







ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Cmp.No: 2471

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Zubin

Nitesh Cape Code Phase - 1

| ಕಂಡಿಕೆ ಸಂಖ್ಯೆ | ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು |
|------------------|--|
| | <p>CMP- 2471</p> <p>08.02.2024</p> <p>As per the request of the complainant and Ms. Shraddha Krishnan Authorized Signatory of the respondent, the execution proceedings in the above case are taken-up for amicable settlement, in the National Lok Adalat to be held on 09.03.2024.</p> <p>The complainant Mr. Zubin and Ms. Shraddha Krishnan Authorized Signatory of the respondent present, in the pre-Lok-Adalat sitting held on 08.02.2024. The authorised person of the respondent has filed the copy of the authorization. The parties have filed withdrawal memo dated: 08.02.2024. The dispute in connection with execution proceedings in the above case are settled as per the joint memo, stating that matter has been settled between the parties in terms of the joint memo dated: 08.02.2024 entered between them filed during the pre Lok Adalat sitting on 08.02.2024. 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 in the above case. The dispute in connection with execution proceedings in the above case are settled between the parties in the pre-Lok Adalat sitting in terms of the joint memo dated: 08.02.2024. The complainant submits that he has already received Rs.1,19,66,948/- (Rupees One Crore Nineteen Lakhs Sixty Six Thousand Nine Hundred and Forty Eight only) from the respondent pursuant to agreement for settlement dated: 30.06.2023 referred in joint memo. The execution proceedings in connection with above case are closed, as settled in the Lok Adalat. 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.</p> <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  For MARATHALLI VENTURES PVT. LTD.  Authorised Signatory </div> <div style="text-align: center;">  Judicial Conciliator.  Advocate Conciliator. </div> </div> |





ಕರ್ನಾಟಕ ಲಿಯಲ್ ಎನ್ಫೋಸ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ

ಕಡತ ಸಂಖ್ಯೆ Comp. No: 2471

ಪುಟ ಸಂಖ್ಯೆ

ವಿಷಯ Zubin

Nitesh Cape Code Phase - I

| ಕಂಡಿಕೆ ಸಂಖ್ಯೆ | ಟಿಪ್ಪಣಿ ಮತ್ತು ಆದೇಶಗಳು |
|------------------|---|
| | <p>As per letter No: KSLSA: 01/NLA/2024 dated: 04.03.2024, KSLSA, Bengaluru, the National Lok Adalat rescheduled to 16.03.2024 instead of 09.03.2024, hence conciliators to pass award on 16.03.2024 instead of 09.03.2024 as ordered earlier.</p> <p> Judicial Conciliator</p> <p> Advocate Conciliator</p> <p>NOT AN OFFICIAL COPY</p> <p>of MARATHALI VENTURES PVT. LTD.</p> <p>Authorised Signatory</p> |

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

CMP/190320/0002471

BETWEEN:

Mr. Zubin Saigal

...Complainants

AND:

Nitesh Urban Development Pvt Ltd
(Now known as Marathahalli Ventures Pvt Ltd)

...Respondents

JOINT MEMO

8/2/24

The Complainant herein had filed the above mentioned Case before this Hon'ble Authority in regard with the **Flat Bearing No. D1104**, Nitesh Cape Cod Project which came to allowed vide Order dated **28th February 2020**

Subsequently, both Complainants and Respondents 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 vide Agreement for Settlement dated 30th June 2023.

Both parties, have now, resolved and settled all the disputes and issues, vide the Agreement for Settlement dated 30th June 2023. A total sum amounting Rs. 1,19,66,948 (Rupees One Crore Nineteen Lakhs Sixty-Six Thousand Nine Hundred and Forty-Eight Only) has been paid to Mr. Zubin Saigal herein in reference to the **Flat Bearing No D1104** at Nitesh Cape Cod. The same has been treated as the full and final settlement thereof.

No claims, differences and/or disputes are pending between the Parties and no further claims or disputes will be raised by either party in connection with the issues arising in the present Case.

A total sum amounting Rs. 1,19,66,948 (Rupees One Crore Nineteen Lakhs Sixty-Six Thousand Nine Hundred and Forty-Eight Only) has been paid to Mr. Zubin Saigal herein in reference to the **Flat Bearing No D1104** at Nitesh Cape Cod vide an Agreement for Settlement dated 30th June 2023, as a full and final settlement.

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

For MARATHALLI VENTURES PVT. LTD.

Authorised Signatory

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 settlement of **Flat Bearing No. D1104** at Nitesh Cape Cod Project the Parties to the Petition request this Hon'ble Court to record the same and dispose off the Petition pending in the above Case as fully and finally settled

PLACE: Bengaluru

DATED: 08/02/2024


COMPLAINANT


RESPONDENT

For **MARATHALLI VENTURES PVT. LTD.**

Authorised Signatory

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

CMP/190320/0002471

BETWEEN:

Mr. Zubin Saigal

...Complainants

AND:

Nitesh Urban Development Pvt Ltd

(Now known as Marathahalli Ventures Pvt Ltd)

...Respondents

8/2/24

MEMO FOR WITHDRAWAL

The Complainants herein have settled their disputes with the Respondent out of the court as vide Agreement for Settlement dated 30th June 2023. A total sum amounting Rs. 1,19,66,948 (Rupees One Crore Nineteen Lakhs Sixty-Six Thousand Nine Hundred and Forty-Eight Only) has been paid to Mr. Zubin Saigal herein in reference to the **Flat Bearing No D1104** at Nitesh Cape Cod vide an Agreement for Settlement dated 30th June 2023, as a full and final settlement.

Both the parties to the proceedings state that they have no further claims 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 compromise arrived at between the parties, the Complainant requests this Hon'ble Court to dispose off the above case as settled in the interest of justice and equity.

PLACE: Bengaluru

DATED: 8/02/2024

Zubin
COMPLAINANT

[Signature]
RESPONDENT

For MARATHALLI VENTURES PVT. LTD.

Authorised Signatory

Complaint No. 2471

16.03.2024

Before the Lok-Adalat

The execution proceedings in this case are taken up before the pre-Lok-Adalat held on 08.02.2024. The joint memo dated: 08.02.2024 in the pre Lok Adalat sitting by both the parties is hereby accepted. Hence, the dispute in connection with the execution proceedings of this complaint is settled before the Lok-Adalat as per joint memo dated: 08.02.2024. The joint memo filed by the parties shall be part and parcel of award/order.

The execution proceedings in this complaint referred above stands disposed off accordingly.


Judicial Conciliator.


Advocate Conciliator.

KARNATAKA STATE LEGAL SERVICES AUTHORITY
BEFORE THE LOK ADALAT
IN THE KARNATAKA REAL ESTATE REGULATORY AUTHORITY AT
BENGALURU

DATED: 16TH DAY OF MARCH 2024

: CONCILIATORS PRESENT:

Sri. I. F. Bidari

..... Judicial Conciliator

AND

Ms. Sumathi. M

..... Advocate Conciliator

COMPLAINT NO: CMP/190320/0002471

Between

Mr. Zubin

..... Complainant

AND

M/s. Nitesh Urban Development Private Limited
Presently known as NUDPL Ventures Pvt. Ltd.,
Now changed as Marathalli Ventures Pvt. Ltd.,

.....Respondent

Award

The dispute between the parties with regard to execution proceedings in the above case having been referred for determination to the Lok Adalat and the parties having compromised/settled the dispute in connection with execution proceedings in the matter, as per the joint memo dated:08.02.2024 filed during the pre-Lok Adalat sitting on dated:08.02.2024, same is accepted. The settlement entered between the parties is voluntary and legal one.

The execution proceedings in the case stands disposed off as per the joint memo: 08.02.2024 and said joint memo is ordered to be treated as part and parcel of the award.


Judicial conciliator


Advocate conciliator

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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 H Palakshappa

Adjudicating Officer

Date: 28th February 2020

| | |
|----------------------|--|
| Complaint No: | CMP/190320/0002471 |
| Complainant : | Zubin, 12, 5C Cross, 16 th Main, IAS Colony, BTM 2 nd Stage, Bengaluru-560076 Rep.by: Sri V.Akshay Kumar Jain, Advocate |
| Opponent : | Nitesh Urban Development Private Limited, 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 NUDPL Enterprises Private Limited at 7 th Floor, Nitesh Timesquare, No.8, M.G.Road, Bengaluru-560001 |

“J U D G E M E N T”

1. Zubin, the complainant has filed this complaint bearing complaint no.CMP/190320/0002471 under Section 31 of RERA Act against the project ‘Nitesh Cape Cod Phase I’ developed by “Nitesh Housing Developers Pvt. Ltd.,” wherein the complainant has prayed for delay compensation. The complaint reads as under:

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

1. Booking done in March 2013. 2. Completion was advised as December 2015. 3. As per agreement a compensation of Rs.5/sqft per month needs to be provided. Builder has not provided that. 4. Project handover has been delayed year after year without compensation or concrete time line. 5. Still no sight of completion or handover.

Relief sought from RERA: Delay Compensation + interest @ 20% /year

2. In pursuance of the notice issued by this authority, the complainant has appeared in person. 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 delay compensation 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 21/03/2013 in respect of flat bearing No. D-1104 measuring 1667.11 square feet in the eleventh floor of block-D of Nitesh Cape Cod Project. The developer has agreed to complete the project on or before December 2015. The complainant till date has paid Rs.95,73,558/- to the developer.

Devi
28/02/2020

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ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು
Karnataka Real Estate Regulatory Authority, Bengaluru

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

7. In this regard it is the stand of the developer that it is submitted that the respondent had received Rs.95,73,558/- from the complainant and as the apartment fallen to the share of the land owner, the said amount was transferred to land owner Mr.B.N.Venugopal, who is one of the parties in the agreement of sell and construction agreement to sell 31/03/2013. Hence the said land owner is the proper and necessary party to the proceeding. He should be arrayed as party and relief should be sought against him and order if any has to be passed against him only. This respondent has no kind of liability towards the complainant on any count and in any manner or ground. Without prejudice to the above, the respondent submits as under:

- a. *The complainant and his wife Sharayu Saigal had booked an apartment No.D-1104 in the eleventh floor block D of Nitesh Cape Cod project of the respondent. The parties have executed agreement to sell dated 21/03/2013 and construction agreement dated 21/03/2013 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.*
- b. *It is submitted that as per agreement, the complainant is not entitled to terminate the agreement or claim refunds of amounts due to delay arising out of force majeure circumstances. As stated above, the delay caused was due to above referred bonafide reasons and due to litigations over the schedule property and hence the complainant is not entitled to claim refund of any amount. (clause 6.2 of the construction agreement).*

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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- c. It is further submitted that in case of cancellation of agreement by the complainant as per agreement, the respondent is entitled to forfeit/with hold 18% of the amount received towards administrative charges and the balance shall be refunded with 180 days or upon resale of the apartment, whichever is later. Since the complainant has sought for cancellation and refund of the amount the same will be considered as per the agreement and upon resale of the apartment the balance amount will be refunded to the complainant. (clause No.1 of agreement of sell and clause No.5 of construction agreement).
- d. It is submitted that the financial constraints caused due to bad market conditions which has been affecting the Real estate industry, also prevented the respondent to complete the project within the time frame.
- e. It is submitted that the project consists of 2 phases where the second phase involves TDR. The collections from phase 1 were used to purchase TDR of phase 2, prior to RERA coming into effect. But the State Government took more than three years to frame the new rules for the TDR which affected as badly thereby hampering the cash flow and hence the progress of the project.
- f. It is further submitted that the principal contractor of the project M/s Simplex infrastructure withdrew the project unexpectedly and has filed a criminal case against us at Kolkata and also the contractor has filed an Arbitration Application against us before the City Civil Court in Bengaluru. The withdrawal of the principal contractor has delayed the construction progress of the project. In addition we had called the contractor for the joint measurement but they didn't respond to any of our communication. Because of no joint measurement, we are unable to go ahead the construction as contractor may come and claim for te additional work done by new contractor.

[Handwritten Signature]
25/02/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

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g. It is submitted that there were numerous occasions of transporters strike and river sand strike which delayed the construction progress to a large extent.

I find no good reasons in the above contention taken by the developer since the developer has to compensate the consumer or refund the amount whenever he failed to complete the project within the due date as said in the agreement of sale. The reasons given by him are not covered by the term Force majeure. When that being the case I would say that whatever the objections taken by the developer is only his defence, but Sec.18 does not recognise those reasons.

8. The learned counsel for the complainant submitted that on going through the agreement of sale it reveals that the land lord by name Venugopal is also involved in the transaction. At the time of the argument the representative of the developer submits that the sale consideration has not been received by the developer, but it was received only by the land lord, but no liability can be fixed on the promoter. But I would like to say that the submission made on behalf of the developer has not force at all. Because, the project has been developed by the developer when he is a responsible for the whole transaction. If the amount has been received by the land lord without complying Sec.4(2)(1)(D). Further, as per the definition of promoter includes the land lord, therefore whatever the transaction done by the land lord along with the developer, the developer shall answer. In addition to it, I would like to say that notice has been issued to the land lord but he has not appeared. Therefore, the submission made on behalf of the developer has no force at all.

P. D. S.
28/02/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

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9. I would say that the reasons given by the developer are not acceptable and he has not any ground to forfeit the amount paid by the complainant on the ground of cancellation made by the complainant. The developer can forfeit the amount to some extent as a penalty only in case the cancellation has been made by the complainant without any default on the part of the developer, but here the developer who was expected to complete the project in the month of March 2016 till today he is not able to get the occupancy certificate means his project is not yet completed. When that being the case the stand taken by the developer as stated above falls on the ground. As per the judgement of the Apex court in Pioneer case it says that the developer shall not make complainant to wait for indefinite period. In this case, the completion date was in the year 2015 now we are in the year 2020. There is no reasons to direct the complainant to take delay compensation and wait for completion of the project. Hence, I would say that though the complainant has sought for delay compensation in his complaint but later put the submission for refund which cannot be rejected.
10. 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 26/07/2019 and case is being disposed off on today with some delay. With this observation, I proceed to pass the following

Devi
25/02/2020

ಕರ್ನಾಟಕ ರಿಯಲ್ ಎಸ್ಟೇಟ್ ನಿಯಂತ್ರಣ ಪ್ರಾಧಿಕಾರ, ಬೆಂಗಳೂರು

Karnataka Real Estate Regulatory Authority, Bengaluru

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3ನೇ ಕ್ರಾಸ್, ಮಿಷನ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು-560027.

ORDER

- The Complaint filed by the complainant bearing No. CMP/190320/0002471 is hereby allowed
- The developer is hereby directed to return a sum of Rs.95,73,558/-
- The developer is also directed to pay interest on respective amount paid on the respective dates till 30.04.2017
- 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.
- The complainant is directed to execute cancellation agreement of sale, after whole amount is recovered.
- 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 28/02/2020).

K. PALAKSHAPPA
Adjudicating Officer

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