

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: 18th March 2020

Complaint No:	CMP/191017/0004498
Complainant :	Ningappa M Hunchyali #19, 4 th Cross, Ganesha Block, Dinnur Main Road, RT Nagar, Bengaluru-560032 Rep.by: Sri V.Akshay Kumar Jain, Advocate
Opponent :	M/s 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. Ningappa N Hunchyali, the complainant has filed this complaint bearing complaint no.CMP/191017/0004498 under Section 31 of RERA Act against the project 'Nitesh Hyde Park Phase II' developed by "Nitesh Housing Developers Pvt. Ltd.," where in the complainant has prayed for refund of her investment along with interest since he failure to deliver the apartment unit beyond due date. His complaint reads as under

Done
18/03/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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I had booked a flat bearing number L202 in Nitesh Melbourne Park Hennur Main Road, Bangalore. The cost estimates of my flat is Rs. 103.00 lakh. I have paid Rs. 21.06 Lakh between May 2014 - October 2016 and I have entered into an agreement on 18/05/2017. Nitesh Estates via email dated 08/04/2019 have informed that they are exiting from the project and may sell to a new promoter. The decision of the company is one sided and I have not given approval for the same. Despite continuous requests the company has not refunded the amount with interest and compensation. There is no progress in work and everything is at standstill even after lapse of 5 years. I have been exploited by the company for no fault of mine. Since there is no proper response from the company, I had resorted to this extreme step of filing a complaint before RERA for justice.

Relief Sought from RERA : Rs. 21.06 lakh refund with Interest + compensation

2. In pursuance of the notice issued by this authority, the complainant has appeared through his advocate Shri. V.Akshay Kumar Jain. The developer has appeared through his representative who filed the objections.
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. It is the case of the complainant that the developer has executed agreement of sale on 18/05/2017 in respect of flat bearing No. L-0202 measuring 1800 square feet in the II floor of block-L of Nitesh Hyde Park Project. The developer has agreed to complete the project on or before July 2020 with grace period of 3 months. In this regard the complainant has said that there is no progress in the

D. S. S.
18/03/2020

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project except foundation works in few blocks. There is no foundation work for the block where the flat L-202 is proposed to be constructed. According to the complainant his project may take about next three years for completion.

7. Further the complainant has said that he has received a mail dated 08/04/2019 wherein the developer has said that the management has taken a decision to exit from the Nitesh Melbourne Park and that there are in progressive touch with the land owners and prospective developers who will be taken over the project. It means in the month April 2019 itself the developer has decided to transfer the project to some third party. Further the developer himself has express his willingness to close the project and inability to complete the project. I would like to say that this aspect has not been properly met by the developer. In this regard the developer has taken his own stand which reads as under:

8. Further, the developer has taken some contentions with regard to the delay caused wherein he submits as under:

The complainants had books a flat bearing No.L-0202 second floor at Nitesh Melbourne Park Project of the Nitesh housing developers private limited. The parties have executed agreement to sale dated 18/05/2017 and construction agreement dated 18/05/2017 respectively. The parties are governed by the terms and conditions agreed therein. In case of any dispute between the parties, the dispute resolution should happen by Arbitration as agreed by the parties in the

Dr. S. S. S. S. S.

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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 ground 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, whoever is later. Hence on this ground, the complainant is not entitled to for the refund of the balance amount till such time.

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17/03/2020

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It is submitted that the respondent has been trying their best to complete the construction of the project and handover the respective flats to the allottee including complainant within the agreed period of time. For this reason the complaint should not be allowed and the respondent need not be directed to refund the amount deposited. If refund is ordered, on any ground, the complainant will be put to irreparable loss and injury.

It is submitted that the respondent company has paid Rs 2,15,093 (two lakhs fifteen thousand and ninety three only) out of the amount paid by the complainant towards GST/VAT/service tax. Hence, the respondent company need not refund the portion of amount to the complaint.

9. This is the objection filed by the developer. Of course the complainant has filed his complaint very much earlier to the completion date. As per the agreement itself the completion date would become March 2021 but this complaint is filed in the month of October 2019 only because intention expressed by the developer. The developer himself has sent a mail to the complainant on 15.03.2019 stating that his project will be closed even before completion. Apprehended by the same the complainant has approached this authority. Surprisingly the developer has taken a different contention in the objection statement stating that the complaint is not maintainable as it is premature one. I have already referred the same which is factually correct also. The complainant will be entitled for refund of the amount only in case the developer is

Penu
17/03/2020

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failed to complete the project within the due time as mentioned in the agreement. Here, the due date is not yet occurred. But the complaint is filed based upon the mail sent by the developer himself. Now the developer has taken a different stand by stating that the present complaint is not maintainable holds no water for the simple reason that he himself has given notice to the complainant to take further action. I would like to say that as per Sec.19(4) of the Act, the complainant is entitled to claim the refund of the amount in case the project has been abandoned for any reason. I would say that two responsibilities were on the shoulder on the developer. Firstly, he ought to have give explanation as to why he has sent mail to the complainant on 15/03/2019. Secondly, he ought to have give explanation what is the present status of his project as on the date of filing of his objections. Why I am referring this point because the complainant has alleged that the project has been stalled.

10. Therefore, I have to respect the apprehension of the complainant in the absence of any proper explanation given by the developer. Mere by filing objections taken contrary to the mail dated 15/03/2019 will not absolve the developer from the liability. He is bound to return the amount as per Sec.18 of the Act. However, the amount paid towards the tax may not be included in the total amount payable to the complainant. Further, I would say that the developer is liable to return the tax amount and he may collect the same from the concerned department since he is going to sell the same unit to some other person.

Done
15/03/2019

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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 03/12/2019 and case is being disposed off on today with some delay. With this observation, I proceed to pass the following

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/191017/0004498 is hereby allowed.
- b. The developer is hereby directed to return a sum of Rs.18,91,581/-.
- c. The developer is also directed to pay simple interest on respective amount paid on the respective dates till 30.04.2017
- d. The developer is also directed to pay simple interest @ 2% above the MCLR of SBI as on today commencing from 01.05.2017 till realization of the entire amount.
- e. The developer is directed to return Rs.2,15,093/- to the complainant which was paid by the developer to the GST with a direction to collect the same from the concerned department.
- f. The developer 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 18/03/2020).

K. PALAKSHAPPA
Adjudicating Officer

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ಕಡತ ಸಂಖ್ಯೆ Comp. No: 4498

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Sh Ningappa M Hunchyali

Nitesh Melbourne Park

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-4498

04.03.2022

As per the oral request of the complainant and Sri. Harish Kumar, Authorized person of the respondent in the above case in connection with execution proceedings is taken-up for amicable settlement, in the National Lok Adalat to be held on 12.03.2022.

The complainant and Sri. Harish Kumar, Authorized person of the respondent present, in the pre-Lok-Adalat sitting held on 04.03.2022, the matter is settled in terms of joint memo dated : 04.03.2022. The settlement entered between the parties is voluntary and legal one and as per which the complainant has no further claim against the respondent whatsoever. The settlement is accepted and consequently the execution proceedings in the above case have been closed as settled between the parties in terms of above joint memo. For consideration of joint memo and award, matter is referred to Lok-Adalat to be held on 12.03.2022.

Received
DD of Rs. 18,06,454
only.

Complainant

Judicial Conciliator.

For NHDP South Private Limited

Authorized person of the respondent.

Advocate conciliator

Authorised Signatory

**BEFORE LOK-ADALAT IN THE KARNATAKA REAL ESTATE
REGULATORY AUTHORITY, AT BENGALURU**

Complaint No. : CMP/191017/0004498

Complainant : Ningappa M Hunchyali

-Vs-

Respondent : Nitesh Housing Developers Private Limited

JOINT MEMO

1. The complainant and the respondent, through its Authorised signatory Sri. Harish Kumar M.D., in the above complaint jointly submits as under:

2. During the pendency of the execution proceedings in the above complaint, the complainant/allottee and the respondent/promoter through its Authorised signatory Sri. Harish Kumar M.D. after due deliberation in the pre Lok - Adalat sitting held on 04.03.2022, have got settled the dispute relating to the subject matter of the execution proceedings in this complaint. The respondent/promoter has agreed to pay an amount of Rs.21,06,454/- (Rupees Twenty One Lakhs Six Thousand Four Hundred and Fifty Four only) to the complainant/allottee towards full and final satisfaction of his claim in this case in execution proceedings and the complainant/allottee agreed to receive the same. The respondent/promoter during pre Lok Adalat sitting today on 04.03.2022 handed over a DD (Manager's Cheque) bearing No. 185514 dated: 31.01.2022 for a sum of Rs. 18,06,454/- (Rupees Eighteen Lakhs Six Thousand Four Hundred and Fifty Four only) to the complainant and complainant acknowledged the receipt of the same. The respondent/promoter agreed to pay the balance amount of Rs. 3,00,000/- (Rupees Three Lakhs only) to the complainant/allottee on or before 05.04.2022 and the complainant /allottee agreed for the same and prays that the execution proceedings in this complaint be disposed off and closed by recording the settlement as above in terms of this joint memo.

For NHDPL South Private Limited

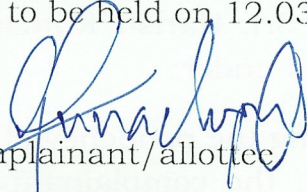
Authorised Signatory

3. The claim of the complainant in execution proceedings in this complaint is being fully satisfied in above terms and complainant have no further claim against respondent in this complaint. Both parties to the proceedings have no claim whatsoever against each other in respect of the execution proceedings in the above complaint. If there is any claim by either of the parties to this complaint against the other before any forum or Court relating to the subject matter of the above complaint, they have agreed that the same be disposed off as settled by either party filling an appropriate memo in such cases.

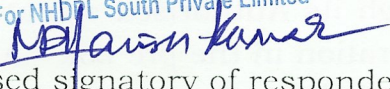
4. In view of the same, they jointly request this Lok Adalat to dispose off and close the execution proceedings in the above complaint as amicably settled before the Lok Adalat.

5. Parties further request that this settlement be recorded in the Bruhath National Lok Adalat scheduled to be held on 12.03.2022.

Bengaluru


Complainant/allottee

Date:04.03.2022

For NHDPL South Private Limited

Authorised signatory of respondent
Authorised Signatory

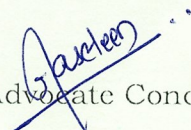
12.03.2022

Before the Lok-Adalath

The case taken up before the Lok-Adalat. The joint memo dated: 04.03.2022 filed by both the parties is hereby accepted. Hence, the matter settled before the Lok-Adalat as per joint memo.

The execution proceedings in the above case stands disposed off and closed accordingly.


Judicial Conciliator.


Advocate Conciliator.