


ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority Bangalore
ನಂ:1/14, ನೆಲ ಮಹಡಿ, ಸಿಲ್ವರ್ ಜ್ಯೂಬಿಲಿ ಬ್ಲಾಕ್, ಯುನಿಟಿ ಬಿಲ್ಡಿಂಗ್, 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/191021/0004513
Complainant	Mahatesh R Gundali, Apartment No.D406, Mantri Splendor Geddalahalli Hennur Road, Bengaluru-560077
Oponent	Nitesh Shetty, 7 th Floor, 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. Mahatesh R Gundali, the Complainant has filed this complaint bearing complaint no. CMP/191021/0004513 under Section 31 of RERA Act against the project 'Nitesh Melbourne Park' developed by "Nitesh Housing developers Pvt.Ltd.," for the relief of delay compensation.



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2. In pursuance of the notice issued by this authority, complainant has appeared in person and respondent also appeared through his representative.
3. I have heard arguments of the complainant and posted for judgment.
4. The points that arise for consideration are:
 - a. Whether the complainant is entitled for the relief as prayed in the complaint?
 - b. If so, what is the order?
5. My answer to the above point is in the affirmative for the following

REASONS

6. This complaint has been filed by the complainant seeking for the relief of refund of his amount. During the course of the argument he has submitted that he has paid Rs.35,21,393/- towards purchase of flat bearing No.A308 in 3rd floor. He has entered into agreement with the developer on 03/02/2017. According to the complainant, the developer has agreed to complete the project within 54 months from the date of agreement including the grace period. It means the completion date would come August 2021. But he has filed this complaint in the month of October 2019 for his own reasons. In this regard, the complainant has said in his complaint which reveals as under:

- A. Nitesh Housing Developer PVT Ltd., don't want to continue with the property they are selling it to another developer without obliging customer interest.
- B. Constructions has been completely stalled from last 18 months.

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- C. They have sold the property and have not ready to disclose if the new developer is going to honor the contract as per the sale agreement
- D. Nitesh housing developer PVT Ltd., representative sent email without mentioning the terms and condition of closing the accounts of existing customers. Attached emails from Yes bank and landowner.
- (i) No clarification of customer money will be paid with interest as we have taken bank loan against paying installments.
- (ii) No details for customer who wish to continue with new developer like will their agreement be in line with the existing agreement of completing and handing over the project by 2021 Feb with the grace period of 6 months as agreed in the sale and construction agreement.
- E. When sought clarification their CRM representative told me that they will only pay the principle not the interest if customer decides not to continue with the project. As there are lots of ambiguity of the terms and condition by the new builder. Attached email from Yes bank and land owner response for your reference.
- F. Nitesh housing developer PVT Ltd., wrongfully collected 2nd installment from me without completing the foundation which they have agreed in the email they were supposed to give me some leverage in the next installment as the project is

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*not moving forward I have lost significant money
paying interest on the loan.*

*Relief sought from RERA: Full refund amount with
penalty.*

7. In this regard the complainant has said that there is no progress in the project except foundation works in few blocks. There is no foundation work for the block where the flat A-0308 is proposed to be constructed. According to the complainant his project may take about next three years for completion.

8. Further the complainant has said that he has received a mail from the developer where the developer has expressed his inability to complete the project.

YES BANK-Lender to the project We are very happy to share with you that the proposal by the new developer to take over the project has been cleared by our lender bank Yes Bank. This went through two rounds of approval process with the board of YES Bank & after further negotiations and back and forth between the developer, land owner, incoming buyer & the bank finally last week the formal approval has been given. This was the final step required for resolving all pending issues on this project mainly the customer pending issues.

2. Incoming buyer / Developer As you are aware we have informed you earlier that we are handing back the property post our customer commitments back to the land owner. The land owner has identified M/s GM Infinite a leading developer in Bangalore (www.gminfinite.com) The land owner has got into an arrangement where in the entire property would be acquired by the above mentioned developer & out of the proceeds of this transaction all customers & YES Bank would be settled. We have now with the approval of point No 1 reached that stage.

3. Customer Refunds & Closures Out of our 160 customers on this project, we shall be through with this transaction of refund and closing out all the 160 customers. A few customers have asked us if they could stay on in the new project being envisaged by the incoming developer & whether the design will be the same. We would like to mention here that we would be closing out our obligations as far as this project is concerned and our customer refunds are paid. If anyone would like to

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18/03/2020

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continue please give us your interest in the new project & we shall be more than happy to facilitate this with the incoming developer. and get you a credit and allotment as per your current arrangement with us subject to the new incoming developer agreeing for the same. As far as the design is concerned at this moment it may be premature for us to comment.

4. RERA We shall be reaching out to you very shortly once the incoming developer has the DD's ready for all the refunds. We will then start the deregistration process with RERA.

5. Closure Dates We had earlier mentioned to you that we were hopeful that the entire deal should be concluded by 31st October 2019. The land owners have reverted to us after speaking to the incoming developer that they will need 30 days from today to close the entire transaction. They have also indicated that the 70 odd customers who had officially cancelled earlier with the value Rs.3.42 crores would be honoured by 31st of October 2019 and the rest of the customers will be closed as per the timelines mentioned above. To keep it transparent we are ccing our land owner partner Mr.Pankaj Parikh on this email who is well aware of the developments. We would like to take this opportunity to sincerely apologize for all of you who have trusted us and booked apartments in this project which was also very dear to us. Unfortunately things did not work out the way we anticipated now and the slowdown in the sector did not help our cause either. We have now reached the last mile of ending this process and is a matter of few days before everything is closed. We have also taken the liberty to ccing Mr.Kumar Abhishek the incharge person looking after this account from the YES Bank perspective.

9. 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:

[Handwritten signature]
18/03/2020

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

The complainant and his wife Mrs. Sheetal Gundali had booked a flat bearing No. A-0308 in third floor at Nitesh Melbourne Park Project of the Nitesh Housing Developers Private Limited. The parties have executed agreement to sell dated 3.02.2017 and construction agreement dated 3.02.2017 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 said documents. The complainant should have opted for arbitration. On this ground the complaint is not maintainable. The copies of Agreement to sell and construction agreements are produced herewith.

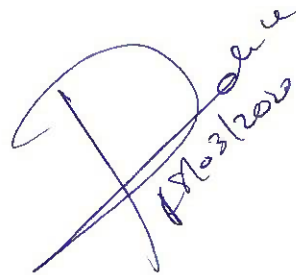
It is submitted that as per clause 4 of the construction agreement, the date agreed between the parties for the delivery of the possession of flat is 48 months from the date of execution of construction agreement with a grace period of additional six months. Accordingly the respondent is under the obligation 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.

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.3,70,985 (three lakhs seventy thousand and nine hundred eighty-five 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.



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11. 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 21/10/2019 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 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.

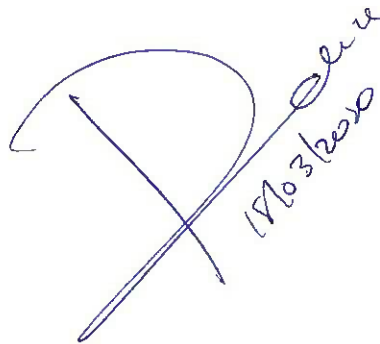
12. I would say that two responsibilities were on the shoulder on the developer. Firstly, he ought to have give explanation as to why he has sent mail to the complainant on 14/10/2019. Secondly, he ought to have give explanation what is the present status of his project as on the date of filing of his objections. Why I am referring this point because the complainant has alleged that the project has been stalled. Therefore, I have to respect the apprehension of the

Done
17/03/2020

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complainant in the absence of any proper explanation given by the developer. Mere by filing objections taken contrary to the mail dated 14/10/2019 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.

13. 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 21/10/2019. In this case the parties were present on 03/12/2019. After hearing arguments of the parties, the matter came up for judgment.


17/03/2020


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14. With this observation, I proceed to pass the following.

ORDER

- a. The Complaint filed by the complainant bearing No. CMP/191021/0004513 is hereby allowed.
- b. The developer is hereby directed to refund Rs.8,29,015/- to the complainant.
- c. The developer is hereby directed to pay simple interest and @ 2% above MCLR of SBI as on today on the said amount from the date of payment till the realisation.
- d. The developer is hereby directed to discharge the home loan with its interest, EMI if due, EMI if paid by the complainant on behalf of the developer and discharge any other statutory charges.
- e. The developer is hereby directed to pay GST amount of Rs.3,70,985/- to the complainant with a direction to take back the same from the concerned department.
- f. The developer shall also pay Rs.5,000/- as cost of the petition.
- g. Intimate the parties regarding the order.

(Typed as per dictated, corrected, verified and pronounced on 18/03/2020).


(K.PALAKSHAPPA)
Adjudicating Officer.

KARNATAKA STATE LEGAL SERVICES AUTHORITY

BEFORE THE LOK ADALAT

**IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU**

DATED: 25TH DAY OF JUNE 2022

: CONCILIATORS PRESENT:

Sri: I. F. Bidari

..... Judicial Conciliator

AND

Sri/Smt.: Preethi N

..... Advocate conciliator

COMPLAINT NO: CMP/191021/0004513

Between

1) Mr. Mahantesh R Gundali

..... Complainant/s

(In Person)

AND

1). M/s. Nitesh Housing Developers Pvt. Ltd.,Respondent/s

(By: Authorized Person of the Respondent)

Award

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the matter, in terms of joint memo dated: 24.06.2022 filed during the pre Lok Adalat sitting on dated: 24.06.2022, same is accepted. The settlement entered between the parties is voluntary and legal one.

The complaint stands disposed off in terms of the joint memo and joint memo is ordered to be treated as part and partial of the award.


Judicial conciliator


Advocate conciliator

Complaint No. 4513

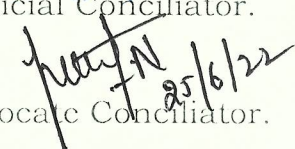
25.06.2022

Before the Lok-Adalat

The above case is taken up before the Lok-Adalat. The joint memo filed by both the parties is hereby accepted. Hence, the matter is settled before the Lok-Adalat as per joint memo. The joint memo filed by the parties shall be part and partial of award/order.

The complaint stands disposed off accordingly.


Judicial Conciliator.


Advocate Conciliator.

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

COMPLAINT NO: CMP/191021/0004513

Complainant : Mr. Mahantesh R Gundali

-Vs-

Respondent : Nitesh Housing Pvt. Ltd.,

JOINT MEMO

The complainant and the respondent in the above complaint jointly submit as under:

1. The complainant/allottee and the respondent/promoter after due deliberation have got their dispute pertaining to the subject matter of the complaint settled amicably before the Lok - Adalat.
2. The respondent/promoter has agreed to pay sum of Rs.41,00,000/- (Rupees Forty One Lakhs Only) to the complainant towards the full and final satisfaction of the complainant's claim in connection with the execution proceedings in the above said case and the allottee/complainant also agreed to receive the said amount towards full and final satisfaction of his claim in the execution proceedings in connection with the above case. The respondent promoter has paid a sum of Rs. 41,00,000/- to the complainant today on 24.06.2022 by way of two separate demand drafts bearing No. 036713 dated: 24.06.2022 for Rs. 5,78,667/- and another demand draft bearing No. 185510 dated: 09.06.2022 for Rs. 35,21,333/- both of HDFC Bank, Bengaluru.
3. In view of the same, they jointly request this Lok - Adalat to dispose of the complaint as settled before the Lok - Adalat.
4. Both the parties to the proceedings have no further claim whatsoever against each other in respect of the subject matter in connection with execution proceedings in 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, they have agreed that the same be disposed off as settled by filling an appropriate memo in such cases.

Gundali

For NHDPL SOUTH PRIVATE LIMITED

Nitesh Kumar



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ಕಡತ ಸಂಖ್ಯೆ Comp.No: 4513

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Mahantesh R Gundali

Nilesh Melbourne Park

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

CMP-4513

24.06.2022

As per the oral request of the complainant and Sri. Harish Kumar MD 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 25.06.2022

The complainant Sri. Mahantesh R Gundali and Sri. Harish Kumar MD Authorized person of the respondent present, in the pre-Lok-Adalat sitting held on 24.06.2022, the matter is settled in terms of joint memo dated:24.06.2022. The settlement entered between the parties is voluntary and legal one and as per which the complainant has no further claims 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. The RRC/recovery warrant issued against the respondent in this case is hereby recalled and office is hereby directed to intimate about the RRC/recovery warrant in this case to the concerned DC. For consideration of joint memo and award, matter is referred to Lok-Adalat to be held on 25.06.2022.

[Signature]
Complainant

[Signature]
Judicial Conciliator.

[Signature]
24/6/22
Advocate Conciliator.

For NHDPL SOUTH PRIVATE LIMITED

[Signature]
Authorized Signatory



ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ

ಕಂಡಿಕೆ
ಸಂಖ್ಯೆ

ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು

Receival DDS bearing no. 1855102p
DD bearing no. 026713 for Rs. 3521,333/-
for Rs. 352667/- both drawn
on HDFC Bank
S. Chuli
24/06/22