despite having received several reminders to deliver possession of the apartment unit along with its amenities, the respondent has failed to hand over possession of the apartment unit. ix. It is pertinent to note that, the respondent not having completed the slabs as stipulated under the payment schedule, has provided false progress reports to the complainants and issued demand notices to the complainants. The respondent has received almost 90% of the apartment cost by raising false demand notices, whereas, the project has not progressed to the extent as claimed by the respondent.

Relief Sought from RERA: Refund Rs. 95,28,222 along with 18% per annum.

2. In pursuance of the notice issued by this authority, the complainants have appeared through their advocate Shri. Nanndkumar. The Employee of the developer was present, filed objections.
3. Hence, I have heard arguments.
4. The points that arise for consideration is as to:
Whether the complainant is entitled for refund as prayed?
5. My answer is affirmative for the following

REASONS

6. It is the case of the complainants that the developer has executed agreement on 11.10.2013 wherein the developer has agreed to complete the project on or before 31.12.2014. The complainants till date have paid Rs.95,28,222/- to the developer. It is also submitted that at the time of the argument the developer has paid only Rs.9

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11/6/2020

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lacs towards loan whereas the complainant also discharged the loan amount of Rs.6,85,312/- but the developer neither complete the project nor return the amount.

7. In this regard it is the stand of the developer that the complainant cannot terminate the agreement. 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 within 180 days. Of course, the developer has also given some excuses stating that due to bad 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 virtue of the Arbitration petition filed by the land lord.
8. But the complainant has said that it his burden to prove the delay in completing the project and same is proved and therefore he is entitled for the relief. It is needless to say that the developer has to complete the project within the due date mentioned in the agreement. If not he is liable either to pay delay compensation or refund of the amount.
9. In support of his contention, the counsel for the complainant has given some of the decisions:

- The ruling in the case of DLF Homes Panchkula Pvt. Ltd. V. D.S. Dhanda and others (first appeal no. 853 of 2016) by the National Consumer Disputes Redressal Commission squarely applies to the present case. All the purported "delay" events are business risks that the respondent ought to have taken into consideration at the time of signing the Agreement particularly since it was

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11/02/2020

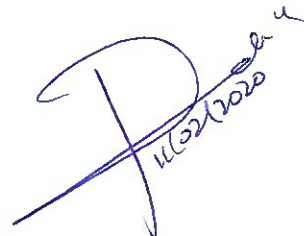
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aware of a number of the purported "delay" events when entering into the agreements.

- The rulings in the case of DFL Homes Panchkula Privet Limited v. D. S Dhanda and others (First Appeal No. 853 of 2016 (Paras 48, 49 and 57) by the National Commission Disputes Redressal Commission squarely applies to the present case. All the purported delay events are business risk that the respondent ought to have taken into consideration at the time of signed the agreement particularly since it was aware of a number of the purported delay events when entering in to the agreements.*
- In the case of Avinash Saraf, Neha Dugar Saraf V. Runwal Homes Privet Limited, the Hon'ble Maharashtra Real Estate Regulatory Authority at Mumbai in Complaint No. CC06000000000032 by way of its final order dated 13.10.2017 directed the respondent therein to pay the consideration amount along with the stamp duty and registration charges along with interest. The authority also granted a compensation at 9% from the respective date of payment along with Rs. 20,000/- towards the cost of the complainants. The respondent was also directed to bear the expenses of executing the cancelation of sale agreement. A copy of judgment is produced here with for the kind perusal of this Hon'ble Authority.*
- In the case of Joan Disouza v. Deepak Kamik and others, the Hon'ble Maharashtra Real Estate Regulatory Authority at Mumbai in Complaint No. CC060000000000181 by way of its final order dated 04.10.2017 directed the refund of the entire consideration paid by the complainant along with compensation of Rs. 1,00,000/- . The respondent was once again directed to bear the cost of re-conveyance of the plots. A copy of the judgment is produced here with for the kind perusal of this Hon'ble Authority.*



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10. 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 2016 itself. As per the judgement of the Apex court in Pioneer case it reads as under:

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.

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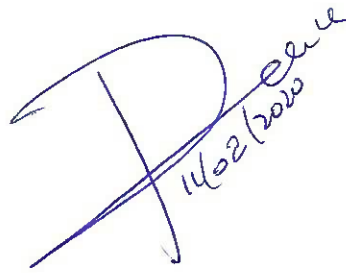
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In view of the above discussion made by the Hon'ble High court the developer has no defense as against the case made out against the complainant. The reasons given by the developer will not absolve him from the liability. He bound to return the amount as per Sec.18 of the Act.

11. 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 be computed from the date of appearance of the parties. In this case the parties have appeared on 17.10.2019 and case is being disposed off on today with some delay. With this observation, I pass the following


14/02/2020

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ORDER

- a. The Complaint filed by the complainant bearing No. CMP/190918/0004223 is hereby allowed
- b. The developer is hereby directed to return a sum of Rs.34,17,104/-.
- c. The developer is also directed to pay interest on respective amount paid on the respective dates till 30.04.2017
- d. The developer is also directed to pay interest @ 2% above the MCLR of SBI commencing from 01.05.2017 till realization of the entire amount.
- e. The developer is also directed to pay discharge loan amount with its EMI, if any, EMI is paid and any other statutory charges.
- f. The developer is directed to return Rs. 11,11,118/- to the complainant which was paid by the developer to the GST with a direction to collect back the same from the concerned department.
- g. The developer is directed to execute cancellation agreement of sale, after whole amount is recovered.
- h. 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 11/02/2020).

K. PALAKSHAPPA
Adjudicating Officer

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